



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
2000 Volume III: Constitutional and Statutory Privacy Protections in the 21st Century

Privacy Issues and Disabled Persons

Curriculum Unit 00.03.06
by Joanne R. Pompano

In recent years, disabled persons have fought for their right to equal access to facilities, experiences, and opportunities in American society. Much progress has been made in the effort to ensure that disabled citizens have equal and appropriate opportunities in schools, communities and workplaces. Often this progress was made possible by the rulings of the Supreme Court and by State and Federal legislation.

However, disabled people may have lost some of their privacy in the process. Are there issues of privacy that are unique to the disabled? What protection is provided to disabled persons? Have some of the laws that were developed to assist them also created privacy issues for them? This unit addresses the privacy issues faced by the handicapped populations in our country. It will provide students with the opportunity to discuss and understand these issues and the protection or lack of protection provided by the laws of the United States.

Although, the unit was developed to explore issues of privacy as they pertain to the disabled, it should also be of value to the non-handicapped student wishing to understand the problems and concerns of disabled peers. In addition, classroom teachers will also gain insight into the problems that are of concern to their disabled students.

Purpose of the Curriculum

The purpose of this curriculum is to assist students and teachers in exploring the privacy issues that are of concern to disabled persons. There are three major parts to this curriculum.

1. The unit will summarize the privacy rights recognized or established by the U.S. Constitution, its amendments, as well as the state and federal laws that pertain to privacy.
2. The unit will focus on the special problems handicapped individuals may encounter concerning privacy issues such as computerized data banks, confidentiality of medical and educational records and the laws and legislation concerning the rights of disabled persons.
3. The unit will look at the laws that pertain to persons with disabilities and will investigate whether those laws provide privacy protection or in fact are creating privacy issues for disabled person.

Developed for students in grades 11-12, this unit will teach students about issues that are of vital importance to persons who are disabled. The exercises and lessons supplied will help students understand how these issues may affect disabled persons.

This unit will allow students:

1. To gain a general understanding of the U.S. Constitution including the First, Fourth, and Fifth Amendments
2. To debate issues such as genetic enhancement, computerized data banks, reproduction rights and confidentiality rights for disabled persons
3. To explore issues such as the non-medical use of genetic information by employers, insurance companies, and schools
4. To gain insight into the effects of the new technology in the fields of the privacy
5. To study the rights of disabled persons by following the federal laws that protect their rights including: the Family Educational Rights and Privacy Act (FERPA), The Protection of Pupil Rights Amendment (PPRA), The Individuals with Disabilities Education Act (IDEA)
6. Also, in order to understand the history of the special needs student the following

Legislation will also be investigated: The Education for All Handicapped Children Act, and The Americans with Disabilities Act (ADA).

Issues of Privacy in the 21st Century

Citizens of the United States generally regard privacy as a cherished right that is protected by the Constitution. This right, it is assumed, prevents the government from interfering in private matters, protects citizens from search and seizures of personal property, and provides confidentiality in such personal matters as medical histories, personal communication and financial information. In addition, citizens expect privacy rights to protect them in their efforts to control personal information by providing them with the right to grant or deny access of that information to others.

Our privacy and confidentiality rights seem increasingly to be challenged. Many experts believe that the threat to privacy is greatly increased in this age of information where personal and business data can be linked, transferred, shared and sold, usually without knowledge or consent of individuals involved.

Privacy Issues and Disabled Persons

The right of privacy is a very important issue for handicapped individuals. For some persons who are disabled, threats to privacy and confidentiality are problems that they deal with on a daily basis. There are, in fact, a number of privacy issues that are of special concern to handicapped people.

They include the following issues:

1. the control of computerized data concerning their disability including distribution of this information to employers, associates, government agencies and merchandisers
2. the desire not to be compelled to give information to government bodies, employers, and merchants about

their handicapped and medications they may be taking because of their handicaps

3. the desire to have unimpeded rights about reproduction, including decisions as to whether fetuses should be tested and corrected for handicaps

4. the special problems of confidentiality in school settings

As a teacher of blind and visually impaired students, I am concerned that my students understand the history of disabled citizens in the United States. In addition, I feel it is also important for non-disabled individuals to understand the issues important to disabled citizens. In addition, teachers with disabled students in their classrooms often have questions and concerns regarding disabled students. It seems, therefore, that many people would benefit from understanding the history of the disabled in various periods of our history. In addition, they need to understand how laws evolved to meet the challenges faced by persons who have handicapping conditions. Landmark legislation that is important to disabled persons will also be included.

