

## **CERTIFICATION IN EDUCATION LAW: BENEFITTING BOTH OUR PROFESSION AND OUR STUDENTS**

**By Usher L. Brown**

If you are reading this article you presumably have an interest in education law. The practice of law is becoming very specialized and more complicated. Many of us devote much, if not all, of our professional time in the practice of education law. By this I mean that we work for public or private organizations that operate schools, entities that regulate schools, or, regularly represent clients with issues involving education or educational organizations. Some of us work for public and private schools, charter school management companies, colleges, research groups and think tanks affiliated with universities, school boards or community colleges. Others work in public or private firms, and focus their efforts on advocacy for students and parents in educational matters, including equity, ADA and IDEA. There are several other areas of practice I could list that fall within the scope of education law, but you get the idea. We are a diverse group of practitioners, but united by a common bond. We all seek to improve the standards of practice and professionalism in education law, and thereby improve Florida's civic climate and its system of justice. As our standards elevate, so improves the entire system of education.

Now that I've got us feeling good about ourselves, let's build on that by examining how the citizens and our leaders view the importance of education in Florida. Article IX, Section 1 of the Florida Constitution states that the education of children is a "fundamental value" and that "[A]dequate provision shall be made by law for a ... high quality system of free public schools." Article IX, Section 7 states that the purpose of the State University System is the achievement of "excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens." The citizens have spoken in the Constitution, and have proclaimed that the system in which we specialize is a preeminent value.

I am pleased to tell you that the Florida Bar's Education Law Committee is earnestly working on the development of certification in education law. The Committee members understand the significance of this area of practice, and are committed to making certification in education law a reality. I hope that you will agree with the premise of this article, and will fully support our effort to obtain certification. Once the Bar puts this in place, we want each of you practicing education law to become a certified lawyer!

The leadership of the Florida Bar often explains our interest in the promotion of civic values, inculcated through the schools. A former chair of the Bar's Law Related Education Committee says that the purpose of the Committee is the promotion of "effective law related education programs in grades K-12, with emphasis on understanding the rights and responsibilities of citizens in a participatory democracy."<sup>1</sup>

The Bar often promotes positive interaction among lawyers, schools and students. Our leadership recognizes that attorneys proficient in primary components of education law are essential in our system of justice.<sup>2</sup> Although our Bar leaders have not generally used the term "education law", they have often spoken about the need for specialized lawyers to practice in areas that we recognize as being within the practice of "education law". For example, it is recognized that we need skilled attorneys to serve as surrogate parents to protect students' due process rights in special education pursuant to the Individuals With Disabilities Education Act.<sup>3</sup>

Why have certification, and why get certified in education law? There are many reasons. Dawna G. Bicknell, Director of the Bar's Board of Legal Specialization and Education (BLSE), has written that, "[l]awyers who are or who may become eligible as specialists should be inspired to make the commitment to themselves, their families, their colleagues, and their clients to become board certified."<sup>4</sup> Past Bar President Chesterfield H. Smith, as early as his speech to the

National Conference of Bar Presidents in August 1966, advocated specialization as “desirable and inevitable”.<sup>5</sup> Chesterfield Smith saw specialization as a means to better inform the public so that consumers of legal services might make better decisions in choosing a lawyer with appropriate expertise. Former Bar President John F. Harkness, Jr. is also a strong advocate of specialization and certification. Mr. Harkness writes, “that the public is entitled to know which lawyers have demonstrated special skills and possess technical competency in specific legal areas.”<sup>6</sup> Former Chief Justice Harry Lee Anstead has written that “board certification is one of the crown jewels of the Florida justice system.”<sup>7</sup>

Many practitioners of education law work in the in-house legal departments of educational institutions, government, or legal service organizations. Former Attorney General Bob Butterworth has stressed the importance of board certification for in-house counsel.<sup>8</sup> The Attorney General’s official long-range planning document called for an increase in specialization of the legal staff, and success in meeting this goal was “measured in part by the percentage of board certified attorneys.”<sup>9</sup> General Butterworth wrote that he was proud of his accomplishment that by the time he left office in 2002, the Attorney General’s office had 36 board certified attorneys, representing almost 10% of the attorneys on his staff.

