

January 2011

## The Risks of Legally Illiterate Teachers: The Findings, the Consequences and the Solutions

David Schimmel

Follow this and additional works at: <http://scholarship.law.umassd.edu/umlr>

---

### Recommended Citation

Schimmel, David (2011) "The Risks of Legally Illiterate Teachers: The Findings, the Consequences and the Solutions," *University of Massachusetts Law Review*: Vol. 6: Iss. 1, Article 2.

Available at: <http://scholarship.law.umassd.edu/umlr/vol6/iss1/2>

This Article is brought to you for free and open access by Scholarship Repository @ University of Massachusetts School of Law. It has been accepted for inclusion in University of Massachusetts Law Review by an authorized administrator of Scholarship Repository @ University of Massachusetts School of Law.

# THE RISKS OF LEGALLY ILLITERATE TEACHERS: THE FINDINGS, THE CONSEQUENCES AND THE SOLUTIONS

---

DAVID SCHIMMEL<sup>\*</sup>

MATTHEW MILITELLO<sup>\*\*</sup>

Most public school teachers are uninformed or misinformed about their rights and responsibilities and those of their students. Moreover, teachers report that their lack of legal literacy interferes with their job. This was the finding of a recent national survey about what public school teachers know and don't know about school law, where they get their information and misinformation, and what difference it makes.<sup>1</sup> As a result, we suggest that the failure of pre-service and in-service programs to address the legal illiteracy of teachers could be considered educational malpractice.

School law includes a wide range of federal and state constitutional and statutory provisions and the judicial decisions interpreting these laws. Our survey of teachers concerned laws directly related to students and teachers in the public schools. We focused on the constitutional rights of students and teachers including the scope and limits of freedom of expression and religion, search and seizure, due process, state laws concerning liability for student injury, defamation, reporting student abuse and neglect, and professional conduct.

---

<sup>\*</sup> Professor of education at the University of Massachusetts, Amherst and a visiting professor at Harvard University's Graduate School of Education. Schimmel is the author of over 60 articles and the coauthor of six books about law and education.

<sup>\*\*</sup> Assistant professor in the Educational Policy and Leadership Studies Department at North Carolina State University. Militello was a middle and high school teacher, assistant principal, and principal.

<sup>1</sup> See David Schimmel & Matthew Militello, *Legal Literacy for Teachers: A Neglected Responsibility*, 77 HARV. EDUC. REV. 257 (2007).

In Part I of this article we highlight the findings of that survey and summarize some of the well-established law that all teachers should know so that legal issues do not inhibit their professional practice. In Part II we outline some of the reasons and consequences of teachers' legal illiteracy. Part III discusses the benefits of teachers becoming legally literate with specific examples of how that can be achieved.

### I. THE FINDINGS AND THE LAW

In the past there was little empirical evidence regarding what K-12 school teachers know and don't know about school law. Moreover, little was known if legal literacy mattered to teachers' practice. That is why a 2007 study of teachers broke new ground toward developing a better understanding of teacher legal literacy and its implications. The survey focused on the sources of teachers' information and misinformation about school law, what legal topics teachers wanted to learn more about and the impact of their legal knowledge on their practice.

The results of the survey of 1,317 teachers from seventeen states were published in the Fall 2007 issue of the *Harvard Educational Review*.<sup>2</sup> The survey included twenty-nine true/false/unsure questions: twelve were related to students' rights; seventeen focused on teachers' rights and responsibilities. The survey also asked teachers whether their behavior would be different if they knew the answers to the questions and about the sources of their information.

Here are some of the survey's striking findings. Over 85 percent of the teachers had taken no course in school law during their teacher preparation program. The percent of correct answers in the students' rights section was only 41 percent, while the percent of correct answers in the teachers' rights section was even lower—39 percent. Fifty-two percent of teachers indicated that their main source of information about school law was other teachers, and 57 percent of the teachers who responded to an open-ended question said that their actions would have been different if they knew the

---

<sup>2</sup> *Id.*

answers to the survey questions.<sup>3</sup> Teachers' responses to all of the law knowledge survey questions are found in Tables 1 and 2.