The issue of privacy is a second, equally important issue, which affects this population. In researching and working on the issue of privacy in educational matters it will be necessary to learn a little about the important legislation that has been passed concerning the education of disabled children in our schools. Therefore, students will be introduced to The Americans for Disability Act and the Education for All Children. These cases are included because they are referred to in readings and will help students gain an understanding of handicap issues.

In addition, it is hoped that classroom teachers will gain information about the issues that their disabled students are concerned with concerning privacy. Certainly classroom teachers are concerned about the issues of privacy since it is a topic often discussed. For instance, classroom teachers are concerned that they be given all the information necessary to serve their students and their individual needs. Helping them to understand why there are such strict rules and regulations will assist them in their efforts to serve their students more effectively.

Section I: Sources of Privacy Protection

Constitutional Principles that Provide for the Right to Privacy

The U.S. Constitution does not specifically grant individuals the right to privacy. In fact, the word privacy does not appear in the Constitution. However, the right to privacy in the United States is a concept recognized by the principles embodied in the Federal Constitution and by courts and lawmaking bodies.

The Supreme Court has recognized that the Constitution protects different aspects of individual privacy. The right of privacy in U.S. Constitutional law is commonly provided by the First, Fourth, and Fifth amendments. The Fourth Amendment prohibits unreasonable searches and seizures; the First and Fifth protects an individual's freedom to be autonomous.

The Fourth Amendment provides the strongest guarantee to privacy in the Constitution. The Fourth amendment prohibits unreasonable searches and seizures by the government. It protects the right of people to be secure in their persons, places, papers, and effects from unwarranted searches and seizures from the

government.

Traditionally the right to privacy focused on protection from intrusion by the government into an individual's house or property that resulted in measurable injury. However, in 1890, the Harvard Review published an article by Louis Brandies and Samuel Warren entitled "The Right to Privacy." This article was influential in the way federal courts began to interpret constitutional principles concerning privacy rights. (1) The Courts have broadened their scope recognizing that an individual's right to privacy is implicit in the United States Constitution and the Bill of Rights. (2)

The right of privacy began to be recognized as a legal concept in U.S. constitutional law and in the law of torts. Tort law asserts a right of an individual to recover damages for unjustifiable invasions of privacy.

Landmark Cases

The court expanded the existing doctrine to include personal rights in the 1923 case of Meyer v. Nebraska. This decision struck down a Nebraska ban on the teaching of foreign languages in elementary schools. (3) Thus, the Court held that the federal Constitution implied a right to privacy.

Brandies is quoted:

The makers of our Constitution sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred as against the Government, the right to be let alone the most comprehensive of the rights of man and the right most valued by civilized men. (Justice Louis D. Brandies (dissenting in the Olmstead decision, 1928) (4)

In 1965, the Supreme Court first recognized a constitutional right of privacy in the decision of the case Griswold v. Connecticut. In this case, a state law prohibiting the use of contraceptives by married couples was struck down. Justice William O. Douglas, writing for the Majority Opinion, stated that there is a "zone of privacy" created by fundamental constitutional guarantees included in the First, Fourth, and Fifth amendments. (5)

This later led to the decision Roe v. Wade, which overturned most state prohibitions on abortions. Thus, the Supreme Court through such cases has recognized an individuals' right to privacy. (6)

The U.S. Privacy Act of 1974, guarantees individuals access to many government files including files pertaining to themselves. Government agencies are prohibited from disclosing information from these files except under a court order or other limited circumstances. (7)

Section II: The Issues of Privacy and Disabled Individuals

Many of the issues that are of concern to disabled persons are also of concern to individuals who are not handicapped. Three issues that may be of special interest to people who are handicapped have been included in this unit. These issues include: the use of computerized medical records, genetic concerns, and confidentiality of school records.

1. The Issue of Computerized Medical Records

An individual's medical records can potentially reveal information that is highly personal and sensitive. Records may include information about family relationships, sexual behavior, substance abuse, and private thoughts and feelings related to mental health or genetic disorders.

Americans often assume that the information contained in their medical records will be kept confidential and will be used only to benefit their health and welfare. However, information we provide to a physician may not actually be protected or not as closely as we may like. In fact, medical records may be routinely shared, sold, or used for other purposes often without the patient's knowledge.

Medical data has enormous value to more than just patients and their doctors. Insurance companies, employers, researchers, and commercial enterprises all have an interest in gaining health related information often without the knowledge or consent of the patient.

There are a number of privacy and confidentiality issues concerning the collection, use, and distribution of an individual's health information.

Information may be used for other purposes:

1. An employer can use the information to reduce health care and workers compensations costs by identifying employees and applicants that may be costly now or in future.
2. There is the fear that health care providers can use the information to do research for reimbursement.
3. Another fear is that insurance companies can use the information to deny or limit coverage.

