

Legal Literacy and K-12 Public School Teachers

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Courts have long held that public school teachers are “state actors” when they carry out the duties of their job. Despite this, very few teacher preparation programs include an education law class. In order to understand teachers’ legal literacy, a survey was given to 300 public school teachers in Indiana. The survey assessed knowledge of constitutional law issues, statutory law issues, and case law relevant to public school settings (e.g., student free speech, search and seizure, special education law, etc.). Results indicate that very few teachers are legal literate, often mistaking what is within the realm of legal possibility in a school setting. Implications and suggestions for mitigating possible lawsuits are discussed.

Introduction

We live in a litigious society and public schools are not immune to lawsuits. In fact, lawsuits have often shaped the way that schools function, are governed, and how specialized services are delivered to students (Decker, 2014; Decker & Brady, 2016). When teachers enter a preK-12 classroom in a public school they represent not only themselves, their school, and school district, but – legally speaking – also the state. Courts have long interpreted public school teachers to be state actors when carrying out the duties of their job. In *Wood v. Strickland* (1975) the U.S. Supreme Court ruled that school personnel can be held personally liable for violating students’ constitutional rights if they “knew or reasonably should have known that the action they took....would violate the constitutional rights of the student affected” (p. 322). Indeed, the hundreds of daily interactions teachers have with students, colleagues, administrators, and parents have constitutional implications (Kiracofe, Summers, & James, 2019). Legal literacy is important for teachers because “in the same way that drivers cannot avoid a speeding ticket by claiming they were unaware of the speed limit, educators’ ignorance of the law will not excuse its violation” (Decker, 2014, p. 685).

In spite of the importance of teacher legal literacy, it is an under-studied area of social science research. The majority of studies on the topic are doctoral dissertations (Decker, 2014), which lack the rigor of blind peer review. Furthermore, there is no agreed upon definition of legal literacy in the literature, although Decker and Brady (2016) offered that legal literacy might best be defined as “the legal knowledge, understanding, and skills that enable educators to apply relevant legal rules to their everyday practice” (p. 233).

Decker and Brady's (2016) definition provides a solid foundation upon which to examine teacher understanding of education-law related concepts that may impact them or their students on a daily basis. As such, the goal of our study was to examine the legal literacy of public school teachers in the state of Indiana.

Indiana is part of the United States Court of Appeals for the 7th Circuit, which also has jurisdiction over Illinois and Wisconsin. We examined the legal literacy of Indiana public school teachers as it relates to U.S. Constitutional issues (free speech, religion, search and seizure, etc.) and Federal legislation (special education, Title IX).

Legal Literacy Basics

Education law is a necessarily broad topic that covers Federal and state constitutional provisions, Federal, state, and local legislation, case law, and policy. It would not be feasible for teachers to know and understand the entire body of education law and policy that could impact them. However, teachers should have, and would benefit from, basic legal literacy. Because teacher legal literacy is understudied, there are many directions researchers could explore in order to better understand the topic. For the purposes of this paper, we provide an overview of the key areas of constitutional law and federal legislation that we explored with our research participants.

First Amendment

The First Amendment of the Constitution ensures several important freedoms, all of which are relevant to public school settings. The First Amendment states,

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 (U.S. Const. amend. I).

Several of these freedoms relate directly to the classroom. Public school teachers are state actors and, as such, all of their professional interactions have constitutional implications. By voluntarily signing an employment contract, teachers agree to temper their speech in accordance with school district guidelines. For example, a math teacher who tires of her subject cannot decide to teach modern political history in her courses instead of calculus and then claim that the free speech clause of the constitution allows her this latitude.

In comparison, students have far greater speech protection in public schools than teachers. In contrast to teachers who have voluntarily entered into employment contracts, students are mandated to attend school (if not always a public school) by compulsory attendance laws. Unlike teachers, who could quit their jobs if they did not agree with the school curriculum, students are not generally able to leave school without legal repercussions. Thus, the first amendment rights of students are carefully guarded by courts. However, the school and teachers can limit student speech when it is done for curricular reasons. For example, a biology teacher is able to mandate that the only thing students talk about during class is biology. Yet, during

periods of free time such as lunch or during passing periods, students have wide latitude to speak about what they wish within reasonable limits (obscene student speech, for example, is not constitutionally protected).

One of the more controversial issues facing American public education is the role which religion plays (or does not play) in the classroom. There are two religion clauses of the First Amendment: The Establishment Clause and the Free Exercise Clause. The former proscribes what state actors cannot require or mandate in public schools when it comes to religion. For example, historically, many schools began the school day with a prayer. This practice has repeatedly been deemed by courts (including the Supreme Court) to violate the Establishment Clause (*Engel v. Vitale*, 1962).

The Free Exercise Clause, in contrast, regulates what teachers cannot prohibit when it comes to student exercise of religion. For example, school talent shows may offer students the opportunity to sing or dance to “acceptable” music, including religious-based music. Generally speaking, this assessment of acceptability is determined by the absence of curse words or lyrics that address adult themes. When well-meaning teachers veto a student’s music selection for being “too religious” they are actually at risk of violating students’ Free Exercise rights.

