

AN EVALUATION OF THE LEGAL LITERACY OF EDUCATORS AND THE
IMPLICATIONS FOR TEACHER PREPARATION PROGRAMS

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Abstract

This study was undertaken in an attempt to document the perceptions of the legal literacy of educators and to discuss the implications for teacher preparation programs. The research further attempted to study the impact and fear of legal issues on the educational practices of teachers, principals, and university professors and to determine the areas of school law that teachers, principals, and university professors felt should be included in undergraduate (preservice) teacher preparation programs.

It was hypothesized that this research design would illustrate differences between the three professional groups and that the university professors would be represented as outliers in the data. This hypothesis was sometimes confirmed, but other interesting findings originated in this research.

Introduction

It can be argued that public school litigation has had an important impact upon education. In the previous century, lawsuits were influential in ending segregation, protecting the First Amendment rights of all students, and expanding the public education opportunities for children with disabilities. Presently, there are lawsuits seeking to change schools (e.g., school funding challenges, school choice, and the No Child Left Behind Act). While it can be argued that education lawsuits have had an important impact upon education, others argue that there are too many school lawsuits and that matters could be resolved in other nonlitigious ways (Johnson & Duffett, 2003).

In the twenty-first century, this vast amount of legal action requires educators to possess a basic understanding of the laws that impact them and the concerns that frequently arise in education law (Taylor, 2001). In addition to this understanding, educators must recognize how their actions can lead to litigation and the impact of legislative and judicial mandates on the teaching profession. Teacher preparation programs often do not prepare teachers to understand the relationship of the constitutions, statutes, and judicial decisions to the daily process of delivering instruction and providing supervision (Dunklee & Shoop, 1986). In addition to teachers, school administrators may have a larger responsibility than other professionals to understand the legal process as well as the substantive requirements of certain landmark decisions and their effect on school policies (Sergiovanni, Burlingame, Coombs, & Thurston, 1992). Therefore, all educators must focus on the volume and complexity of school legislation that have increased significantly since the mid-twentieth century (Cambron-McCabe, McCarthy, & Thomas, 2004).

Most educators are aware of the litigious nature of the American public and of ever-changing legislation and judicial decisions that impact the operation of schools; however, many teachers and administrators foster misunderstandings about the basic legal concepts that are being applied in educational settings. This phenomenon has resulted in uncertainty about the legality of daily decisions that educators make in the course of operating schools (Cambron-McCabe, McCarthy, & Thomas, 2004). School personnel often approach the law with anxiety and fear and view it as a trap to ensnare any educator who makes an innocent mistake (Fischer, Schimmel, & Kelly, 1999). Such uncertainty, misunderstanding, and

fear, contributes to a growing concern among educators about being sued and the increasing numbers of educators who are purchasing liability insurance.

Officials at Forrest T. Jones and Company, Inc., the nation's third largest insurance provider to teachers, reported that the number of teachers purchasing liability insurance increased 25% between 1995 and 2000 (Lewis, 2001). The company speculated that the consumer trend is attributable to the perceived litigious society of the 1990s (Johnson & Duffett, 2003). In 2000, a teacher liability package with Forrest T. Jones cost approximately \$80 a year for a \$1 million policy (Portner, 2000). In 2007, the cost increased to \$99 a year for a \$1 million policy and the company now offers a new \$2 million policy for \$136 a year (Forrest T. Jones and Company, Inc., 2007a).

A review of the frequently asked questions section of the Forrest T. Jones and Company, Inc., website (2007b) showed the following:

Question: Are lawsuits against educators increasing?

Answer: Yes. As part of a general trend in increased litigation, the number of lawsuits against schools and teachers has been rising over the last decade. According to an American Tort Reform Association survey, almost 1/3 of all high school principals have been involved in a lawsuit in the last two years, compared to only 9% ten years ago.