Many experts feel it is imperative that the privacy of medical records must be maintained. They feel more needs to be done to ensure that only those who have an expressed need to know and have patient authorization be allowed to access protected health information and only for the specific purpose authorized.

These are very important issues because the information from medical records may influence many aspects of an individual's life including employability, credit worthiness, and the ability to get health insurance.

The Constitution provides little support for medical record privacy claims in the United States. Privacy harms are usually remedied through private actions such as contract and tort, and state agencies. However, the spirit of the Constitution shapes our beliefs about the right of privacy and common law and state statutes provide most of the safeguards against the misuse of personal data.

There is a legitimate fear that more people will have access to personal health records due to the increased use of computerized records. Computers can collect, collate, store, analyze and distribute data quickly, easily, and cheaply. Protecting that information is an issue. Companies can sell and trade this information easily

across a vast network of computers.

The automation of medical and health records presents significant patient privacy and confidentiality issues.

Databases may contain errors in information

An increased amount of data can be stored and shared as computers become more powerful and cheaper to use.

The need to limit the collection, use, disclosure and retention of records

The need to ensure that records are used for the purpose of caring for the patient.

Obviously the growth of managed care organizations complicates these problems because they are based on many health care providers sharing information on a patient.

Many believe that privacy must be extended to the right of an individual to determine how, when and to whom information about them is used, distributed, stored and accessed.

2. The Issues of Genetics

Genetic errors can increase an individual's risk of developing disorders such as cancer, heart disease, and diabetes. In fact, an estimated 3,000 to 4,000 diseases, including cystic fibrosis and muscular dystrophy, are believed to be inherited by errors in genes. (8)

The Human Genome Project has identified nearly all of the 50,000 to 100,000 genes that make up the human genome. This information provides an opportunity for health care to develop strategies to prevent or reduce the effects of genetic disease. (9)

DNA technology provides this important assistance to the diagnosis and treatment of disease. However, DNA also provides the most personal and private data not just about an individual but his family. As genetic testing increases in use there are significant risks that highly sensitive information will be easily accessible without the knowledge or consent of the patient. Thus, there may be an even greater increase in the loss of privacy and genetic possibilities of discrimination.

Genetic research has made it possible to identify the genetic basis for many human diseases and disorders. This research provides an increased possibility of detecting diseases and conditions at an early stage. In fact it may also be possible to provide information about problems that may occur in the future. Thus, we may be increasingly able to develop prevention strategies and treatment.

There are many problems, however, that go along with this increased knowledge of our genetic make-ups. Insurance companies can try to reduce costs by denying coverage or increasing the amount of cost for coverage. In the workplace, genetic information is used to discriminate against individuals by denying jobs or benefits.

because an employee possesses a particular genetic trait. This may be so even when the genetic problem has no bearing on their ability to do the job or even though the individual may never come down with the illness or condition.

Due to these problems, many are calling for federal legislation to protect them from genetic discrimination in the workplace.

Genetic tests alone cannot predict with certainty whether a person with a particular genetic error will develop a disease or disorder and the majority of diseases do not result solely from a genetic predisposition. There are many factors involved such as the interaction of genes including environmental factors, occupation, diet, and lifestyle.

Technologies are being developed that may provide a means of early detection. Advances in research also suggest that detection, treatment and genetic alterations may help prevent or reduce diseases and medical disorders. For example, genetic testing for glaucoma and some cancers may allow the patient to take preventive measures before the disease causes harm.

Genetic Information and Discrimination

Genetic information can be obtained through analysis of DNA, the material that makes up genes. Genetic tests can identify: individuals who have developed a disease. The information from genetic tests can also recognize healthy people who may be at risk of developing a genetic disorder, or who are at risk of having children with that inherited disorder or trait.

Genetic technology increases the ability to detect and prevent health disorders. Genetic information can be misused, however, to discriminate against individuals by denying employment or insurance based on their genetic predisposition to an illness. Genetic information has implications for future generations

Existing Protections are Limited

It is difficult to ensure that medical information is not used to discriminate against individuals. There are no federal laws that directly and comprehensively protect against abuses in the gathering or use of genetic information in the workplace. A few protections exist incidentally under federal laws that address other types of workplace discrimination

Existing laws do not seem to provide for adequate protection against genetic discrimination in the workplace. There are wide variations among these state laws, which differ in coverage, protections, and enforcement. Due to the growing concern over genetic discrimination in the workplace a number of states have addressed the issue of genetic discrimination in employment through state legislation.