---

<sup>3</sup> *Id.*

Table 1: *Participant responses to questions related to student rights (sorted from highest to lowest percent correct)*

Percent Correct	Question
73.6	Law enforcement requesting permission to search a student at school must have probable cause.
55.7	School officials may legally search a student's personal belongings without a specific reason.
53.8	Schools may require all students to wear uniforms without violating student rights.
52.7	Students have the right to promote their political beliefs to other students at school.
48.6	Students that choose to participate in competitive athletics may be subjected to random drug testing.
40.7	Students who refuse to salute the flag may be required to stand in respectful silence.
35.8	Students may wear t-shirts that criticize school policies as long as they do not cause a significant interference with school operations.
34.3	Students have a constitutional right to participate in extracurricular activities.
21.2	Invocations and benedictions at graduation ceremonies are permitted.
19.1	School officials must permit students to distribute controversial religious materials on campus if it does not cause a disruption.
17.5	Before students are suspended for 5-10 days, they have a right to a hearing where they can bring a lawyer to advise them.

*Note:* The mean participant score was 41.18.

Table 2: *Participant responses to questions related to teacher rights/liability (sorted from highest to lowest percent correct)*

Percent Correct	Question
92.9	Teachers may be held liable for their failure to report sexual, physical, or verbal abuse.
77.8	Public schools can fire a teacher for having a consensual sexual relationship with a student in their school even if the student is over 18.
67.0	Teachers are prohibited from viewing their students' records unless they receive permission from the parents or the principal.
60.6	Academic freedom generally protects teachers who discuss controversial subjects if they are relevant, appropriate for the age and maturity of the students, and do not cause disruption.
54.6	Schools have the right to require supplemental material approval by administrators in advance without violating teachers' academic freedom.
47.9	It is unconstitutional to study the Bible in a public school.
46.7	Teachers have the legal authority to select the texts for their students.
41.3	As an agent of the state, a public school teacher is constrained by the Bill of Rights.
39.9	Teachers can be disciplined for publicly criticizing school policies of community concern.
36.9	Schools can impose rigid dress codes on teachers without violating their rights.
35.1	Teachers can be sued for defamation if their report of student abuse is not substantiated.
26.4	Teachers cannot be held liable for student injuries that occur in breaking up a fight.
14.8	If a teacher is asked to give a recommendation by a student and includes false information in the recommendation that causes a student to be rejected for a job, the teacher can be held liable for libel even if the libel was unintentional.
9.3	Teachers/schools can be held liable for educational malpractice.
4.8	Schools can be held liable for failing to prevent student sexual harassment.
3.6	If a teacher gives a student a ride home from school without parental permission and the student is injured—not as a result of teacher negligence—the teacher would still be held liable.
2.8	Teachers can be held liable for any injury that occurs if they leave their classroom unattended.

*Note:* The mean participant score was 39.23.

Below we highlight a number of legal issues where the law has been clear for years, but about which many, if not most, of the teachers were uninformed or misinformed. After noting the percentage of teachers who were wrong or unsure about the issue, we summarize the important legal principles that apply to American public schools, including some of the major Supreme Court rulings relevant to teachers and students.

#### A. *Student Freedom of Expression*

Forty-eight percent of teachers did not know that “students have the right to promote their political beliefs to other students at school.”<sup>4</sup> In the 1968 U.S. Supreme Court decision, *Tinker v. Des Moines*, the Court ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>5</sup> The case concerned students who were suspended for violating school rules by wearing black armbands as a protest against the Vietnam War.<sup>6</sup> In *Tinker*, the Court ruled that schools cannot prohibit unpopular student views unless there is evidence that the forbidden expression would “materially and substantially” interfere with the work of the school or the rights of others.<sup>7</sup> This protection for student expression, especially political and religious expression, has been upheld by the courts over the years and was reinforced in the 2007 Supreme Court case of *Morse v. Frederick*.<sup>8</sup> *Morse* involved a student who was suspended for displaying a banner that said: “BONG HITS 4 JESUS.”<sup>9</sup> The Court upheld Frederick’s suspension because his banner advocated illegal drug use.<sup>10</sup> However, Chief Justice Roberts noted that this was a narrow ruling, and he emphasized that student expression cannot be punished simply because it is plainly offensive since “much political

---

<sup>4</sup> See *supra* Table 1.

<sup>5</sup> *Tinker v. Des Moines*, 393 U.S. 503, 506 (1969).

<sup>6</sup> *Id.* at 504.

<sup>7</sup> *Id.* at 509 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

<sup>8</sup> *Morse v. Frederick*, 551 U.S. 393 (2007).