In addition to private insurance companies, the National Education Association (NEA) and the American Federation of Teachers (AFT) offer liability and other types of insurance plans for their members. In fact, both organizations jointly insure more than 80% of the nation's public school teachers. Moreover, in a recent AFT survey on requested union benefits, liability protection ranked third, after advocacy for healthcare benefits and the handling of grievances (Carpenter, 2001; Portner, 2000). Most teacher unions offer liability coverage up to \$1 million (e.g., the Ohio Education Association, 2007), but some unions are beginning to offer even larger packages to their members (Duff, 1999). For example, the Texas State Teachers Association (2007) offers up to \$6 million in liability coverage as stated in the following:

As a member of TSTA/NEA you are protected by comprehensive employment insurance against most legal claims while acting within the scope of employment. You are automatically covered by NEA's \$1 million policy (\$300,000 in employment-related civil rights violations) and by an additional \$5 million excess policy.

The purchase of additional liability insurance for educators is an area of controversy, with advocacy groups on both sides that support or refute additional liability insurance and even additional liability protections for educators. Some of the recent controversy stems from the teacher liability protections contained in the No Child Left Behind (NCLB) Act of 2001. Despite the fact that teacher protections were added to NCLB, some critics argue that there needs to be an enhanced understanding of the number and types of education lawsuits before making revisions to federal, state, and local policies.

It appears that a majority of educators do not understand their liability protections or do not feel as though immunity laws are adequate to cover all aspects of their professional responsibilities. Such concerns about being sued and the possibility of ruinous legal fees, coupled with the vast amount of legislation and litigation in the U.S. educational system, suggests that (preservice) teacher education programs need to prepare potential educators with a working knowledge of the fundamentals of school law. It appears that in the absence of preparedness, many educators are relegated to practice the principles of law in retrospect. Conversely, it is better to have a sound understanding of school law than it is to study the relevant statutes after the fact because knowledge of school law is a better protector than it is a healer (Reglin, 1992). Since educators are often required to make split-second decisions that impact children, working knowledge of the law is essential. Seldom is there enough time to ponder a course of action (Strickland, Phillips, & Phillips, 1976). Such working knowledge of school law is important for the obvious reason to avoid court, but more importantly to provide an orderly, productive, and humane school basic to the continuation of a democratic society (Ubben, Hughes, & Norris, 2004).

Methodology

Research Design

This investigation contains excerpts of a larger study conducted by Wagner (2006) that employed survey research to examine the perceptions of teachers, principals, and university professors about the impact of legal issues on the educational practices of teachers, principals, and university professors, and examine the fear of legal issues on the education practices of teachers and principals. Additionally, teachers, principals, and university professors were asked to document the areas of school law they perceive should be included as a part of undergraduate (preservice) teacher preparation programs. Based upon the review of the literature, common themes emerged concerning the perceptions of educators and specific aspects of teacher preparation programs. This study addressed these specific themes by responding to the following questions:

1. Do you personally know an educator who has been sued by a parent or student?
2. Are there differences among teachers, principals, and university professors in the perceived importance of specified legal issues in teacher preparation programs?
3. What are the most important legal issues that teachers, principals, and university professors believe should be included in teacher preparation programs?

While this study is considered to follow a quantitative methodology, there are questions in the survey that are qualitative. Since there are only limited qualitative questions, the design of this study is not considered to be of a mixed-method; however, the qualitative questions were included in the survey to add breadth and scope to the research. Altogether, the quantitative structure of the survey and the complementary qualitative questions satisfy the research needs of this study.

Population and Sample

The sample for this study consisted of teachers, school principals, and all professors in the colleges of education at the designated universities. All of the 276 participants in this study were employed in public school districts or public universities in one of three counties in Northeast Ohio. The sample of teachers represents different sized school districts, some less than 2,000 students to some larger than 10,000 students. Teacher participants in this study have school teaching experience in either a suburban, rural, or urban-core setting and represent a mixture of elementary and secondary school candidates.