Some states provide protections against various forms of genetic discrimination in the workplace while other state laws only regulate the use of genetic testing in employment decisions and the disclosure of genetic test results. For instance, some States prohibit employers from requiring workers and applicants to undergo

genetic testing as a condition of employment.

State and federal protections against employment discrimination based on genetic information varies greatly. Therefore, it may be necessary to enact comprehensive federal legislation that would establish minimum protections. Federal legislation could be supplemented by state laws to ensure that advances in genetic technology and research are used to solely to address medical needs of an individual. Congress has introduced numerous bills, with bipartisan support, recognizing the need for federal protection.

The 1996 Health Insurance Portability and Accountability Act (HIPAA) is the only federal law that directly addresses the issue of genetic discrimination. This act prohibits group health plans from using any health factors, including genetic information, as a basis for denying or limiting eligibility for coverage or for charging an individual more for coverage. (10)

Currently laws prohibiting discrimination based on disability provide a source of protection against genetic discrimination in the workplace such as Title I of the Americans with Disabilities Act (ADA) which is enforced by the Equal Employment Opportunity Commission (EEOC). (11) Similar disability-based anti-discrimination laws, such as the Rehabilitation Act of 1973 provide some protections against genetic discrimination in the workplace. (12)

Under the ADA, individuals with symptomatic genetic disabilities have the same protections against discrimination. Advances in genetic research will likely mean more people will be affected by genetic discrimination based on unexpressed genetic conditions.

The ADA does not protect workers from requirements or requests to provide genetic information to their employers. An employer may not make medical inquiries about a job applicant prior to extending a conditional offer of employment. However, once a conditional offer of employment has been made, the employer may obtain extensive medical information about the applicant. At that point, an employer could obtain require genetic screening as a condition of employment, or purchase genetic information about applicants from a genetic information data bank. Once the applicant is hired the employer may request medical information that is job related.

Title VII of the Civil Rights Act of 1964, is another federal law that may incidentally provide protection against some forms of genetic discrimination. This legislation applies when genetic discrimination is based on racially or ethnically linked genetic disorders. (13)

3. Privacy Protection and Special Populations

Federal legislation has been important to advancing the opportunities and rights of special needs students in the United States. Students will investigate whether these laws provide provisions for ensuring the privacy of disabled persons.

Special Education

In the United States special education programming begin during the early 19th century when the first special schools for handicapped children were established. (14) Prior to this, severely handicapped students were excluded from schools and, in many states; this practice was within the law. Students with cerebral palsy, for instance, could be forced to attend private residential schools or to rely on private tutors, all at the expense of their parents.

This practice continued, in many places, even as educators and parents began to recognize that integrated education was of great value to both the handicapped and non-handicapped student. Students, with a wide variety of disabilities, were educated separately in special education facilities, often far from their homes. Countless others probably never attended school or did not have access to appropriate educational programs.

In the early 1950's, some school districts began to integrate students with disabilities into their regular programs. However, even though such programs often showed that handicapped students could be active and successful members of their class and communities, many districts began to separate handicap students from their non-handicapped peers in special classes. Often many age groups and disabilities were taught in the same room separated from their non-handicapped peers. (15)

In 1971 a federal district court ruled that retarded children in Pennsylvania were entitled to a free public education. *Pennsylvania Association for Retarded Children v. Commonwealth*, 334 F.Supp. 1257 (E.D.Pa. 1971) (16) After this ruling other districts had to look at their educational practices for educating handicapped students.

A subsequent decision in the District of Columbia extended these rights to all handicapped students. *Mills v. Board of Education*, 348 F.Supp. 866. (17) This case is important because it developed The Individualized Education Plan basis for all subsequent legislation.

Section 504 of the Rehabilitation Act: In 1973, Congress passed Section 504 of the Rehabilitation Act. It reads in part:

"No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.... " (18)

Section 506 requires that organizations, school districts that receive federal financial assistance and other contractors doing business with state and local governments must comply with this law.

The Education for All Handicapped Children Act

In 1975, Congress passed P.L. 94-142 assuring the right of all handicapped children to a public school education. (20 U.S.C. Section 1401 et seq.) (19) This Act is a federal effort to promote the education of all handicapped children. Prior to this, the majority of handicapped children in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to `drop out.'" ()

The Act provides handicapped children with the following:

I. The right to a free appropriate public education.

2. The development of an individualized education program (IEP)
3. Provision of special education and related services
4. Due process to protect parents and students in effort to provide appropriate education
5. Guarantee that students be educated in the least restrictive environment

A team meeting must be held annually to discuss the goals and objectives for the student. The meeting should consist of: a representative of the local educational agency, the classroom and special education teacher, the parents or guardian, and when appropriate the child. A written document would then be produced that would include:

- The present levels of educational performance
- The annual goals and short-term objectives
- The specific educational services to be provided
- The extent to which such child will be able to participate in regular educational programs
- The projected date for initiation and anticipated duration of such services
- Appropriate objective criteria and evaluation procedures
- Schedules for determining whether instructional objectives are being achieved
- Complaints brought by parents or guardians must be resolved at "an impartial due process hearing." Section 1415(b)(21)

The demand for special education services rose dramatically when these laws were enacted. Litigation began to define this Act.