Whether you are inside or outside counsel, you will find great value in becoming board certified. The certification will demonstrate that you are substantially devoted to the practice of education law, you meet rigorous practice requirements, and are peer reviewed. (Don’t worry “old-timers” – the Committee will waive the testing requirement to the extent allowed by the BLSE and Rule 6-3.5(d), Rules Regulating The Florida Bar.) The peer review requirement in particular sets you apart from other practitioners because you will be evaluated as to “character,

ethics and reputation for professionalism.”<sup>10</sup> In fact, an applicant “otherwise qualified may be denied certification on the basis of peer review.”<sup>11</sup>

Board certification will set you apart and will inform your client that you are truly a specialist in this area of practice. There may be other benefits (such as improving the likelihood of getting your requested hourly rate in a contested fee hearing), but the principal reasons for becoming board certified are improvement of the professionalism in this area of practice, distinguishing yourself with clients and judges, demonstrating your commitment to the highest ideals of our profession, and that sense of satisfaction you will have in achieving certification. This achievement, after all, is characterized by former Chief Justice Anstead as the “capstone for a lawyer’s professionalism goals.”

The members of the Education Law Committee are excited about the prospect of BLSE approval of education law as the next area of certification. We hope that you will join the Education Law Committee if you are not already a member, and become an active participant in our meetings. We will continue our excellent CLE programs, and the development of innovative ways to improve the quality and professionalism of the practice of education law in Florida.

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Usher L. Brown has practiced law in Florida since 1980. He is a graduate of the University of Florida Law School, is AV rated by Martindale-Hubbell and is listed in the Martindale-Hubbell directory of preeminent attorneys. Mr. Brown is also board certified by the Florida Bar in civil trial law and has represented many local government entities in Florida in his practice. Mr. Brown has represented as general counsel the School Board of Osceola County since 1992 and represents on a regular basis other local government as special counsel or trial counsel, including several other school boards and the Cities of Casselberry, Cocoa, Winter Springs, Palm Bay, Okeechobee and Lake Mary. A substantial part of his litigation practice has included the representation of parties in actions under IDEA and Section 504, including litigation before DOAH, Florida circuit and appellate courts and federal district and appellate courts.

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1. Noel G. Lawrence, *Annual Report of Committees – Public Service*, FLORIDA BAR JOURNAL, Vol. 71, Number 6 (June 1997).
  2. Jan Pudlow, *Lawyers Needed to Serve Children*, THE FLORIDA BAR NEWS (December 15, 2003). See also, Jan Pudlow, *Children’s Panel Studies Representation Issues*, THE FLORIDA BAR NEWS (January 15, 2001) (emphasizing the need for lawyers specializing in providing legal services to children); Jan Pudlow, *Anstead Sworn In As Chief Justice*, THE FLORIDA BAR NEWS (July 15, 2002) (“Harry Lee Anstead ... promised to put children first during his two year term as Chief Justice of the Florida Supreme Court.”); Jennifer Krell Davis, *Meet The Court: Justice Barbara Pariente*, THE FLORIDA BAR NEWS (April 15, 2002) (“Justice Barbara Pariente is focused on being a jurist committed to the needs of children and the legal profession ... ‘I would hope that law schools will consider courses that embrace interdisciplinary approaches to those areas of law that really demand it ... to best represent a child or a parent, it is important for an attorney to recognize underlying issues such as learning problems.’”).
  3. Jan Pudlow, *Children’s Panel Studies Representation Issues*, THE FLORIDA BAR NEWS (January 15, 2001).
  4. Judge Ralph Artigliere and Dawna G. Bicknell, *Florida Bar Board Certification: Taking the High Road*, FLORIDA BAR JOURNAL, Volume 77, Number 4 (April 2003).
  5. *Id.*
  6. John F. Harkness, Jr., *Why Certify?*, FLORIDA BAR JOURNAL, Volume 77, Number 4 (April 2003).
  7. Chief Justice Harry Lee Anstead, *Message From the Florida Supreme Court*, FLORIDA BAR JOURNAL, Volume 77, Number 4 (April 2003). (Justice Anstead writes that board certification “should be the capstone for a lawyer’s professionalism goals.” Certification is viewed as a “visible way to demonstrate that lawyer’s commitment to professionalism and excellence.”)
  8. Robert A. “Bob” Butterworth, *Certification: A Valuable Tool For the Attorney General’s Office*, FLORIDA BAR JOURNAL, Volume 77, Number 4 (April 2003).
  9. *Id.*
  10. Rule 6-3.5(c)(6), Rules Regulating the Florida Bar.
  11. *Id.*