Instrument

A survey questionnaire was developed for participants to answer the research questions. The survey questionnaire was based upon the research of Harris Interactive (2004) and Monts (1998). The literature review that both instruments were suitable to address the research questions in this study. The Harris Interactive instrument was used in an adapted form to address the first two research questions: (1) Do you personally know an educator who has been sued by a parent or student? and (2) Are there differences among teachers, principals, and university professors in the perceived importance of specified legal issues in teacher preparation programs? The instrument developed by Monts was used in an adapted form to address the third research question: (3) What are the most important legal issues that teachers, principals, and university professors believe should be included in teacher preparation programs? Additionally, the qualitative questions in the survey provided information primarily to support research question three, but also yielded information about other legal issues that concern teacher preparation programs.

Data Collection

The principal and university professor participants were contacted via email addresses obtained from either the Ohio Department of Education (ODE) or each local university. Since the ODE does not collect teacher email addresses, email messages sent to school principals requested that they participate in the survey and also to forward the message to all of the teachers in their building.

The perceptions of teachers, principals, and university professors about teacher preparation programs were addressed by using descriptive and inferential statistics to answer the three research questions. The results from the qualitative questions were also considered to deepen the understanding of the respondents' perceptions of the impact and fear of legal issues on educational practices and to determine the areas of school law that educators believe should be included in teacher preparation programs.

Results and Discussion

The study was designed to examine the perceptions of classroom teachers, principals, and university professors in the area of school law and to suggest changes to teacher preparation programs. The data for this research were collected using a web-based survey questionnaire consisting of five sections: (a)

demographic information; (b) items that clarify educators' experience with lawsuits or legal challenges; (c) items that illustrate the impact and fear of legal challenges upon the current education environment; (d) items that identify the areas of school law that educators perceive should be included in teacher preparation programs; and (e) open-ended questions, to assess qualitative participant responses. The final response rate obtained through this research included 186 teachers, 70 principals, and 20 university professors from three counties in Northeastern Ohio.

Research Question One

In Section II of the survey instrument, educators were asked: *Do you personally know an educator who has been sued by a parent or student?* Respondents were asked to choose among one of five alternatives. The responses were analyzed using frequencies and percentages and are highlighted below in Figure 1.