<sup>9</sup> *Id.* at 397.

<sup>10</sup> *Id.* at 410.

and religious speech might be perceived as offensive to some.”<sup>11</sup> Thus even the conservative Roberts’ Court has not rejected *Tinker’s* basic principles. Therefore, it is disturbing that almost half of the teachers in the survey did not know that students have the right to promote their political beliefs at school.<sup>12</sup> Similarly, on a related issue, more than 80 percent of the teachers did not know that “school officials must permit students to distribute controversial religious materials on campus if it does not cause a disruption.”<sup>13</sup>

Closely related to the right to speak is the right to remain silent. Thus it is also disturbing that 60 percent of teachers did not know that students who refuse to salute the flag may not be required to stand in respectful silence.<sup>14</sup> As the Third Circuit Court of Appeals ruled, schools cannot require students to engage in a form of symbolic speech by standing during the Pledge of Allegiance, a requirement that interferes with their right not to participate in the flag ceremony.<sup>15</sup> In a more recent decision, the Eleventh Circuit even ruled that a student had a right to silently raise his fist during the pledge.<sup>16</sup> Each of these rulings supporting student free speech reinforces an earlier Supreme Court statement that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”<sup>17</sup>

### B. Search and Seizure

Forty-five percent of teachers did not know that schools may not “search a student’s personal belongings without a specific reason.”<sup>18</sup> In *New Jersey v. T.L.O.* (1985) the Supreme Court ruled that schools may only search students if there are “reasonable grounds for suspecting that the search

---

<sup>11</sup> *Id.* at 409.

<sup>12</sup> *See supra* Table 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Lipp v. Morris*, 579 F.2d 834, 836 (3d Cir. 1978).

<sup>16</sup> *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1259, 1294–95 (11th Cir. 2004).

<sup>17</sup> *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

<sup>18</sup> *See supra* Table 1.

will turn up evidence that the student has violated or is violating either the law or the rules of the school.”<sup>19</sup> Furthermore, the Court held that reasonableness “involves a twofold inquiry: first, one must consider ‘whether the . . . action was justified at its inception’, [citation omitted]; . . . second, one must determine whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the’” search.<sup>20</sup> In short, the search must be reasonable in inception and in scope.<sup>21</sup>

This two-part test was reaffirmed by the Supreme Court in the 2009 case of *Safford Unified School District v. Redding*.<sup>22</sup> The case involved Savana Redding, an eighth grade student who was strip-searched by school officials based on a report by another student that Redding was giving out ibuprofen pills to fellow students in violation of school rules.<sup>23</sup> Applying the *T.L.O.* test, the Court ruled that the search of Redding was reasonable in its inception, but not in its scope.<sup>24</sup> That is, the report by a student that Redding was distributing pills constituted reasonable suspicion to initially justify the search of Redding’s backpack and outer clothing.<sup>25</sup> But since there was no reason to believe that ibuprofen posed a danger to students or was concealed in Redding’s underwear, the search was not justified in scope.<sup>26</sup> Thus all teachers should be taught that they cannot search a student without reasonable suspicion that the student has violated a law or school rule.

### *C. Religion*

Seventy-nine percent of the teachers did not know that school-sponsored invocations and benedictions at graduation

---

<sup>19</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985).

<sup>20</sup> *Id.* at 341.

<sup>21</sup> *Id.*

<sup>22</sup> *Safford Unified Sch. Dist. v. Redding*, 129 S.Ct. 2633 (2009).

<sup>23</sup> *Id.* at 2640–41.

<sup>24</sup> *Id.* at 2641–44.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 2643.

ceremonies are not permitted.<sup>27</sup> Yet almost twenty years ago, the Supreme Court ruled in *Lee v. Weisman*, that public school sponsorship of religious invocations or benedictions at public school graduations is a violation of the Establishment Clause of the First Amendment.<sup>28</sup> The Supreme Court ruled that there was no Establishment Clause violation when student initiated religious meetings were held in public schools during non-instructional time.<sup>29</sup> As the Court explained: “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”<sup>30</sup> Under the Court’s interpretation of the Establishment Clause, the government must not encourage prayers or religious beliefs; instead it must be neutral concerning religion—neither endorsing nor disparaging it.<sup>31</sup> Therefore, public school teachers, who are agents of the government, cannot begin school with prayers nor promote or criticize religion in any class.