Americans with Disabilities Act

The American with Disabilities Act prohibits discrimination against students on the basis of disability in education programs or activities that receive Federal financial assistance.

Section 504 of the Rehabilitation Act of 1973, Title II of the ADA extends the prohibition to the full range of state or local government services, programs, or activities regardless of whether they receive any federal funding. (22)

The Americans With Disabilities Act and Education

Congress passed the Americans with Disabilities Act in 1992. It created statutory rights of actions to protect the disabled from discrimination. Title II of the Americans With Disabilities Act (ADA) states: No qualified individual with a disability shall be excluded from participation in, or denied access to, programs or activities; denied benefits or services; or be subjected to discrimination by any public entity. (23)

There is limited Federal protection for genetic discrimination. The ADA prohibits employers from discriminating

against individuals with physical or mental impairments as long as they are capable of performing the job. In addition, the ADA extends anti-discrimination protections to employees of working for places that do not receive federal financial assistance.

The Paper Trail of Special Education

By the time a disabled student enters pre-school a mountain of paperwork work may be created about his or her condition and other details of the child's life. This information is gathered to allow insurance companies, government agencies, educators, and health care professionals to give appropriate services to the child. The information compiled by these numerous agencies are often shared.

As the student progresses through the educational system, information is added, discussed, and shared. For a student recognized as special education there may be numerous meetings about the student throughout the year.

Federal privacy laws apply to school, educational agencies and other education institutions that receive federal funds from the U.S. Department of Education.

Education records include a great deal of information about a student including a student's date and place of birth, parents /guardians, address, grades, test scores, academic records, activities, and official letters, special education records, disciplinary records, medical and health records, documentation of attendance, awards, degrees, schools attended, and personal information such as social security number are routinely included in a student's educational record.

It is important for disabled persons to ensure their privacy rights. There are many opportunities for disabled individuals to create a paper trail about themselves. For instance, each encounter with doctors and medical personnel, insurance companies, government agencies, and other places that they must rely on also have a file created.

The disabled and their families assume these files are created to aid them and will only be used for their benefit. There are many problems that may be created when that information is used in other ways.

Legislation

The Family Education Rights and Privacy Act (FERPA)

The Family Education Rights and Privacy Act is a federal law that establishes privacy protection for educational records. This legislation ensures that information collected about students can only be released with the prior consent of a parent or student over eighteen to authorized persons for specific purposes. This act applies to public schools or local education agencies that receive education funds. It protects both computerized and paper records. In addition; most states have privacy protection laws that reinforce FERPA.

FERPA requires written policies must be accessible about how student records are restricted and released. And these policies must explain parent rights. This Act also sets procedures for reviewing and correcting errors in records. (24)

Buckley Amendment

Congress strengthened safeguards for the privacy of education records and allows for the accuracy of those records. Prior written notice from parents is necessary before local education agencies and schools can release information from students' records. However, information can be released such as to State and local education official for audits or to review records in compliance with Federal laws. They are also allowed to disclose information without parental consent when subpoenas or courts orders are in effect or in emergencies to protect the health and safety of the student or others. The rules apply to third parties working or under contract or acting on behalf of schools (medical, psychologists, researcher, state and local education agencies)

In general, this Act must:

- Specify records to be released
- Reason for releasing
- Identify group or individual receiving records (25)

Improving America' School Act

The Improving America's Schools Act of 1994 amended the FERPA. This amendment tightened privacy rights for students in several areas.

1. It provided parents with the right to review records maintained by state education agencies.
2. It provides a five year ban on receiving federal funds if any agency inappropriately re-releases personally identifiable information

However, it also provides agencies the right to share information about disciplinary actions or for certain law enforcement judicial orders and subpoenas without notifying parents. (NCES feb.96) (26)

The Individuals with Disabilities Education Act (IDEA) of 1997 was the first major revision to the Education of All Handicapped Children Act. It retained and strengthened the basic rights and protections under the original

IDEA: It provides:

- The right to a free appropriate public education for all children with disabilities (including children suspended or expelled from school)

The procedural safeguards rights for children and their parents. (27)

IDEA, is a federal law that affects data collection, disclosure procedures and maintenance of educational records.