Many educators, familiar with the concept of the “wall of separation between church and state” articulated by Thomas Jefferson, hold the mistaken belief that there can be no mixing of religion and public schools (Dayton, 2012). There has been a great deal of confusion as to “how much” religion is allowed in public schools and there are many misconceptions about what the law does and does not require when it comes to issues related to religion in the public schools. As suggested by the previous examples, teachers are asked to walk a fine line between ensuring that their practices do not violate the Establishment Clause while at the same time not being so hyper-vigilant as to wander into the territory of violating students’ Free Exercise rights.

Fourth Amendment

The Fourth Amendment of the U.S. Constitution provides individuals with protection against unreasonable searches and seizures. Since the landmark Supreme Court decision *New Jersey v. T.L.O.* in 1985, courts have repeatedly held that the Fourth Amendment applies to educators’ interactions with public school students, but in a way that is quite different when compared to interactions between the police and members of the general public (*T.L.O. v. New Jersey*, 1985). To illustrate, if a police officer wants to conduct a search of someone’s person or belongings when consent has not been given, they must have both *probable cause* for conducting the search (a fairly high standard of suspicion to meet) and typically must obtain a search warrant from a judge. In sharp contrast to the probable cause standard, in *T.L.O.*, the Supreme Court clarified that school officials may search students and their belongings (including school lockers) based on reasonable suspicion (not the far greater standard of probable cause) and they do not need consent or a warrant to do so.

Special Education

The issue of provision of special education services to children is not clearly found in the U.S. Constitution like the First and Fourth Amendment issues discussed above, but rather it comes from Federal legislation. Historically, students with disabilities were not offered the same educational opportunities as their classmates without disabilities. In the 1950s and 1960s, for example, it was routine for parents of students with even mild disabilities to be turned away from public schools and told that their child was uneducable. In the 1970s, Congress passed two significant pieces of legislation impacting individuals with disabilities. Section 504 of the Rehabilitation Act of 1973 was broadly applicable to both students and adult employees who have a physical or mental impairment that substantially limits a major life activity. While Section 504 is an important law protecting the rights of individuals with disabilities, two years after its passage another federal law was passed providing students far greater academic and procedural protections. This law was first known as the Education of All Handicapped Children Act (EAHCA) but it has since been updated and reauthorized several times and is currently known as the Individuals with Disabilities Education Improvement Act (IDEIA). IDEIA provides eligible students with significant legal rights, namely the provision of a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).

There are strict eligibility criteria for IDEIA. A student must have a qualifying disability that requires special education services. IDEIA-eligible students have the right to a Free Appropriate Public Education (FAPE) and a host of other procedural rights related to classroom placement, disciplinary actions, and more.

Title IX

Title IX of the Education Amendments of 1972 is often characterized as a law relating to gender equity in sports. This is true, but Title IX applies to much more than athletics. The law mandates that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (Title IX, 1972).

Title IX has been identified as controlling law in sexual harassment cases (both student-student and student-teacher) and is increasingly being referenced in cases involving discrimination based on gender identity (Alexander & Alexander, 2019). Courts have held that school districts must take proactive steps to be aware of any sex-based discrimination in their schools. Once such discrimination has come to the attention of school officials (or should have come to their attention, had they been following proper protocol), districts are responsible to address the claims without deliberate indifference.

Existing Research

There has been limited research related to the legal literacy of classroom teachers. Some research (Oltman & Surface, 2017) presents an overview of what teachers need to understand about education law in light of current social contexts, but it provides suggestions rather than empirical data about teachers’ actual legal literacy. Some studies have used a survey methodology to explore teacher understanding of education law, and of those studies, some are quite old. For example, Gullatt and Tollett (1997) conducted a study more than 20 years ago that assessed Louisiana teachers’ perceptions of preservice coursework in education law. The researchers had

a sample of 480 teachers and 95% of respondents who held a Bachelor's degree had not taken an education law course as part of their undergraduate teacher preparation coursework. Similarly, 90% of teachers with Master's degrees had not taken an education law course, yet these same teachers reported that their education had been lacking when it came to school law issues such as student privacy, discipline, special education, and student and teacher rights, among other areas.

More recently, Schimmel and Miltello (2007) surveyed 1,317 teachers about their level of knowledge in ten education law domains. The researchers found that across several domains teachers had incorrect, incomplete, or outdated legal knowledge. Not surprisingly, those who had interacted with education law material, either through a course or another type of training, had more knowledge than those who had not interacted with education law material. While a large sample was used in this study, it is now over a decade old.

In more timely research on the topic of legal literacy, Decker, Ober, and Schimmel (2019) conducted a survey of school administrators and teachers *after* they took a graduate-level education law course. Their sample included 107 participants, 48 of which were teachers. Although Decker and colleagues (2019) did not disaggregate their findings by teacher vs. administrator responses, they did report that 88% of their participants were more confident about education law topics after completing the course. Perhaps their most important finding was that there was an increased feeling of empowerment and a decreased fear about legal issues in school settings. Interestingly, these feelings also led to behavioral changes. Thirty eight teachers reported “doing things differently” as a result of knowledge gained in the class. The behaviors teachers reported engaging in included “changing daily practice to ensure legal compliance, conducting more legal research and seeking more legal advice, and teaching colleagues about the law (Decker et al., 2019, p.170).