In contrast, because students are citizens who are not employed by the government, they have the right to promote their religious or anti-religious views under the protection of the Free Exercise and Free Speech provisions of the First Amendment. These distinctions about the interpretation of the Establishment Clause illustrate why it is important for teachers to know the difference between their rights and the rights of their students.

#### *D. Agent of the State*

Fifty-nine percent of teachers did not know that “[a]s an agent of the state, a public school teacher is constrained by the Bill of Rights.”<sup>32</sup> This is one reason that educators often

---

<sup>27</sup> See *supra* Table 1.

<sup>28</sup> *Lee v. Weisman*, 505 U.S. 577 (1992).

<sup>29</sup> *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226 (1990).

<sup>30</sup> *Id.* at 250.

<sup>31</sup> *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

<sup>32</sup> See *supra* Table 2.

unknowingly violated students' rights. Yet the federal courts have repeatedly reaffirmed these rights since the Supreme Court upheld students' speech rights in *Tinker* in 1969, ruled that the Fourth Amendment applied to students in *T.L.O.* in 1985, and in the 1975 case of *Goss v. Lopez*, held that under the Fourteenth Amendment, students are entitled to due process before being suspended or expelled.<sup>33</sup> Thus all teachers should become aware of students' constitutional rights and educators' obligation to protect those rights.

#### *E. Teachers' Limited Academic Freedom*

Fifty-three percent of respondents in the survey did not know that teachers do not have the legal authority to select the texts for their students.<sup>34</sup> In addition, 46 percent did not know that "[s]chools have the right to require supplemental material approval by administrators in advance without violating teachers' academic freedom."<sup>35</sup> This is evidence that many teachers are not aware of the trend of judicial decisions limiting teachers' First Amendment rights.

In the 1968 case of *Pickering v. Board of Education*, the Supreme Court did give teachers some First Amendment protection.<sup>36</sup> In *Pickering*, the Court ruled that when teachers speak as citizens "in commenting about matters of public concern[,] courts should balance the teacher's First Amendment interests against the interests of the state "in promoting the efficiency of the public services it performs through its employees."<sup>37</sup> But in 2006, in *Garcetti v. Ceballos*, the Court severely limited teachers' First Amendment protection.<sup>38</sup> In *Garcetti*, the Court wrote: "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate

---

<sup>33</sup> *Goss v. Lopez*, 419 U.S. 565 (1975).

<sup>34</sup> See *supra* Table 2.

<sup>35</sup> *Id.*

<sup>36</sup> *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

<sup>37</sup> *Id.* at 568.

<sup>38</sup> *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

their communications from employer discipline.”<sup>39</sup> Thus the *Pickering* balancing test now only applies when teachers make statements about matters of public concern outside of their official duties. As a result, recent court decisions have favored administrators who disciplined teachers who claimed academic freedom protection. For example, when a Virginia teacher argued that his principal violated his First Amendment rights by censoring his classroom bulletin board, a federal appeals court ruled that bulletin boards were subject to the supervision of the principal, and the case was “nothing more than an ordinary employment dispute”—not a matter of public concern.<sup>40</sup> Similarly, another federal appeals court ruled that the Constitution did not protect a teacher who was not rehired after she answered a student’s question about her views concerning the Iraq War.<sup>41</sup> She told the students that she honked for peace to support anti-war demonstrators after she had been told by her principal to keep her opinions to herself.<sup>42</sup> If teachers know the limits of their rights, they are less likely to carelessly make statements in or out of school that can lead to their being punished.

#### *F. Liability for Student Injury*

Seventy-four percent of teachers did not know that they cannot be held liable for student injuries that occur in breaking up a fight.<sup>43</sup> Just as it is important for teachers to know about their constitutional rights and responsibilities, teachers must also understand the relevant state laws that impact their interaction with their students every day. None are more important and widely misunderstood than the laws concerning negligence and the risk of liability for student injury.

---

<sup>39</sup> *Id.* at 421.

<sup>40</sup> *Lee v. York Cnty. Sch. Div.*, 484 F.3d 687, 689, 700 (4th Cir. 2007).

<sup>41</sup> *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477 (7th Cir. 2007).

<sup>42</sup> *Id.* at 478.

<sup>43</sup> *See supra* Table 2.