How To Utilize This Curriculum;

This curriculum was originally developed for visually impaired student attending a regular education high school in an urban setting. The students are legally blind or visually impaired due to a variety of vision problems including cataracts, glaucoma, severe myopia, Retinitus Pigmentosa, etc. Some students are totally blind. Others have some limited vision. In addition, some students may have additional handicapping conditions such as cerebral palsy, hearing impairments, or learning disabilities. The students are mainstreamed into regular education classes along with their non-disabled peers.

The visually impaired students may use enlarged print, recorded translations, or Braille text. A certified teacher of the blind consults with the student and staff members concerning any modifications that need to be made to compensate for the students loss of vision. In some cases, an aide or tutor either accompanies them to class or is in close contact with them throughout the school day.

This curriculum was designed to integrate the skills of reading and writing, computer, and debating, and researching. The unit was designed for use in History, Law, Special Education, and Social Science. Both handicapped and non-handicapped students will benefit from the information and experiences it will provide.

The classroom activities utilized will promote problem solving, communication skills and teamwork. In addition, these activities will allow students the opportunity to gain an understanding of the t U.S. Constitution, the 1st, 4th, and 5th amendments, as well as general issues of privacy that will have to be dealt with in the 21st century. It is believed that the knowledge and understanding gained from this project will assist students as they attempt to comprehend problems on a wider scale. The materials used in this curriculum will be provided in large print, Braille, or audio translations depending on the needs of individual's students.

General issues of privacy will have to be dealt with in the 21st century. It is believed that the knowledge and understanding gained from this project will assist students as they attempt to comprehend problems on a wider scale. The materials used in this curriculum will be provided in large print, Braille, or audio translations depending on the needs of individual students.

Lesson One: To research and debate privacy issues

Objective: To gain knowledge of the issues of privacy rights for the disabled

Goals: 1. Students will research issues that are of concern to disabled individuals including

Materials: Copies of federal laws and amendments:

The Family Educational Rights and Privacy Act, The Protection of Pupil Rights Amendment, The Individuals with

Disabilities Education Act, The Education for All Handicapped Children Act, and The Americans with Disabilities Act.

Procedure: The teacher will introduce some of the issues of privacy through discussion with the class and through readings. Groups of 4-6 students will be formed.

Each group will receive a suggested reading list. However, they will also develop their own reading lists. They will also be encouraged to use the Internet to conduct research.

Each group will choose one privacy issue. Each group will select a privacy issue and will research the topic and prepare for debating the issue.

Issues for debate:

1. The privacy issues concerning computerized data banks including distribution of this information to employers, associates, government agencies and merchandisers
2. The privacy issues concerning confidentiality of medical and educational records.
3. The privacy issues of genetic enhancement and unimpeded rights about reproduction, including decisions as to whether fetuses should be tested and corrected for handicaps
4. To explore issues such as the non-medical use of medical and genetic information by employers, insurance companies, and schools
5. the special problems of confidentiality in school settings

Lesson Two: To write a law or amendment pertaining to privacy of disabled individuals

Objective: The purpose of this unit is to teach students the federal laws and amendments that provide opportunities and protection for disabled individuals

Goals:

1. Students will examine federal laws and amendments that concern privacy issues.
2. Students will examine federal laws and amendment concerning assess and opportunities persons with disabilities

Materials: Students will need access to the Internet to conduct research.

Websites: <http://cnn.com/>" <http://cnn.com>

<http://findlaw.com/>" <http://findlaw.com>

<http://congresslink.org/>" <http://congresslink.org>

<http://msnbc.com/>" <http://msnbc.com>

Laws and amendments:

The Family Educational Rights and Privacy Act (FERPA)

The Protection of Pupil Rights Amendment (PPRA),

The Individuals with Disabilities Education Act (IDEA)

The Education for All Handicapped Children Act

The Americans with Disabilities Act (ADA).

Procedure: Students will locate the laws and amendments concerning privacy rights for disabled persons.

Each group will choose one privacy issue that they feel is not be addressed in the present laws and amendments. Students will discuss problems and develop a solution in the form of law or amendment.

The teacher will reviews criterion with students. Students will write a law or amendment dealing with a privacy issue. They should be encouraged: 1. to use precise language 2. clearly stating the issue and why this law needs to be developed 3.to include consequences for noncompliance 4.to consider existing laws and 5. to provide a means of enforcement. The group will debate and reform the proposals within their group. The final wording and content will be decided by majority vote.