Unfortunately, even in the small number of studies conducted, each have come to the same general conclusion: Teachers do not know as much about the law as they need to, given the important role they play in society. It is not an issue of lack of *interest* in the law on the part of teachers, but instead reflects the fact that teachers' legal knowledge is not what it needs to be in order for these professionals to best carry out their duties (Kiracofe, Summers, & James, 2019). Most states do not require an undergraduate course in education law. An explanation of this follows.

Teacher Training

In order to address the need for teachers to be legally literate, some states have incorporated a course in education law into the undergraduate pre-service teaching curriculum. In research conducted several years ago Gullatt and Tollett (1997) surveyed teacher certification bureaus in all 50 states to inquire if an educational law course was required prior to teacher licensure/certification. At that time, only two states (Washington and Nevada) required a preservice education law course. Although it is unclear how many states currently require a pre-service course in education law, some universities have taken it upon themselves to require it. For example, in Indiana (the location of this study) both Indiana University and Purdue University require pre-service teachers to take a course in education law before entering the classroom. However, this course is often taken during a point in the student's professional

preparation when there are myriad tasks to be completed and lessons to be learned. Pre-service teachers are likely to be focused on practical aspects of their profession such as how to create a lesson plan or deal with student discipline, and may be less inclined to focus on abstract concepts such as how the law will apply to their future classroom. Student teaching requires students to become proficient in lesson planning and classroom discipline. It is less likely that teacher candidates feel the same pressing need to be fluent in how the law applies to the classroom. Furthermore, even at institutions that require a pre-service course in education law, such a course often encompasses a curriculum that far exceeds just education law. For example, education law courses are often coupled with policy analysis or an emphasis on teaching special student populations (Dayton, 2012). Although both of these topics are important, the multiple foci of study dilutes the amount of time that can be spent on legal literacy. Similarly, many teachers do not take a stand-alone law course, but rather legal concepts are simply infused into existing coursework, which further dilutes the content (Littleton, 2008). Ultimately, this could result in teachers who are ill-prepared to uphold state and federal laws, even though they are state actors. However, it is unclear exactly how prepared teachers feel and how legally literate they are.

This Study

The purpose of this study was to investigate the legal literacy of classroom teachers in Indiana. Research questions that guided this study include: 1) What are teachers' perceptions of their general knowledge and experiences with education law and what types of training have they received related to education law? 2) What are teachers' understandings of two key constitutional provisions (First and Fourth Amendments) within public school settings? 3) What are teachers' understanding of key Federal legislative provisions (Special Education and Title IX) within public school settings?

Method

Participants

Study participants included 300 public school teachers from Indiana. The Indiana Department of Education reports that in 2016-17 (the most recent year for which data is available) there were 71,224 teachers working in the state (IDOE, 2017). Thus, assuming the number of teachers in the state remained relatively constant, 0.42% (1 out of roughly 237) of all Indiana teachers completed the survey. Participants were solicited through their principals; all Indiana principals were sent a link to the survey along with a message asking them to invite their teachers to participate in the study. Several principals emailed the researchers and indicated that the survey link had been sent to all of their faculty, however most did not respond directly to the researchers. Thus, it is impossible for us to calculate a reliable survey response rate.

It took an average of 18.5 minutes for participants to complete the survey. There were 223 (74.3%) females, 73 (24.3%) males, 1 (.3%) transgender female, and 3 (1.3%) participants who did not indicate their preferred gender. The gender breakdown of participants in the study is very similar to gender data reported for Indiana teachers by the most recent version of the Schools and Staffing Survey. The SASS reports that 77.2% of Indiana teachers were female and 22.8% male (National Center for Education Statistics, 2012). Participants were diverse with

respect to the number of years of experience they had teaching. By way of a categorical question, 61 (20.3%) reported between 1 and 5 years of experience, 41 (13.7%) reported between 6 and 10 years of experience, 44 (14.7%) reported between 11 and 15 years of experience, 45 (15%) reported between 16 and 20 years of experience, 27 (9%) reported between 21 and 25 years of experience, 33 (11%) reported between 26 and 30 years of experience, 22 (7.3%) reported between 31 and 35 years of experience, 14 (4.7%) reported between 36 and 40 years of experience, 7 (2.3%) reported more than 40 years of experience, and 6 (2%) did not respond. The age of participants ranged from 23 years old to 68 years old, with a mean age of 39 years old.

Of the participants, 127 (42.3%) indicated they have spent their entire teaching career in a rural setting; 60 (20%) have only ever worked in a suburban setting; 33 (11%) have only ever worked in an urban setting, 77 (25.9%) have worked in some combination of urban, rural, and suburban districts, while 3 (1%) did not answer the question. Participants varied in the grades they taught, ranging from Pre-K teachers to those who taught only 12th grade in the high school setting. More specifically, of the 292 participants who responded to the question, three taught Pre-K, six taught kindergarten, 76 taught in the elementary grades (grades 1-5), 110 taught at the middle school level (grades 6-8), 55 taught at the high school level (grades 9-12), and 42 participants indicated they taught across multiple grade levels. Approximately 184 (61.3%) of participants worked in a Title I school. The majority of participants had either a Bachelor's degree (111, 37%) or a Master's degree (171, 57%). Eight people (2.7%) had a specialist degree, six (2%) held a doctoral degree, one (0.3%) had a law degree, and three (1%) did not answer the question.