Many teachers believe that they can be held liable for any student injury that occurs in their area of responsibility, whether in the classroom, on lunchroom duty, or supervising the playground, especially if the injury is the result of the teacher's use of force. But all states allow teachers to use reasonable force to protect themselves and their students. In some states, statutes protect public school teachers from liability even if they are negligent. For example, Massachusetts law states that no "public employee . . . shall be liable for any injury . . . caused by his negligent or wrongful act or omission while acting within the scope of his office or employment . . ." <sup>44</sup> In addition, the Coverdell Teacher Protection Act (part of the No Child Left Behind Act of 2001) immunizes from liability teachers whose actions were carried out "to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school" unless the injury caused by the teacher was intentional or criminal. <sup>45</sup>

At the end of the survey we invited teachers to make comments. Here are three that illustrate their concerns, their candor, and the need for teachers to know the law. One wrote: "After taking the survey, I realized that my knowledge of school law is minimal to nonexistent." Another teacher confessed: "The survey makes me realize that I have no clue what I'm doing" about these issues. A third wrote: "If I knew the law, parents and students couldn't manipulate me." <sup>46</sup>

## II. THE RESULTS OF LEGAL ILLITERACY

There are both economic and educational costs of legal illiteracy. In addition to the financial costs of school litigation, there is the time spent by teachers and administrators to avoid and prepare for lawsuits and the hidden, yet profound, emotional costs that are often involved.

---

<sup>44</sup> Mass. Gen. Laws. ch. 258, § 2 (2004).

<sup>45</sup> Coverdell Teacher Protection Act, 20 U.S.C. § 6736(a) and (b) (2002).

<sup>46</sup> See David Schimmel & Matthew Militello, *Legal Literacy for Teachers: A Neglected Responsibility*, 77 HARV. EDUC. REV. 257, 264, 266 (2007).

More important are the pervasive, untold educational costs of legal illiteracy—the many unfortunate decisions that are made in every school district every day on the basis of legal misinformation.

As the survey results suggest, many public school teachers violate students' constitutional rights because they are unaware that as public employees, they function as agents of the government and are therefore restrained by the Bill of Rights. Thus with the best of intentions, but without understanding the constitutional context in which they work, teachers search students' backpacks without reasonable suspicion, require them to stand for the Pledge of Allegiance, or prohibit them from distributing "controversial" political or religious pamphlets to classmates.

Teachers' lack of awareness of students' rights can cause friction, frustration and possible litigation. Such problems can be illustrated by the experience of a high school principal. She told us about one of her teachers who sent a student to her office to be suspended for refusing to take off an "offensive" T-shirt that said the President was an "International Terrorist." Since the principal knew that the student had a First Amendment right to wear the shirt because it caused no disruption, she refused to suspend him. As a result, the teacher felt embarrassed and unsupported by her principal. However, if the principal had "supported" her teacher and suspended the student, this would have violated the student's rights, and might have led to a conflict with the parents and a possible lawsuit—which the school would have lost.

In addition to acting when they should not, legal ignorance may cause teachers to fail to act when they should. This is often the result of oversimplified administrative warnings. Thus, a national survey of public school administrators found that the most frequent legal advice principals give to teachers is "don't touch students."<sup>47</sup> Because of this and many other "thou shalt nots," teachers

---

<sup>47</sup> Matthew Militello et al., *If They Knew, They Would Change: How Legal Knowledge Impacts Principals' Practice*, 93 NASSP BULLETIN at 27, 39 (2009).

view law as a source of anxiety and fear. This was exemplified by a third grade teacher who told us that he does not break up fights among his students because he is afraid that if he does and a student is injured, he could be sued and held liable for the injury. This widespread belief among teachers that *any* touching of students involves inherent legal danger persists despite state laws (noted above) that allow teachers to use reasonable force to protect themselves and their students. Similarly, the Coverdell Teacher Protection Act also protects teachers if they unintentionally injure students to enforce discipline.<sup>48</sup>

In sum, legally illiterate teachers may fail to take appropriate action—ignoring misbehavior, permitting disruptions, or rescinding discipline—because of unreasonable fear of liability or because of meritless threats by parents or students. In addition, when teachers are unaware of how the Bill of Rights protects students, they may unintentionally violate students' rights regarding free speech or search and seizure. Furthermore, when teachers are misinformed about their own rights to academic freedom, they may jeopardize their jobs by making critical public statements about their schools or colleagues or by promoting their political or religious views in their classrooms.