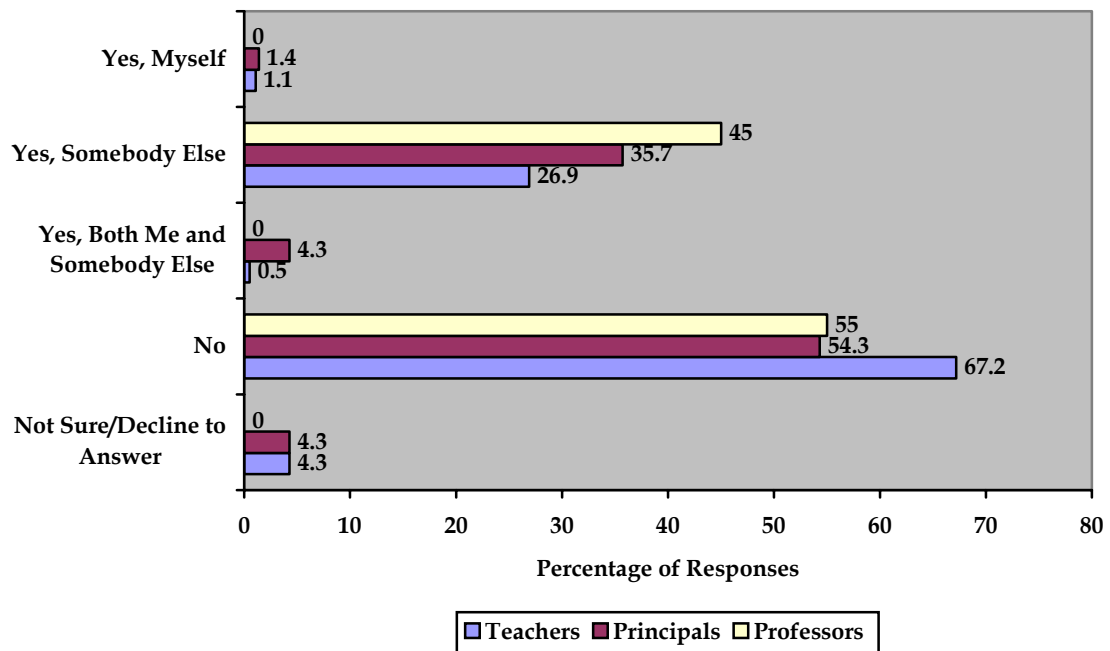


Figure 1. Percentage of Educators Who Have Been Sued

Figure 1 above graphically represents that while there are apparent fears of lawsuits against educators: 67.2% (n = 125) of teachers, 54.3% (n = 38) of principals and 55% (n = 11) of professors have not been sued and do not personally know another educator who has been sued. Only 4.3% (n = 8) of teachers, 4.3% (n = 3) of principals, and zero professors indicated that they were "not sure" or declined to answer the question.

The data in Figure 1 also illustrate that very few educators have been sued. Only 1.1% (n = 2) of teachers and 1.4% (n = 1) of principals indicated that they have been sued. Similarly, only 0.5% (n = 1) of teachers and 4.3% (n = 3) of principals claimed that they have been sued and also personally knew another

educator who was sued. There were no university professors who responded that they have been sued or personally knew another educator who was sued.

Interestingly, there were more educators who claimed to know someone who has been sued than the other two “yes” questions. These data were consistent among all three respondent groups. The data showed that 26.9% (n = 50) of teachers, 35.7% (n = 25) of principals, and 45% (n = 9) of professors identified that they know another educator who has been involved in an educational lawsuit. As indicated above, only 1.1% of teachers indicated that they have been sued and 0.5% indicated that they have been sued and knew of another educator who has been sued. However, when teachers were asked if they knew of another educator, other than themselves, who has been sued, the number increased dramatically to 26.9%. This trend was also repeated among the principals and university professor respondents.

Research Question Two

Respondents to research question two were asked: *Are there differences among teachers, principals, and university professors in the perceived importance of specified legal issues in teacher preparation programs?* Data was initially analyzed using descriptive statistics, but was further analyzed using inferential statistics and specifically a multivariate analysis of variance (MANOVA) executed on the set of 31 legal issues contained within Section IV of the survey instrument. The independent variable was the professional status (i.e., teacher, principal, or university professor) of the educator. The dependent variables were organized to assess the importance of the 31 specified legal issues and the inclusion of these topics in teacher preparation programs.

The use of descriptive statistics included the calculation of means, standard deviations, and the number of respondents in each subsample for teachers, principals, and university professors on each of the 31 dependent variables. The dependent variables were calculated so that a score of four equaled “very important,” three equaled “somewhat important,” two equaled “somewhat unimportant,” and one equaled “not at all important.” The response of “not sure/decline to answer” was coded as missing data and was not included in the tabulation of the means or standard deviations used in the MANOVA or analysis of variance (ANOVA).

The MANOVA showed an overall significant difference among teachers, principals, and university professors against the set of dependent variables ($F = 1.74$; $df = 62, 276$; and $p < .01$). After a significant MANOVA was determined, a series of 31 ANOVAs were calculated, one for each dependent variable. The results of the one-way ANOVA are presented in Table 1.

Table 1.