Instrumentation

Participants completed a researcher-created survey that assessed legal literacy across several domains. The instrument included several demographics questions at the beginning of the survey. These questions included information about the participant's age, number of years they had been employed as a teacher, grade-levels served, teaching assignment (special education, etc.) poverty status of the school in which they teach, school setting (rural, urban, suburban), and gender.

Teachers were then asked a series of questions about their experiences with school law. Broadly, these questions could be categorized in the following way: 1) preservice and/or inservice trainings related to education law, 2) familiarity with ANY education law related case law, 3) understanding of specific U.S. Constitutional provisions applicable to public schools (freedom of religion, free speech, search and seizure, etc.), 4) understanding of specific Federal legislation applicable in school settings (Title IX, special education) and 5) understanding of specific State legislation applicable in school settings (tenure protections, childhood vaccines, etc.)

The topics chosen for inclusion in the researcher-created survey came from prominent education law texts that are used to teach education law at the graduate level. Some of these texts include Dayton's work (2012), which is a widely used education law text, an education law and policy text by Yudof, Levin, Moran, Ryan, and Bowman (2012), and a textbook by Cambron-McCabe, McCarthy and Eckes (2014). In addition, the first two authors of this paper drew upon their own subject matter expertise as instructors of education law classes and scholars who have published in the field of education law. See (Dayton & Kiracofe, 2013; Summers, Crawford, & Kiracofe,

2014;Wood et al., 2015). In addition to taking concepts directly from prominent education law texts, in order to establish content validity, survey items were vetted through the use of additional subject matter experts. Two additional faculty members who have taught education law courses for several years were consulted and gave feedback on survey items.

The survey was kept short and was exploratory and descriptive in nature. We were interested in learning about the construct from a largely descriptive standpoint. Therefore, no formal statistical analyses, such as exploratory factor analysis, were conducted to examine the factor structure of the survey. Doing so was beyond the scope of the study (See Future Directions section).

Procedures

Surveys were disseminated to teachers by building principals in Indiana via an electronic link. Building administrator e-mails were obtained through publicly available online sources. Teachers completed the survey via Qualtrics. The survey was anonymous, IP addresses were not tracked, and participants confirmed they wanted to participate via an informed consent statement at the beginning of the survey. On average, it took participants 18.5 minutes to complete the online survey. All instruments and procedures were approved via the appropriate university institutional review boards.

Results

General Legal Knowledge and Experiences

In order to explore *RQ1: What are teachers' perceptions of their general knowledge and experiences with education law and what types of training have they received related to education law?* Participants were asked a series of questions about their general knowledge of, and experience with education law. Results of these responses are presented question by question.

Participants were asked if they took a law class as part of their pre-service teaching and the majority, 191 (63.7%), had not. Conversely, 82 (27.3%) indicated they did take a class and 24 (8%) were unsure if they took one.

When responding to the question, *"Have you or one of your colleagues ever been sued in your professional capacity as an educator?"* 37 (12.3%) said yes, 44 (14.7%) said no, 173 (57.5%) were not sure, and 46 (15.3%) did not answer the question.

Teachers were asked to respond to the question, *"I am worried about doing something wrong in the classroom that could result in a lawsuit"* using a three point Likert-type scale. Eighty five (28.3%) indicated they were Not At All Worried, 133 (44.3%) indicated they were Somewhat Worried, 23 (7.7%) indicated they were Very Worried, 4 (1.3%) selected Unsure, and 55 (18.3%) did not respond to the question.

Next, teachers were asked to respond to the statement, *"I have changed or modified a class assignment out of fear it might be controversial and lead to a potential lawsuit?"* using a three

point Likert-type scale. One hundred thirty three (44.3%) selected Not At All True, 69 (23%) selected Somewhat True, 27 (9%) selected Very True, 16 (5.3%) selected Unsure, and 55 (18.3%) did not answer the question.

Last, teachers were asked to respond to the question, “*I have a good understanding of how the law applies to public schools*” again using the same three point Likert-type scale. Sixty-five (20.7%) selected Not At All True, 143 (57.3%) selected Somewhat True, 36 (12%) selected Very True, 6 (2%) were Unsure, and 54 (18%) did not answer the question.

First Amendment

In order to obtain information about *RQ2: What are teachers’ understandings of key constitutional provisions (First and Fourth Amendments) within public school settings?*, participants were asked a series of questions about these amendments. For example, participants were asked, “*Which of the following statements are true of the First Amendment of the U.S. Constitution?*” They were instructed to select all possible answers from the following possibilities: 1) It ensures freedom of religion, 2) It ensures freedom of speech, 3) It ensures freedom from unreasonable searches, 4) It ensures freedom from discrimination based on race, 5) It ensures freedom of peaceable assembly, and 6) I do not know. (Note: for reader ease, the correct answers have been underlined).

