

DECEMBER 2024

# EDUCATION LAW NEWS

AALS Education Law Section

## Message from the Chair

BY BEN TRACHTENBERG

Education law continues to generate headlines, and next year promises more noteworthy events. A new presidential administration will bring new Department of Education policies and enforcement decisions, along with the possibility of federal legislation impacting K-12 and higher education. Schools continue to respond to the learning loss associated with pandemic-related school closures and disruptions. Rapidly-changing artificial intelligence technology is already affecting teaching and assessment, with immense changes possibly over the horizon. Compensation of student athletes presents just one legal issue roiling collegiate athletics.

Meanwhile, perennial topics of education law debate remain hotly contested, with school boards, parents, teachers, and students wrestling with questions about the content of curriculum, the role of religion in schools, sources of school funding, student discipline procedures, access for students with disabilities, policing in schools, student privacy, programing for gifted students, and anti-discrimination efforts, to name just a few areas that have inspired legal scholarship and seem likely to continue to generate policy disputes.

The work of members of the Section of Education Law is more important than ever. In the classroom, Section members teach the next generation of lawyers about the issues listed above—and much more besides. In law journal articles, as well other publications that might be shorter and have more readers, Section members analyze the law, explain it to audiences inside and beyond the academy, and promote reform. Clinical faculty give students opportunities to practice in this area before graduation.

It has been a pleasure serving as Section Chair this past year, as well as holding various other offices in prior years. I appreciate all the efforts of my fellow officers, Executive Committee members, and Section members. It is an honor to work with you.

I congratulate you all on your accomplishments during 2024. I hope you enjoy some well-earned rest during the holiday season. There will be plenty of work to keep us occupied in 2025.

-Ben Trachtenberg  
University of Missouri School of Law

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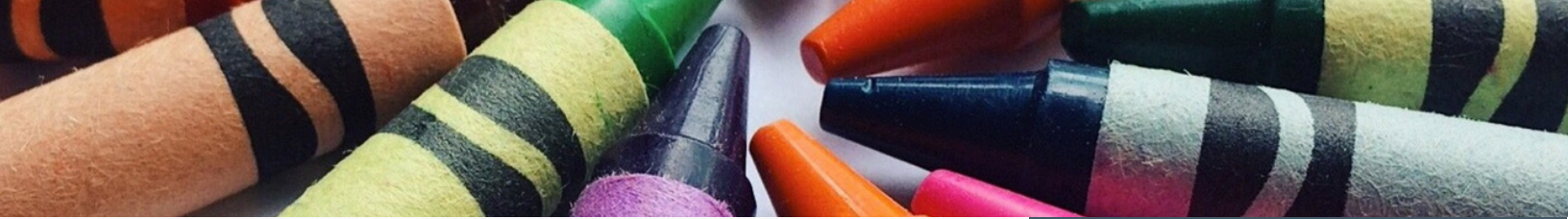
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## ED LAW AT THE AALS ANNUAL MEETINGS

BY BEN TRACHTENBERG

At the 2024 Annual Meeting in Washington, DC, we hosted two panels and co-sponsored another. In our first panel, “Affirmative Action and the Way Forward,” we heard from moderator Janel George (Georgetown), along with panelists David Hinojosa (then Lawyers’ Committee for Civil Rights Under Law, now U.S. Department of Justice), Dean Twinette L. Johnson (then of UDC, now of SLU), Robert Kim (Education Law Center), and Kimberly Jenkins Robinson (Virginia). Panelists discussed recent Supreme Court cases on affirmative action, along with implications for K-12 and higher education institutions.

At our second panel, “Academic Freedom and Faculty Governance in the Crosshairs,” we heard from moderator Ben Trachtenberg (Missouri), with panelists Jonathan Feingold (Boston Univ.), Risa L. Lieberwitz (Cornell), E. Juliana Paré-Blagoev (Johns Hopkins), and Keith E. Whittington (then at Princeton, now at Yale). The panel addressed multi-front attacks on academic freedom, along with concerns that the principle that faculty, administrators, and governing boards share joint responsibility for running institutions may be becoming more theoretical than real.

With the Section on Associate Deans for Academic Affairs and Research, we co-sponsored a panel on “Academic Integrity and Technology: What to Do About AI.” As an associate dean for academic affairs, I can vouch for the importance of this panel, as well as the need for further such discussions as AI technology develops. (I can also attest to the general air of panic that pervaded the room during the presentation.)