Each group will receive a suggested reading list. However, they will also develop their own reading lists. They will also be encouraged to use the Internet to conduct research.

The teacher will be available for clarifying issues, providing suggestions or direction, and for assisting in improving writing style.

Groups will present their proposals to the entire class.

Lesson Three. To create a magazine/journal concerning privacy issues

Objective: Each student will write an essay or editorial about a current issue of privacy rights

Goals: 1. Students will examine federal laws and amendments that concern privacy issues.

2. Students will collect articles from magazines, newspapers, journals, and books

3. Students will write, edit and publish a magazine containing articles and editorials written by students

Materials: Students will need access to the Internet to conduct research

Websites: <http://www.cnn.com/>" <http://www.cnn.com>

<http://findlaw.com/>" <http://findlaw.com>

<http://msnbc.com/>" <http://msnbc.com>

<http://congresslink.org/>" http://congresslink.org

Procedure:

Students will keep a notebook of articles from current newspapers and magazines. Students will collect articles from daily and weekly magazines, journals, newspapers, and book concerning issues of privacy in our daily lives. These articles will be shared and organized in files for future reference.

Each group will choose one privacy issue. Each group will select a privacy issue that they feel is not be addressed in the present laws and amendments. Students will discuss problems and develop a solution in the form of law.

Students will research issues and write essays, articles, or editorials about the subject. The best work will be included in a quarterly magazine edited by the students.

The students will:

1. Gain an understanding of problems disabled individuals encounter concerning privacy issues such as genetic enhancement, computerized data banks, reproduction rights and confidentiality rights.
2. Understand the use of non-medical use of genetic information by employers, insurance companies, and schools
3. Gain insight into the effects of the new technology in the fields of the privacy

Footnotes:

1. Encyclopedia Britannica, "Privacy Rights" Britannica.com.Inc.,1999-2000

<http://www.Britannica.com/>

2. Ibid. <http://www.Britannica.com/> 3. Meyers v. Nebraska 262 US 390 (1923)

<http://Laws.findlaws.com/us/2621/390.html>

"No state ... shall deprive any person of life, liberty or property without due process of law."

4. The Supreme Court in *Olmstead v. United States*, 277 U.S. 438 S.Ct. 564 72 L.Ed. 944, (1928). This 1928 opinion of the Supreme Court held that wiretapping was not a violation of the fourth amendment. This decision was overturned in 1934 by the U.S. Federal Communication Act, which prohibits interception of communication.

<http://library.thinkquest.org/2760/Olmstead.htm> 5. *Griswold v. Connecticut*, 1965

The Court referred to 4th and 5th as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." The Court also described the 4th Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people."

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/griswold.html> 23 Sept. 99

6. *A Roe v. Wade*, 410 U.S. 113 (1973)

Roe v. Wade found that States could not ban abortions in the first six months.

<http://Encyclopedia.com/articles/11075.html> 11-Jan-00

7. U.S. Privacy Act of 1974. Overview. <http://www.library.findlaw.com/scripts/getfile.pl?FILE=federal/doj/doj00001> 8. Dept. of Labor, Dept. of Health and Human Services, Dept. of Justice, and Dept. of Equal Employment Opportunities Commission, Jan. 20, 1998 "Genetics Issues"

http://www.dol.gov/dol/_sec/public/media/reports/genetics.htm#16

9. Ibid. <http://www.dol.gov/dol/sec/public/media/reports/genetics.htm#16> 10. "Protecting the Privacy of Student Education Records," Prepared by Policy Studies Associates, Inc. under contract of the Council of Chief State School Officers. National Forum on Education Statistics, District of Columbia.

http://nces.ed.gov/pubs97/p97527/SEC2_SUM.HTM 7/19/00

11. Education for All Handicapped Children, (PL 94-142 or EHA)

This 1975 act provides for free and appropriate education and related services for all handicapped children in the least restrictive environment.

Electric Law Library <http://192.41.4.29/def/i081.htm> 16 Nov 98

12. Special Education Law-The Individuals with Disabilities Education for All

This article includes the text of this very important educational law that provides children with equal opportunities to educational services

http://www.wrightslaw.com/law/code_regs/20USC1400MyOverview.html 13-Jan-99

13. <http://www.findlaw.com/scripts/titlesearch.pl?TITLE=Civil+Rights> 14.

<http://www.C://WINDOWS/Desktop/Yale.2\EducationLaw.htm> 15. Ibid. 16. [C://Window/Desktop/Yale.2\EducationLaw.htm](http://Window/Desktop/Yale.2\EducationLaw.htm) 17. Ibid.