Table 1 below indicates the correct responses from participants. The most commonly selected incorrect responses included: “it ensures freedom from unreasonable searches” (13 participants selected this) and “it ensures freedom from discrimination based on race” (14 participants selected this). Note that it was possible to select both correct and incorrect responses. For example, if someone selected all of the possible answers, then he would have three correct answers and two incorrect answers for this question.

Table 1
Correct First Amendment Answers

	Frequency	Percent
Answered, but all were incorrect	1	0.3%
One Correct	92	30.7%
Two Correct	53	17.7%
Three Correct	87	29.0%
Selected "I do not know"	17	5.7%
Skipped the question	50	16.7%
Total	300	100%

First Amendment-Religion Specific

Participants were asked, “*Regarding religion in public schools, which of the following is(are) true?*” They could select multiple answers from the following choices: 1)

Schools could offer a history of religion class to students, 2) Schools could allow a student-led bible study for students to meet during lunch. (Assume other clubs are permitted to meet during lunch), 3) Schools could allow teacher-led bible study for students as an after-school club. (Assume other clubs are permitted to meet after school), and 4) I do not know. (Note: The two correct answers have been underlined here for reader ease).

Table 2, below indicates the correct responses from participants. The most commonly selected incorrect statement was, “schools could allow teacher-led bible study for students as an after-school club. (Assume other clubs are permitted to meet after school)” which was selected by 84 respondents. Note that it was possible to select both correct and incorrect responses. For example, if someone selected all of the possible answers, then they would have two correct answers and two incorrect answers (including “I do not know”) for this question.

Table 2

Correct Answers to First Amendment Religion-Specific Question

	Frequency	Percent
No correct answers	7	2.3%
One correct	58	19.3%
Two Correct	158	52.7%
"I do not know"	28	9.3%
Total	251	83.7%
Did not answer the question	49	16.3%
Total	300	100%

Fourth Amendment

Participants were asked an open-ended question: “*Before police can search a citizen without their consent, they generally need to have a search warrant and be able to demonstrate “probable cause.” What search standard do school officials need to be able to meet in order to search a student without their consent?*” Participants could select from *Reasonable Suspicion*, *Probable Cause*, *I do not know*, or they could write in an answer. Fifty-three people (17.7%) correctly indicated that reasonable suspicion was the standard in schools. Thirty-six (12%) indicated that probable cause was needed, 34 participants (11.3%) wrote in other answers, which will be discussed below, 119 (39.7%) indicated they did not know what the standard was, and 58 (19.3%) skipped this question.

Because this was a write-in question, 34 participants gave answers which demonstrated wide ranges of understanding. Examples of these responses are listed in Table 3.

Special Education

In order to answer RQ3: *What are teachers' understanding of key Federal legislative provisions (Special Education and Title IX) within public school settings?*, participants were asked a series of questions. For example, participants were asked the following question: *“Many students are eligible for special education services under the Individuals with Disabilities Education Improvement Act (IDEIA). Which of the following are criteria that students must meet in order to be eligible for IDEIA?”* They were instructed to select all applicable criteria from the following options: 1) Students must score below the 25th percentile on a state-recognized

Table 3

Example Participant Responses for Search Standards in School

Question Prompt	Select Participant Comments
<i>What search standard do school officials need to be able to meet in order to search a student without their consent?</i>	<p>“They must be able to see the illegal product or smell it.”</p> <p>“Police may search school owned areas, but personal property must have a search warrant. It is generally advisable to have more consent than less.”</p> <p>“Teachers can search a student in the company of a witness”</p> <p>“Student safety must be the reason”</p> <p>“Administrators can search based upon suspicion.</p> <p>“We have more power than police officials in search and seizure of students”</p> <p>“Schools make their own policies regarding searches”</p> <p>“Eminent danger to self or others, under the influence of drugs/alcohol”</p> <p>“As lockers and books are school property, school officials do not need a search warrant.”</p>

standardized test, 2) Students must have a qualifying disability, 3) Students must be 19 years old or younger, 4) Students must attend a public school, and 5) Students' disability must cause them to be in need of special education services. (Note: correct answers were underlined for reader ease).

The most commonly selected correct answer was, “student must have a qualifying disability,” which 238 participants (79.3%) selected. Of the incorrect selections, 59 participants (19.6%) incorrectly indicated that in order to qualify for special education services a student must be 19 years old or younger. Thirty participants (10%) also incorrectly indicated that in order to qualify for special education services, a student must score below the 25th percentile on a state-recognized test. See Table 4 below.

Table 4
Special Education Responses

	Frequency	Percent
No incorrect answers	4	1.3%
One correct answer	65	21.7%
Two correct answers	167	55.7%
Three correct answers	7	2.3%
Skipped the question	57	19%
Total	300	100%

Title IX

Participants were asked an open-ended question: “*How does Title IX of the Education Amendments of 1972 apply to public schools?*” They were instructed to select all possible answers from the following options: 1) Title IX applies to student-student sexual harassment, 2) Title IX applies to incidents of gender discrimination, 3) Title IX applies to discrimination based on race, 4) Title IX applies to high school sports, 5) Title IX applies to school safety, and 6) I do not know. (Note: correct answers were underlined for reader ease).