Tests of Between-Subjects Effects for Research Question Two

Impact Variables	Df	MS between	MS error	F
Academic Freedom (Teachers and Students)	2	1.983	.419	4.733
Athletic Eligibility	2	.453	.884	.512
Censorship	2	1.309	.473	2.768
Child Abuse Reporting	2	.013	.099	.127
Collective Bargaining	2	1.179	.646	2.662
Copyright Laws	2	1.334	.615	2.169
Desegregation	2	2.575	.735	3.505*
Discipline Policies	2	.037	.179	.209
Due Process (Teachers)	2	.054	.279	.194
Employment Discrimination including Affirmative Action	2	2.156	.605	3.564*
FERPA	2	.879	.380	2.311
First Aid and Medication	2	.423	.427	.990
Freedom from Discrimination (Teachers)	2	1.178	.458	3.884
Freedom of Expression, Student Speech and Press	2	.821	.478	1.717
Grading and Grading Policies	2	1.003	.411	2.440
IDEIA (Special Education)	2	.280	.133	2.109
Liability Insurance	2	3.781	.503	7.510**
Negligence	2	.332	.374	.888
No Child Left Behind Act	2	.996	.652	1.528
Permission Slips	2	1.454	.668	2.176
Physical Contact with Students	2	.058	.280	.208
Proficiency Testing	2	.455	.712	.640
Religious Issues	2	.570	.655	.871
Residency and Attendance	2	.064	.712	.089
School Funding	2	.413	.509	.811
Search and Seizure	2	2.338	.489	4.777
Section 504	2	.198	.264	.750
Self Defense (Teachers)	2	2.004	.516	3.886
Sexual Harassment	2	.718	.366	1.959
Teacher Termination/Nonrenewal	2	.084	.345	.243
Time Spent Alone with Students	2	.005	.354	.013

* Note $p < .05$ ** Note $p < .01$

When a significant difference in the means was found among teachers, principals, and university professors using ANOVA, the Newman-Keuls post hoc procedure was used to determine which groups were significantly different. Newman-Keuls post hoc testing for research question two established three significant legal issues: desegregation ($< .05$); employment discrimination, including affirmative action ($< .05$); and liability insurance ($< .01$). In the legal areas of desegregation and employment discrimination, university professors were more likely than teachers or principals to believe that it is important to teach these legal issues as a part of preservice teacher programs. However, with liability insurance, classroom teachers were more likely than principals and university professors to express the importance of including the topic of liability insurance in teacher preparation programs.

Research Question Three

To enrich the quantitative data collection in Section IV, Section V of the survey instrument answered research question three “*What are the most important legal issues that teachers, principals, and university professors believe should be included in teacher preparation programs?*” To address this research question, respondents were asked to identify the most important legal issues that should be included in teacher preparation programs. The results of the third research question are highlighted in Table 2.

Table 2.

Educators’ Four Most Important Legal Issues to be included in Teacher Preparation Programs

Legal Issues		Teachers	Principals	Professors
IDEIA (Special Education)				
	Rank	1	1	3
	Mean	2.84	2.57	1.61
	N	83	44	6
Child Abuse Reporting				
	Rank	2	3	2
	Mean	2.31	1.91	1.72
	N	54	25	5
Discipline Policies				
	Rank	3	4	4
	Mean	2.03	1.54	1.56
	N	49	16	5
NCLB				
	Rank	4	2	1
	Mean	1.75	2.0	1.78
	N	38	20	6

The survey responses for the data contained in Table 2 were organized into groups based upon each legal issue and assigned a mean. For example, if a teacher participant placed the IDEIA as the most important legal issue to be included in teacher preparation programs, this selection was given a score of three, whereas, legal areas ranked number two by a respondent were assigned a score of two and areas ranked as number three were given a score of one. This process continued until every participant ranking was considered, tabulated, and analyzed. Once this process was complete, mean scores for each legal area were computed and ranked from lowest mean score to highest.

The data in Table 2 are organized by rank order, the mean, and the number of respondents who selected the legal issue. The teacher data yielded the following results as the most important legal issues: IDEIA (M=2.84), Child Abuse Reporting (M=2.31), Discipline Policies (M=2.03), and NCLB (M=1.75). The principal responses identified the most important legal issues as: IDEIA (M=2.57), NCLB (M=2.0), Child Abuse Reporting (M=1.91), and Discipline Policies (M=1.54). Finally, the professor responses showed the same four legal concerns, but ranked the

most important issues as: NCLB (M=2.0), Child Abuse Reporting (M=1.72), IDEIA (M=1.61), and Discipline Policies (M=1.56).