In September 2024, the Section collaborated with the Section on Children and the Law to run a Works-in-Progress conference, hosted by Loyola University New Orleans College of Law. Section Treasurer (and Loyola Professor) Nicole Tuchinda facilitated the conference. Read more about the conference on page 3 of this newsletter.

Our next gathering will be in San Francisco, CA, at the January 2025 Annual Meeting of the AALS. We will again present two exciting panels on hot topics. The first is titled “The Role of Law and Policy in Supporting Student Mental Health.” This panel will feature experts on student mental health and restorative practices, including Professors Thalia González (UC Law SF), Nicole Tuchinda (Loyola Law), Monica Bhatt (Univ. of Chicago Education Lab), and Esther Hong (ASU Law).

The second panel will be a pedagogical panel titled “Teaching (Education) Law in a Time of Significant Legal Change.” This panel will discuss the unique challenges of teaching law students in time of significant change and strategies for addressing these challenges. The session will be moderated by Erik Girvan (Univ. of Oregon), and panelists are: Anne Alexander (Univ. of Missouri), Pilar Escontrias (Seattle University), Joshua Jones (California Western), Eve Rips (University of Illinois-Chicago), and John Rumel (Univ. of Idaho).

We are also co-sponsoring two panels—“Law and the Political Participation of Children and Youth” (organized by the Section on Children and the Law) and “Rights, Regulation, and Resistance: Parents, Children, and the State” (organized by Family and Juvenile Law)—and will conduct a brief business meeting to elect officers and make plans for 2025. We look forward to seeing everyone in 2025 in San Francisco!

**“THE WORK OF THE  
EDUCATION LAW  
SECTION  
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IMPORTANT  
THAN EVER.”**

**-BEN TRACHTENBERG  
AALS EDUCATION LAW  
SECTION CHAIR**







# FALL 2024 WORKS-IN-PROGRESS (WIP) SESSION

BY NICOLE TUCHINDA AND THALIA GONZÁLEZ

On September 20, 2024, UC Law SF Professor of Law Thalia González and Loyola University New Orleans (“Loyola”) Assistant Professor of Law Nicole Tuchinda kicked off the Works-in-Progress (WIP) session, which was co-hosted by the AALS Sections on Children and the Law and Education Law. The session was hosted by Loyola University New Orleans College of Law. The keynote conversation was entitled, “Who Gets a Childhood?,” aimed to reflect a synthesis across themes presented in the works-in-progress including resistance to problematic state intervention, failure of the state to protect children, child disability rights, and children, and the U.S. Constitution. González and Tuchinda’s conversation was attended by participating law professors and Loyola students who engaged critically during the session to expand understandings of the dimensions of inclusion and exclusion in childhood.

To open, Tuchinda framed their conversation by describing “childhood” as a time when a young person is permitted to be carefree and not responsible for taking full care of themselves. She reflected on childhood as a time to play and make mistakes, without those mistakes determining and harming the rest of the young person’s life. It is a space protected and supported by others in which a young person can explore and determine who they are and what they want to do.

González’s initial response explored how the “freedoms” and supports Tuchinda framed are most plainly enjoyed by those children whose identities exist at the intersection of whiteness, economic privilege, and gender and sexual identity conformity.

Drawing attention to examples from school discipline to juvenile justice to child welfare, González illuminated how a proximity to white privilege allows children to exist within their childhood in remarkably different ways. González and Tuchinda discussed how law regarding children typically reflects intentions to exert social control by those in power rather than sincere desires to serve children’s best interests. Thus, they observed, the law often indicates which children are seen as valuable by those in power and which children are not. They described how law often functions to pathologize and exclude children who are seen as “other,” including children with disabilities, Black, Native American, and Latinx children, LGBTQIA+ children, and children in low-income households. Tuchinda emphasized that these problems in the law are saddening, disturbing, and regularly harmful to minoritized children and their families.

In addition to their exchange, the conversation yielded audience participation which further evidenced, from legal practice to personal narratives, how bias, including adultification, can have sharp impacts on the trajectory of a child’s life. Afterwards, several audience members commented that the conversation helped them identify issues that must be addressed to improve children’s rights and health in the U.S.