The most commonly selected correct answer was, “applies to incidents of gender discrimination,” which 143 participants (47.6%) selected. The second most common correct response was, “applies to high school sports,” which 100 people (33%) selected. Of the incorrect selections, 41 people (13.7%), selected “discrimination based on race” as an answer. See Table 5 below.

Discussion

Teacher Perceptions and Concerns about the Law

The current study builds upon the work of Schimmel and Mitello (2007) as well as others by providing a greater understanding of teacher legal literacy. Although our sample size was

Table 5*Number of Correct Answers Related to Title IX*

	Frequency	Percent
One Correct Answer	76	25.3%
Two Correct Answers	51	17%
Three Correct Answers	41	13.7%
Did not Know	74	24.7%
Skipped the Question	58	19.3%
Total	300	100.0

modest, to our knowledge, it is one of the only studies to examine specific domains of teacher legal literacy by asking questions about laws such as IDEIA and Constitutional Amendments such as the First Amendment and Fourth Amendment. In that way, our findings are a unique contribution to the field.

As far as the specific results of this study are concerned, data show that maintaining compliance with the law is a concern for many of the teachers surveyed. More than half of respondents (52%) indicated that they were either “somewhat” or “very worried” about doing something wrong in the classroom that could result in a lawsuit. The concern about professional litigation appears to be well founded. Our data indicated that even in our modest sample, nearly one in eight teachers had either been sued or knew someone who had been sued in their professional capacity as an educator. These data, coupled with the fact that more than one in five teachers (20.7%) indicated that they did not have a good understanding of the law (a concern echoed as “somewhat true” by an additional 47.3% of respondents) warrant cause for concern for educational administrators and trainers of educational administrators and teachers. More than a quarter of respondents reported an inclination to modify course assignments out of fear that it might be controversial and lead to a potential lawsuit.

Certainly, compliance with the law is a good thing in K-12 classrooms. However, when fear or lack of legal knowledge results in a narrowing of the curriculum, students’ educational opportunities suffer. Teachers who face the internal pressure of worrying about the legality of thinking outside of the box may well be pushed to keep classroom discussions and assignments “safe” and “uncontroversial,” decisions that can rob students – especially older students – from fully participating in the proverbial marketplace of ideas.

First Amendment

The First Amendment of the Constitution ensures several important freedoms, all of which are relevant to public school settings. Respondents were asked about five different freedoms protected by the Constitution, only three of which are contained within the First Amendment:

freedom of religion, freedom of speech, and freedom to peaceably assemble. The other two choices were freedom from discrimination by race (protected by the Fourteenth Amendment) and freedom from unreasonable searches and seizures (protected by the Fourth Amendment). It is possible that respondents were aware that these freedoms were protected by the Constitution, but were unsure of whether the First Amendment was the controlling law. While other questions asked for participants' knowledge of the law, this question was designed to assess respondents' legal literacy as to the source of laws relevant to the public school classroom.

We hypothesized that performance on this question might be relatively poor due to the nature of the question; the fact that what was being assessed was the source of law rather than the substance of the law. In fact, participants did perform significantly better on the next question which asked about the substance of the law (and not the source of law) as it relates specifically to religion in public schools.

Religion in the Public Schools

Many of the teachers in our study thought it was constitutionally permissible for a teacher to lead a bible study to students in a public school. Teachers must walk a fine line between teaching about various religions and proselytizing as courts have repeatedly held that religious instruction that is proselytizing in nature is unconstitutional. For example, if a teacher interjected his/her personal religious beliefs about the origin of humankind into a biology class lecture on evolution, it would violate the Establishment Clause. However, there are times when religion simply cannot be removed from the curriculum without damaging students' educational opportunities. For example, it would be extremely difficult to teach about the Renaissance and not mention the significant role that the Catholic Church played in society during this era. Likewise, a history of religion class – so long as it was not “pro” or “anti” one or all religions in particular or designed to bring students to religious faith – would be permissible in public schools.

Many of our participants agreed that schools can allow a student-led bible study for students to meet during lunch, assuming that other clubs are permitted to meet during lunch. The legality of this issue is governed, in part, by the Equal Access Act (EAA). The EAA was a federal law passed in 1984 that mandates when school districts permit extracurricular clubs in school, clubs cannot be banned or denied access to school facilities solely because of their religious nature. The EAA was affirmed as Constitutional by the U.S. Supreme Court in *Westside Community Schools v. Mergens* in 1980.

Under the EAA, schools are free to decide whether or not they would like to offer non-curricular clubs to students (i.e. a theater club in a school that has no theater program or coursework could be an example of a non-curricular club). A school that elects not to allow any non-curricular clubs to meet is legally operating as a “closed forum” and is not required to facilitate student (or community) requests to use school facilities. This also means that schools are not able to rent out facilities during the weekends, as is currently done by many schools to raise additional revenue. When a school elects to offer non-curricular clubs to students, regardless of whether or not the club is operated by individuals outside of the school, the school is legally operating as a “limited access public forum.” Under these circumstances, a student-led bible study would be permissible so long as other non-curricular clubs were also permitted to meet.

Overall, our study results confirm findings of other researchers and suggest that there is still a fair amount of confusion related to teachers' knowledge of education law.