Conclusions, Limitations, and Educational Implications

Conclusions

The overarching theme in this study is the need for school law coursework in preservice teacher preparation programs. This recommendation is not new or unique and, in some instances, has been shown to have more than a 40-year history (Nolte and Linn, 1963). In addition to preservice coursework, there are current educators who need inservice coursework in school law. The larger study conducted by Wagner (2006) showed that some of the educators who have taken a school law class need to update their legal knowledge and cannot rely on information learned over thirty years ago.

In addition to the recommendation by Nolte and Linn (1963), there is a long-standing history of researchers who have recommended legal preservice preparation and inservice for educators (Bounds, 2000; Davis & Williams, 1992; Gordon, 1997; Gullatt & Tollett, 1995; Harris, 2001; McDaniel, 1979; Patterson & Rossow, 1997; Petzko, 1998; Reglin, 1992; Sametz, McLoughlin, & Streib, 1983; Schachter, 2007; Zirkel, 1996), yet even with these recommendations little has changed and there currently is not a state that requires coursework in school law as a prerequisite to earning a teaching license (Gullatt & Tollett, 1997). It would appear that over 40 years of history in this area would lead to acceptance that there is a void in the legal preparation of preservice educators and to now consider reforms to teacher preparation programs to fill this void.

Limitations

There are numerous limitations to this study. First, and foremost, is the ever-changing legal landscape of school law. The generation of new case law and new legislation will continue to change public education and educators' perceptions about school law. Second, this study examines only participants' perceptions, which may not reflect actual facts. Third, there are limited research findings to compare to this study and methodological design employed in this research. Fourth, there are limitations associated with web-based data collection, including the computer literacy of respondents, incompatible computer platforms or Internet browsers, multiple survey submissions, and the submission of incomplete or partial survey data. Finally, although legal knowledge is important in order to understand how to work within a school system to accomplish certain educational objectives, educators must continue to remind themselves that legal requirements do not always convey best practices, nor do they substitute for educational philosophy and pedagogy (Sergiovanni et al., 1992).

Educational Implications

The findings of this study resulted in the following recommendations:

1. Reforms in teacher preparation programs must include input from practicing teachers.

Changes in teacher preparation programs should be based upon research, but should also include input from practicing educators. In some regard, aspects of this research support that university professors are not staying up to date with the current realities of public schools. For example, note the statistically significant findings where

university professors placed such high value on the teaching of desegregation, but teachers and principals did not agree, or that teachers are requesting to know more about liability insurance and protections, even though principals and university professors do not agree. The focus on liability insurance and protections may help to allay the fears of teachers and allow them to focus more of their efforts on teaching children. In either situation, it does not seem worthwhile to undertake reforms and changes to teacher preparation programs without the guidance and counsel of teachers from local schools working in partnership with university faculty. School and university partnerships are rare; hence the teacher's perspective is often absent from discussions of teacher education (Rigden, 1996). This recommendation of school and university partnerships is also not new or unique and was best stated nearly 40 years ago by Koerner (1968):

What voice, for example, do classroom teachers have in teacher education and certification? None whatever. Yet it must be obvious that the views of able and experienced teachers on a great many aspects of the education of a teacher are at least as valuable as those of administrators or members of an educational faculty who may not have taught in a school for a decade or two, if ever. I have never understood why people who run teacher-training programs or establish certification standards fail to give experienced teachers a role in policy deliberations. (p. 181)

2. Colleges of Education need to include an education law class for all preservice teachers.

Undergraduate students at Washington University in Missouri are able to select one of four courses dealing with historical, philosophical, sociological, or legal foundations of educations. Only one of the four courses is required for graduation. Similarly, Langston University in Oklahoma allows preservice educators to choose between education law or classroom management. Finally, the University of Massachusetts-Amherst offers a course in education law as one of several courses classified under the auspices of multicultural education (Patterson & Rossow, 1997).