### III. CHALLENGES AND SOLUTIONS

In view of the negative consequences of legal illiteracy, the obvious solution would be simply to add a school law course to pre-service teacher certification programs and/or require administrators to add school law to their in-service professional development programs. But these solutions are not simple, and they are much easier to recommend than to implement.

Faculty in schools of education give several reasons for not requiring a school law course for teachers. These include: (1) There is no room for another course in an already crowded curriculum, (2) none of our teacher-education faculty possess legal expertise, (3) budget constraints prevent

---

<sup>48</sup> Coverdell Teacher Protection Act, *supra* note 45.

hiring a legal specialist, and (4) teachers will learn what they need to know on the job from their colleagues and administrators.

Traditionally it may have been adequate to only require principals to take a course in school law. But this tradition was born of an earlier era—before public schools became law-saturated systems, before the Bill of Rights impacted every public school classroom, and before some parents and students came to believe that every injury deserves a financial settlement and every educational dispute merits a legal claim. Therefore, we believe that the failure to provide all teachers with a basic understanding of school law, in view of today's demonstrated need, can be considered a form of educational malpractice.

#### *A. Teacher Certification Programs*

While it may be desirable, but not feasible, to add a three-credit school law course to every teacher preparation program, it should be possible to add one of the following alternatives: a discrete, required one-credit course on teachers and the law, or a comprehensive six-to-ten hour unit on law for the classroom teacher. These alternatives could be integrated into standard courses such as introduction to education, foundations of education, or student teaching.

The University of Massachusetts at Amherst has piloted both of these approaches. First, all students in the Secondary Teacher Education Program are required to take a one-credit course on teachers and the law based on a user-friendly, affordable text written for teachers entitled *School Law: What Every Educator Should Know*.<sup>49</sup> Second, three two and a half hour sessions on school law are integrated into the UMASS elementary teacher certification program. These few sessions focus on two broad topics about which students have expressed their greatest interest and concern: preventing liability for student injury and how the Bill of Rights applies to them and their students. It would be useful for student

---

<sup>49</sup> DAVID SCHIMMEL ET AL., *SCHOOL LAW: WHAT EVERY TEACHER NEEDS TO KNOW* (Allyn and Bacon, 2008).

teachers to be provided with more legal knowledge. But even this limited exposure is important and helpful. As a result future teachers learn how to practice preventive law and how to think constructively about the legal issues involved in classroom management and supervision in the halls, on playgrounds, and on field trips.

### *B. In-service Professional Development*

The teacher law survey found that school administrators are the primary law teachers of their faculty, second only to their fellow teachers. The subsequent principal law survey indicated that principals themselves are oftentimes misinformed about the law. Survey results showed that a majority of principals are uninformed or misinformed about school law issues and 85 percent of the principals said they would change their behavior if they knew the answers to our law survey questions.<sup>50</sup> We believe that principals need to be conscious, informed, and effective law teachers in their schools. Unfortunately, however, principals usually teach school law unconsciously, sporadically, and poorly (usually through warnings at staff meetings and in informal conversations). This is because most administrators do not think of themselves as law teachers (even though almost all give legal advice), and because the courses they took in school law did not prepare them to teach the subject. Therefore, we recommend two approaches to enable principals to be conscious, informed and effective law teachers; modifying school law courses in principal certification programs and developing principal-lawyer partnerships.

---

<sup>50</sup> Matthew Militello et al., *If They Knew, They Would Change: How Legal Knowledge Impacts Principals' Practice*, 93 NASSP BULLETIN at 27, 36 (2009).