Fourth Amendment

With Fourth Amendment issues, we attempted to identify whether teachers understood that there was a different search standard for educators (as compared to law enforcement officers) and see how many participants knew what the actual standard was. Just 53 participants (17.7%) correctly identified the search standard needed by educators to conduct a search as *reasonable suspicion*. Some of the incorrect answers further underscored educators' confusion in this area of the law. For example, one participant indicated that teachers could search students so long as there was a witness. In actuality, while making sure that there is a second individual present for a search is best practice, it is not the presence of a "witness" that makes the search legal. Another teacher incorrectly stated that before a student could be searched (presumably for drugs) that educators would either have to be able to see or smell the contraband. This assertion is untrue. There are circumstances in which educators may have knowledge about a student's possession of illegal drugs (amounting to reasonable suspicion) that would permit a search even in the absence of sight or smell evidence. These results were particularly troubling, as understanding the parameters of when educators can – and cannot – search students is very important in maintaining both school safety and ensuring that students' Constitutional rights are respected.

Special Education

As many as 14 percent of American schoolchildren receive special education services of some type under the Individuals with Disabilities Education Act (IDEIA) ("Children and Youth With Disabilities", 2019). All teachers – not just special education teachers – have a professional responsibility to be on the lookout for students who may be in need of IDEIA services. Conducting this duty requires that teachers be familiar with IDEIA eligibility criteria.

In our study, we asked teachers to identify, from a list of five different choices, which criteria students must meet in order to be eligible under IDEIA for special education services. The vast majority of participants (79.3%) correctly identified that eligibility for IDEIA services required that students have a qualifying disability. However, in contrast, a large number of teachers shared some pretty important misconceptions about IDEA eligibility. For example, many incorrectly believed that IDEA eligibility was limited to students 19 and younger. Additionally, several teachers answered that eligibility required that students score below the 25th percentile on a state recognized standardized test.

The misconceptions shared by a significant percentage of teachers are troubling. Teachers have a legal and ethical responsibility to play an important role in the "child find" process of IDEA by identifying students who they believe may be in need of special education services. Teachers who have an incorrect or incomplete understanding of the law in this area will be unable to carry out their statutorily-required duty. As a result, students who need, and are legally entitled to IDEA services, may not receive them.

Title IX

In our sample, teachers lacked knowledge of Title IX, which is concerning and problematic. Although each school is required to have a Title IX coordinator, often classroom teachers are on the “front lines” when it comes to instances of student sexual harassment or gender discrimination. As the individuals in the school who are perhaps most likely to first hear about incidents that might be reportable and remediable under Title IX, teachers’ lack of understanding of this important law could result in inadequate support and guidance for students who suffer gender based discrimination.

Limitations and Future Directions

One limitation of this study is that we used a researcher-created survey that has yet to undergo psychometric analysis. Therefore, any conclusions drawn from the research may not be robust in nature. Future researchers should take a more systematic approach to assessment of legal literacy by adding more questions in more domains, running the appropriate factor analyses, and trimming the items from there.

A second study limitation is that participants were only from Indiana, one state in the Seventh Circuit. Future researchers should look to expand the sample to Illinois and Wisconsin and/or investigate teacher legal literacy in other Appellate circuits throughout the U.S.. If other circuits were assessed, perhaps comparisons and contrasts could be examined which might prove instructive for educational leaders. For example, if legal literacy is stronger in a particular circuit, one could examine the reasons behind that. Perhaps some states require more robust legal preparation for their teachers either pre-service, in-service, or both.

Last, the sample size was modest and there may have been sampling bias. This was a self-report survey sent through e-mail. Teachers who were inherently interested in study content may have been more likely to participate. Furthermore, participants were unable to ask clarifying questions because of the use of a quantitative, online-based survey.

Conclusion

Twenty-first century teachers are tasked with a tremendous amount of responsibility that far exceed the traditional expectations of providing instruction in reading, writing, and arithmetic. Modern teachers are expected to not only educate students, but to serve as positive role models, act as a lay social workers, and so much more. Ensuring that students’ legal rights are preserved in the classroom is one such important, and increasingly complex, expectation.

A surprisingly small amount of research examining the legal literacy of teachers has been conducted. This is especially ironic given the fact that many states and teacher preparation programs require that pre-service teachers receive instruction in the law (Littleton, 2008), even if that instruction is not in the form of a full class. Unfortunately, our study – like those before ours outlined in the literature review – supports the previous research suggesting that legal literacy in teachers is insufficient.

The answer to the lack of legal literacy in teachers may not be as simple as incorporating education law courses into all pre-service teacher programs. Perhaps teachers are best able to digest education law only after they have real-life classroom experience to draw from. Further studies should compare the efficacy of education law courses and/or professional development sessions for practicing educators. We hypothesize that it is not the content that is problematic, but perhaps instead the timing of that content.