3. In the absence of an education law course, Colleges of Education can integrate education law topics into other courses.

Davis and Williams (1992) were some of the earliest researchers to propose models to integrate school law coursework in preservice teacher preparation programs. In these models two alternatives were proposed. The first model included the formatting of a cluster course around a central legal theme, while the second proposed a focus on broad-based legal topics that may be addressed throughout the educational coursework of a preservice teacher. Either model would provide an enhancement for teacher preparation programs, but there are a limited number of universities that have embraced interdisciplinary coursework to enhance the legal studies of preservice teachers. Two institutions that serve as examples of this approach are Bethany College in Kansas and the University of Kentucky (Patterson & Rossow, 1997).

4. Public schools need to determine the legal knowledge of the school district.

In a departure from other researchers, Zirkel (1992) proposed a legal audit for school districts to review their legal affairs against a set of legal standards. Instead of measuring the legal knowledge or preparedness of individuals or groups of educators, Zirkel focused on the legal knowledge of the entire school district. The idea behind the legal audit is similar in concept to a school district curriculum audit and other audits conducted by corporations. Zirkel recommended that school districts use the legal audit as a form of preventive law; however, he also cautioned that the content of the audit would need to be continually checked for emerging legal rulings and opinions to remain a functional tool for school districts.

5. Public schools need to provide education law professional development for inservice educators.

In the absence of adequate education law preparation for preservice teachers, public schools will need to embrace a model to provide education law instruction to inservice teachers. One such possibility includes modifying the law-related education (LRE) model that currently exists. Law-related education has been an important part of the social studies curriculum in the United States for over 40 years and is used to help secondary teachers prepare to teach legal topics to students. All fifty states already have a state LRE contact and LRE programs are supported by a variety of state and national organizations, including the American Bar Association (Cornett & Chant, 2000).

While LRE is designed to enhance the legal knowledge of educators in finite curricular areas, this model of inservicing educators could be applied on a broader scale. Essentially, the LRE model uses a cooperative approach to teach legal topics. Teachers receive additional training in school law and volunteer attorneys or police officers also interact with staff and students to help deliver the law-related curriculum. Additionally, throughout the year bar associations and other law-related organizations sponsor conferences that allow teachers to learn about relevant court cases and legislative updates, participate in role plays and simulations, and meet with attorneys who are willing to serve as resources (Hanson, 2002). Adopting a LRE model to help educators enhance their own school law knowledge base would improve upon the previously mentioned recommendation of school and university partnerships.

6. The content of education law used in preservice preparation or inservice professional development must be based upon research.

The final area of recommended practice extends beyond preservice or inservice models and focuses on the content of what should be taught. Research conducted to determine the legal subject matter to be taught in preservice or inservice programming will also need to consider the origins of law. In the mass media greater attention is often given to judicial decisions, but preservice or inservice programming must also include legislative and administrative agency rules and regulations (e.g., state boards of education) to fully inform educators of new or existing laws.

The findings of this study identified through inferential analyses that teachers want to know more about liability insurance and legal protections. However, qualitative findings illustrated that teachers, principals, and university professors all agreed about the top four legal issues to be included in teacher preparation programs, but indicated differing levels of importance among the four topics. The legal issues of: child abuse reporting, IDEIA

(special education), discipline policies, and NCLB were found to be the most important legal topics. Applying additional descriptive techniques to the qualitative results narrowed the list of legal topics to two: child abuse reporting and IDEIA. These findings were inconsistent with the findings of other investigators.

The researchers included in the literature review of the larger Wagner (2006) study demonstrated that there was no agreement about the specific legal subject matter that should be included in preservice or inservice programming. Such discrepancies present challenges and suggest that in addition to national or state research, Colleges of Education or public schools may need to conduct regional research about the education law topics to be taught. Such an approach to collecting regional information should reflect the first recommendation of this section where the input from practicing educators and their legal issues of concern are considered.

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