18. http://www.wrightslaw.com/law/code_regs/20USC1400MyOverview.html 19. Education Week: Individuals with Disabilities Education Act (IDEA)

IDEA is a federal law passed in 1975

<http://www.edweek.org/context/glossary/idea.htm> 25-May-00

20. Ibid.

21. Ibid.

22. <http://www.library.findlaw.com/scripts/getfile.pl?FILE=federal/dol/ddol/000127> 23.

[C://Window/Desktop/Yale.2\EducationLaw.htm](http://Window/Desktop/Yale.2\EducationLaw.htm) 24. Ibid 25. Ibid 26. Ibid 27. Ibid

Teacher's Reading List

Alderman, Ellen & Kennedy, Caroline, *The Right to Privacy*, Random House, Inc., New York, 1997

This book presents interesting and useful case studies and supporting information concerning privacy issues. The reader can easily follow the issues presented. It is a book that is useful for both student and teacher.

Billings, Paul R. et. al., "Discrimination as a Consequence of Genetic Testing," *American Journal of Human Genetics*, 50:476-482, 1992.

This article is easy to read and will allow the reader the opportunity to understand the consequences that may result from genetic testing.

Disability Act Homepage -- <http://janweb.icd.wvu.edu/edu/kinder.linkframe.htm> Etzioni, Amital, *The Limits of Privacy*, Basic Books, April 2000. The author, a George Washington University scholar, investigates issues such as the privacy needs versus law enforcement.

Encyclopedia.Com-Results for *Griswold v. Connecticut*

This case was decided by the Supreme Court in 1965 and established the right to privacy when it struck down a Connecticut law that banned the sale of contraceptive.

<http://www.encyclopedia.com/articles/05440.html> 11-Jan-00

@Ref:FindLaw: United States Law: Supreme Court This site provides cases and codes from the Supreme Court opinions and all circuit courts. It is an excellent resource for easily finding laws.

<http://caselaw.findlaw.com/US/000/96-1793.html> Fletche, J.C. and Wertz, D.C. Refusal of Employment or Insurance, abstract for presentation made at the Annual Meeting of the American Society of Human Genetics, Baltimore, November 1, 1997.

This article provides insight into the problems genetic testing can provide for individuals in employment and insurance. It is informative, well written, and provides the reader with information that is important to this issue.

Gostin, Lawrence O., Georgetown University Law Center, Principal Investigator and Hodge, James, Jr., Adjunct Professor of Law Georgetown University Law Center, Project Director "Model State Public Health Privacy Act," October 1, 1999, *Privacy and Security of Public Health Information*, This article discusses the development and need for a health privacy act. It provides much useful and informative information on this topic.

Rosen, Jeffrey, *The Unwanted Gaze: The Destruction of Privacy in America*,

Written by George Washington University law professor Jeffrey Rosen this book uses not headline events to discuss the issues of privacy faced by Americans today.

Yell, Mitchell L., *The Law and Special Education*, Prentice Hall, 1997. This book presents valuable information concerning the history of special education laws in the United States. It provides the reader with an understanding on how to locate pertinent information from law libraries, on the Internet, and from other sources.

Teacher Information

The Bill of Rights

The Bill of Rights, the first ten amendments of the Constitution, embodies the civil rights and liberties of the U.S. citizens.

Amendment I

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The 1st amendment guarantees freedom of speech, press, and assembly. It also guarantees the right to freedom of religious exercise and the separation of church and state.

Amendment IV

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The 4th amendment protects the privacy and security of the home and personal effects. It also prohibits unreasonable searches and seizures.

Amendment V

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual services in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Student’s Reading List

Alderman, Ellen & Kennedy, Caroline, *The Right to Privacy*, Random House, Inc., New York, 1997. This book presents interesting and useful case studies and supporting information concerning privacy issues and the law. The reader can easily follow the issues presented. It is a book that is useful for both student and teacher.

Etzioni, Amital, *The Limits of Privacy*, Basic Books, April 2000. The author, a George Washington University scholar, investigates issues such as the privacy needs versus law enforcement.

Rosen, Jeffrey, *The Unwanted Gaze: The Destruction of Privacy in America*,

Written by George Washington University law professor Jeffrey Rosen this book uses not headline events to discuss the issues of

privacy faced by Americans today.

Yell, Mitchell L., *The Law and Special Education*, Prentice Hall, 1997. This book presents valuable information concerning the history of special education laws in the United States. It provides the reader with an understanding on how to locate pertinent information from law libraries, on the Internet, and from other sources.

<https://teachersinstitute.yale.edu>

©2019 by the Yale-New Haven Teachers Institute, Yale University

For terms of use visit <https://teachersinstitute.yale.edu/terms>