School leaders would be wise to incorporate instruction in education law through in-service teacher sessions and provide teachers with alternate opportunities to gain legal literacy while “on the job.” For example, supporting teachers by providing opportunities to take an education law course after they have begun teaching might be an effective way of increasing their legal literacy at a time in their career when they are most able to digest and apply it. Additionally, leaders should consider supporting teachers’ membership to education law-related organizations and/or providing financial assistance for teachers interested in attending education law conferences. While this study was not a strict cost-benefit study, one could reasonably surmise that by having more legally literate teachers, it will save a school district money. Providing teachers legal literacy learning opportunities would be costly, to be sure. However, it is reasonable to expect that the costs of providing teacher training in education law would be less costly than litigation expenses resulting from inadequate teacher legal literacy.

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References

- Alexander, K. & Alexander, M.D. (2019). *American Public School Law*. St. Paul, MN: West Academic.
- Cambron-McCabe, N., McCarthy, M. & Eckes, S. (2014). *Legal rights of teachers and students*. New York, NY: Pearson.
- Children and Youth With Disabilities, (2019). Retrieved on October 15, 2019 from https://nces.ed.gov/programs/coe/indicator_cgg.asp
- Dayton, J. (2012). *Education law: Principles, policies, and practice*. Scotts Valley, CA: Create Space Publishing.
- Dayton, J., & Kiracofe, C. (2013). *Illinois education law: A state companion*. Bangor, MA: Wisdom Builders Press.
- Decker, J. (2014). Legal literacy in education: An ideal time to increase research, advocacy, and action. *West's Education Law Reporter*, 304, 679-697.
- Decker, J.R., & Brady, K.P. (2016). Increasing school employees' special education legal literacy. *Journal of School Public Relations* 36(2) 231-259.
- Decker, J.R., Ober, P.D., & Schimmel, D.M. (2019). The attitudinal and behavioral impact of school law courses. *Journal of Research on Leadership Education*, 14(20) 160-185. doi:10.1177/1942775117742647
- Education for all Handicapped Children Act of 1975. Retrieved from GovTrack.us. October 15, 2019. <https://www.govtrack.us/congress/bills/94/s6>
- Engel v. Vitale, 370 U.S. 421 (1962).
- Equal Access Act of 1984. H.R.5345 – 98th Congress. Retrieved on October 15, 2018 from <https://www.govtrack.us/congress/bills/98/hr5345>
- Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654 (2006).
- Gullatt, D.E., & Tollett, J.R. (1997). Educational law: A requisite course for preservice and inservice teacher education programs. *Journal of Teacher Education*, 48(2), 129-135.
- Individuals With Disabilities Education Act, 20 U.S.C. § 1400 (2004).
- Indiana Department of Education. (2017). *DOE Compass: School Personnel*. Retrieved from: <https://compass.doe.in.gov/dashboard/personnel.aspx?type=state>
- Indiana University. (2018). *Elementary Education Program Sheet*. Retrieved from

https://education.indiana.edu/students/undergraduates/academic-advising/program-sheets/_docs/Elementary-Ed-May-2018.pdf

- Kiracofe, C., Summers, K.H., & James, C. (2019): Bad religion: teacher understanding of the first amendment in public schools. *Journal of School Business Management* 31(1), 14-19.
- Littleton, M. (2008). Teachers' knowledge of education law. *Action in Teacher Education* 30(2) 71-78.
- Mirabile, C. (2013). *A Comparison of Legal Literacy Among Teacher Subgroups*. Retrieved from VCU Scholars Compass, <https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=4194&context=etd>
- National Center for Education Statistics, Schools and Staffing Survey (2012). Table 2. Average and median age of public school teachers and percentage distribution of teachers, by age category, sex, and state: 2011-12. Retrieved from https://nces.ed.gov/surveys/sass/tables/sass1112_2013314_t1s_002.asp
- Oltman, G. & Surface, J.L. (2017) Living education law in 2017: How Facebook, prayer, toilets, and guns impact today's teachers, *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*, 90(5) 172-176. doi:[10.1080/00098655.2017.1366795](https://doi.org/10.1080/00098655.2017.1366795)
- Purdue University. (2019). *University Catalog: Undergraduate, Graduate, and Professional*. Retrieved from http://catalog.purdue.edu/preview_program.php?catoid=7&poid=6400
- Schimmel, D. & Militello, M. (2007). Legal literacy for teachers: A neglected responsibility. *Harvard Educational Review*, 77, 257-284.
- Summers, K. H., Crawford, J. & Kiracofe, C. (2014). A legal and statistical analysis of Illinois school funding in light of pending litigation in Chicago Urban League v. Illinois, *West's Education Law Reporter*, 309, 595-617.
- Title IX of the Education Amendments of 1972. (1972). Education Amendments Act of 1972, 20 U.S.C. §§1681 - 1688 (2018).
- T.L.O. v. New Jersey, 469 U.S. 325 (1985).
- Westside Community Schools v. Mergens By and Through Mergens. (n.d.). *Oyez*. Retrieved November 4, 2019 from <https://www.oyez.org/cases/1989/88-1597>
- Wood, R.C., Thompson, D.C., Dayton, J., & Kiracofe, C. (2015). *Educational finance law: Constitutional challenges to state aid plans – an analysis of strategies*. Cleveland, OH; Education Law Association.

Yudof, M.G., Levin, B., Moran, R.F., Ryan, J.E., & Bowman, K.L. (2012). *Educational policy and the law, 5th ed.* Belmont, CA: Wadsworth.