Tuchinda (left) and González (right) at the AALS Ed Law WIP Keynote Discussion (Loyola Law, New Orleans, LA.)



Fall 2024 WIP Participants.



# MEMBER PROMOTIONS, PUBLICATIONS, AND PRESENTATIONS

## NEW POSITIONS & PROMOTIONS

- Joshua E. Weishart: After teaching for twelve years, most recently as the Thomas R. Goodwin Professor of Law at the West Virginia University College of Law, Weishart recently joined Suffolk University as a Professor of Law, where he teaches Constitutional Law, Education Law, Torts, and Professional Responsibility.
- Eve Rips: Joined the University of Illinois-Chicago School of Law as an Assistant Professor of Law.

## PUBLICATIONS

- AALS Education Law Section Chair-Elect Karen Halverson Cross (University of Illinois Chicago) published: Faculty Handbook as Contract, 45 *Cardozo L. Rev.* 789 (2024). This Article addresses faculty termination policies and uses them as a lens through which to analyze the law on enforcement and modification of employee handbook policies.
- Kevin Brown (University of South Carolina Law) has two forthcoming publications:
  - Rise and Fall of the Consideration of Race and Ethnicity in the Admissions Process: The Long-Term Negative Consequences of the Fall, 100 *Indiana L. J.* (forthcoming 2025).
  - Distinguishing The Caste–Race Debate In The United States From South Asia, 66 *Arizona Law Review* (forthcoming 2025).
- Rachel Moran (UC Irvine School of Law) published the following:
  - The Perennial Eclipse: Race, Immigration, and How Latinx Count in American Politics, 61 *Houston L. Rev.* 719 (2024)
  - A Perfect Storm for Legal Education: Privatization, Polarization, and Pedagogy, 85 *Pittsburgh L. Rev.* 331 (2023).
  - (with Sameer Ashar, Benjamin Barton, and Michael Madison), The Future of Law, Lawyers, and Law Schools: A Dialogue, 85 *Pittsburgh L. Rev.* 207 (2023).
  - Reflecting on the Foundations of Latinx Civil Rights: Looking Back and Looking Forward, 10 *Tex. A&M Law Rev.* 759 (2023).
  - (with Raquel Aldana, Emile Loza de Siles, and Solangel Maldonado), Latinas in the Legal Academy: Progress and Promise, 26 *Harv. Latin Am. L. Rev.* 301 (2023).
  - Personhood, Property, and Public Education: The Case of Plyler v. Doe, 123 *Columbia L. Rev.* 1271 (2023).
  - Racial Equality, Religious Liberty, and the Complications of Pluralism, 50 *Hastings Con. L. Quarterly* 149 (2023).



Members at Fall 2024 AALS WIP Session.



Members at Fall 2024 AALS WIP Session.