## 1. Improving School Law Courses

Harvard's Graduate School of Education has responded to this challenge by adding three important, related assignments to its Schools and the Law course it requires for principal certification. These future administrators first survey or interview teachers about their knowledge, worries, and interests concerning the rights of students and teachers and then analyze their findings and implications. Next they do legal research and prepare a lesson plan on one of the topics highlighted by their survey. In addition to legal content, the lesson plans include anticipated questions and answers, methods for assessing teachers' understanding of the content, and references to additional resources on the topic. Students work in small teams to present, critique, and revise the lesson plans before they are submitted to the instructor for review and comment. Third, the principal candidates develop a long-term strategy for incorporating legal issues into their school's in-service professional development program—anticipating challenges and how to overcome them.<sup>51</sup>

## 2. The Principal Lawyer Partnership

Even with appropriate resources and lesson plans, some principals may hesitate to include school law in their in-service programs unless they know that there is a competent lawyer available to consult with them—to review their lessons, to note how Supreme Court decisions relate to local policy and state law, to suggest recent, relevant cases, and to clarify possible confusion. These concerns can be addressed through a principal-lawyer partnership. It is in the mutual interest of both partners to help teachers become legally literate practitioners of preventive law. Principals will be less hesitant to add law to their in-service program knowing that there is a lawyer a phone call away in case teachers ask questions the principal can't answer. Even busy school

---

<sup>51</sup> DAVID SCHIMMEL, SCHOOL AND THE LAW SYLLABUS, EDU. A213 (Harvard Graduate School of Education, Fall 2009).

lawyers should want to encourage and support their principal's efforts to accurately teach preventive law.

Although there are still some challenges to overcome before well-planned, relevant and accessible school law lesson plans become a standard part of most in-service programs, there are now strategies, materials, and resources available to enable principals to become informed and effective law teachers of their staffs. To assist in this effort, we have recently published, *Principals Teaching the Law: 10 Legal Lessons Your Teachers Must Know*.<sup>52</sup> This book of lesson plans focuses on the issues of greatest concern to classroom teachers from avoiding liability for student injury, cyberbullying, and sexual harassment to academic freedom, search and seizure, and special education. It is designed to enable busy principals to add lively and accurate legal topics to faculty meetings and in-service programs.

#### IV. CONCLUSION: BENEFITS OF LEGAL LITERACY

There will be a number of positive outcomes if colleges provide knowledge of the rights and responsibilities of students and teachers in their teacher preparation programs and if administrators add the basic principles of school law to their in-service professional development programs. If public school teachers understand that they are agents of the government and therefore are restrained by the Bill of Rights, they are not likely to require students to take off a T-shirt with a political message because they fear it might offend someone, order a student to stand for the Pledge of Allegiance, or search a student's backpack without a reasonable suspicion that the student violated the law or a school rule. In addition, if teachers are aware of the limits of their academic freedom, they will not use the classroom to promote their political, religious, or social views and will understand their lack of First Amendment protection if they cause conflict in their school by publicly criticizing their supervisors or colleagues or the curriculum that they are

---

<sup>52</sup> DAVID SCHIMMEL ET AL., *PRINCIPALS TEACHING THE LAW: 10 LEGAL LESSONS YOUR TEACHERS MUST KNOW* (Corwin Press 2010).

required to teach. Furthermore, when teachers know state and federal laws that govern discipline and the reasonable use of force, it is less likely that the classroom will be out of control. This is because legally literate teachers will not be afraid to break up a fight because of unfounded fears that they will be held personally liable if a student is injured, nor will they fear a lawsuit if they put a restraining hand on the shoulder of a student who is constantly jumping out of his seat—disrupting the class and possibly injuring himself or others.

Some critics of teaching teachers about school law argue that a little legal knowledge can be a dangerous thing. Even if this might be true in rare cases, we are convinced that legal ignorance is much more dangerous. As one survey participant wrote: “I think the fact that so many teachers are under-informed about the law is both dangerous and upsetting.” And as another teacher wrote: “I most certainly would have avoided many days of anguish and humiliation if I had known more about school law.”<sup>53</sup>

The goal of legal literacy is not to encourage litigation or help teachers win lawsuits. On the contrary, it is to avoid litigation whenever possible since judicial resolution of an educational dispute is usually an expensive, distracting, polarizing, and time-consuming experience. By becoming legally literate, teachers will know when to seek competent legal advice. Equally important, teachers will no longer see themselves as potential victims of the legal system. Instead they will be able to use the law as a source of guidance to avoid unconstitutional actions, to bring legal violations to the attention of colleagues and administrators, and to improve the educational experience of students by insuring that their rights are understood and respected. Thus legally literate teachers will be informed practitioners of preventive law who can use their legal knowledge to protect their students, their schools and themselves.

---

<sup>53</sup> David Schimmel & Matthew Militello, *Legal Literacy for Teachers: A Neglected Responsibility*, 77 HARV. EDUC. REV. 257, 275 (2007).