## PUBLICATIONS (CONTINUED)

- Jonathan Feingold (Boston University School of Law) published the following:
  - [The Right to Inequality: Conservative Politics and Precedent Collide](#), \_\_ Conn. L. Rev. \_\_ (forthcoming 2024)
  - [Discriminatory Censorship Laws](#), \_\_ Tulane L. Rev. \_\_ (forthcoming 2024) (with Joshua Weishart).
  - [The War on Higher Education](#), 72 UCLA L. Rev. Discourse 1 (2024) (with Athena Mutua, Angela Harris, Emily Houh, Matthew Patrick Shaw, Frank Valdes).
  - [How Universities Can Build and Sustain Welcoming and Equitable Campus Environments](#), Policy Brief, The Campaign for College Opportunity (2024) (with Julie Park).
  - [Could Florida Colleges Be The Blueprint for Trump's War on Education?](#) The Emancipator (Nov. 26, 2024).
  - [Why the Supreme Court's "Judicial Power Grab" Bodes Ill for Racial Equity](#), The Emancipator (Oct. 1, 2024).
  - [The GOP's Bad Faith Focus on Campus Antisemitism](#), Inside Higher Education (July 9, 2024).
  - [Justice is \(Color\)Blind: Why DEI Isn't Likely Going Away Anytime Soon](#), The Hill (July 7, 2024).
- AALS Education Law Section Secretary Janel George (Georgetown Law) published:
  - [Deny, Defund, Divert: The Law and American Miseducation](#), 112 Geo. L.J. 509 (2024).
- Mark C. Weber (DePaul University College of Law) published the following:
  - Resolving the Paradox of Payroll-Tax-Based Social Insurance for Disability: Lessons from the Canada Disability Benefit Act, 61 Osgoode Hall L.J. (forthcoming 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4562604](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562604).
  - Least Restrictive Environment and Students with Disabilities in the United States, in Oxford Research Encyclopedia of Education (George Noblit ed.) (New York: Oxford Univ. Press 2024). <https://doi.org/10.1093/acrefore/9780190264093.013.1950> (institutional or other subscription required)
  - UNDERSTANDING DISABILITY LAW (DURHAM, N.C.: CAROLINA ACADEMIC PRESS 4TH ED. 2024).
- Eve Rips (University of Illinois Chicago) published:
  - [The Collateral Consequences of School Disciplinary Records](#), 2024 Mich. St. L. Rev. 175 (2024)
- John Rumel (Currently Visiting at the University of San Francisco School for the 2024-25 academic year, University of Idaho School of Law) published:
  - [Let's Get Critical: The Rights and Obligations of School District Stakeholders under State Laws Limiting or Banning Discussion of Critical Race Theory in K-12 Classrooms](#), 2024 B.Y.U. Educ. & L. J. 33 (peer reviewed publication)
- Laura McNeal (Brandeis School of Law, University of Louisville) published:
  - [Integrating the Marketplace of Ideas: A New Constitutional Theory for Protecting Students' Off-Campus Online Speech](#), 76 Stan. L. Rev. 1575 (2024), which led to her receipt of Scholar of the Year Award from the University of Louisville's Brandeis School of Law.
- Jarienn A. James (Case Western Reserve University School of Law) published:
  - [Eliminating Racial Assault of Black Bodies through CRT Based Professionalism](#), 72 UCLA L. Rev. Disc. 150 (2024)
- Maryam Ahranjani (Univ. of New Mexico School of Law) has published the following:
  - Unarresting School Safety, Nev. L. J. (forthcoming 2025)
  - The Role of the Law School Dean and Faculty in Supporting and Sustaining Ethical and Antiracist Admissions Practices, Antiracist Approaches to Admissions and Financial Aid (Jay Austin and Patricia Roberts, ed., forthcoming 2025).
  - Maryam Ahranjani and Adria Kimbrough, Is Standardized Testing Antithetical to Antiracism Efforts in Law School Admissions?, Antiracist Approaches to Admissions and Financial Aid (Jay Austin and Patricia Roberts, ed., forthcoming 2025).



## SELECT PRESENTATIONS & PANELS

Kevin Brown (University of South Carolina Law) presented at the following:

- Panel entitled Controversy Over Caste: When the Move to Strengthen Anti-Discrimination Laws Meets History, Culture, and Politics at the National Asian Pacific American Bar Association (NAPABA) in Seattle, Washington on November 8, 2024
- Keynote Address: The Historical Relationship between the African-American Community and Oppression on the Indian Subcontinent as the 17th Dr. B. R. Ambedkar Memorial Lecture at the Jawaharlal Nehru University (JNU) in New Delhi, India sponsored by JNU and the Indian Institute for Dalit Studies on October 21, 2024
- Keynote Address: Distinguishing Caste/Race Debate in the United States from India as the Dr. Ambedkar Memorial Lecture at Nagpur University, sponsored by Nagpur University in Nagpur, India on October 13, 2024
- Paper delivered: Contrast of Untouchability in India with Chattel Slavery in the United States at the Slavery Past, Present, and Future 8th Global Meeting held in Vienna, Austria on June 15, 2024
- Panel entitled: Categories of Race & Caste at the Law and Society Association Annual Meeting with the theme Unsettling Territories: Tradition and Revolution in Law and Society held in Denver, Colorado on June 9, 2024
- Panel entitled Where Do We Go from Here at the Belinda Sutton Symposium, a Harvard Law School symposium, hosted by the Charles Hamilton Houston Institute for Race & Justice held at Harvard Law School in Cambridge, Massachusetts on April 11, 2024

Jonathan Feingold (Boston University School of Law) presented at the following:

- Moderator, Asian American is Not a Color: A Fireside Chat with Dr. OiYan Poon, Boston University School of Law (Nov. 2024)
- Panelist, Re-Shifting Foundations of Brown, Diversity in Education, Washburn University School of Law (Nov. 2024)
- Panelist, The University After October 7, Institute on Culture, Religion & World Affairs, Pardee School of Global Studies, Boston University (Oct. 2024)
- Panelist, Race, Law, and the University, Massachusetts Historical Society & The New England Quarterly (Sept. 2024)
- Moderator, From CRT to DEI: Tracing the Assault on Multiracial Democracy, Boston University School of Law (Sept. 2024)
- Panelist, College Admissions after SFFA, SALT Teaching Conference (Sept. 2024)
- Panelist, Antisemitism on Campus, J-Street National Leadership Conference (Sept. 2024)
- Panelist, After SFFA: Affirmative Action and Beyond, American Political Science Association Annual Conference (Sept. 2024)

Janel George (Georgetown Law) presented at the following:

- Featured panelist, Racial Justice After SFFA v. Harvard, Northwestern University Law Review Symposium, Chicago, IL (November 2024)
- Featured Speaker, (with Prof. Elizabeth McRae, West Virginia University), Parental Rights for Some, But Not Others: Moms for Liberty and the New Censorship, African American Policy Forum (AAPF) Critical Race Theory Summer School
- Plenary Speaker, Massive Resistance 3.0: The Shape Shifting Nature of Racial Backlash, African American Policy Forum Critical Race Theory Summer School, Virtual, July 2024)
- Panelist, Law and Society Association (LSA) Annual Conference, The Project of Decoloniality in the Age of Retrenchment, (June 2024, Denver, CO)
- Presenter, AALS Clinical Conference, Lightning Session, Scholarship is Resistance: The Mid-Atlantic Clinical Writers Workshop as a Model for Fostering Collaboration and Community among Clinical Scholars (May 2024, St. Louis, MO)
- Featured Speaker, U.S. Naval Academy Annual McCain Conference, "Liberal Democracy: Challenges and Critics," Critical Race Theory Background and Tenets (April 2024, Stockdale Center, Maryland)
- Moderator, Panel: Brown's Legacy, With All Deliberate Speed: The Past, Present, and Future of Racial Equity in Education, Columbia Law School, coordinated by the NAACP Legal Defense and Educational Fund, Inc., Brown's Promise, and Columbia Law School, (April 2024, New York, NY)

## SELECT PRESENTATIONS & PANELS (CONTINUED)

Daniel Kiel (University of Memphis School of Law) presented at:

- Presented as part of Boston University's Barbara Jordan Speaker Series on Race, Law, and Inequality and delivered the keynote address for the National Foundation for Judicial Excellence.
- Both presentations centered on his 2023 book [The Transition: Interpreting Justice from Thurgood Marshall to Clarence Thomas](#), which he also shared over the past year with colleagues at Pepperdine, Loyola-Chicago, and Missouri.
- In addition, Daniel co-convoked an interdisciplinary symposium with the Hooks Institute for Social Change commemorating the 70th anniversary of the Brown v. Board of Education ruling.

Mark C. Weber (DePaul University School of Law) presented at:

- "Attorneys' Role in Advancing the Educational Rights of Children with Disabilities," Disability and the Law Symposium, Wayne State University Law School, Detroit, Sept. 27, 2024
- "Promoting Social Equality Through Disability Benefit Policy," Canadian Law and Society Association Annual Meeting, Montreal, June 15, 2024
- Prof. Weber also received the DePaul University College of Law Excellence in Scholarship Award, May 2024 and served as Co-counsel for amicus curiae in support of petition for rehearing en banc, A.J.T. v. Osseo Area Schools, 96 F.4th 1058 (8th Cir. 2024).



January 2024 AALS Education Law Section Panel on Academic Freedom and Faculty Governance  
(from left to right):

AALS Ed Law Chair Ben Trachtenberg (Univ. of Missouri Law), Keith E. Whittington (Yale Law), E. Juliana Paré-Blagoev (John Hopkins School of Education), Jonathan Feingold (Boston Univ. School of Law), and Risa L. Lieberwitz (Cornell University School of Industrial and Labor Relations)).





# AALS EDUCATION LAW SECTION OFFICERS

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