



**National School  
Boards Association**

# LEADERSHIP Insider

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PRACTICAL PERSPECTIVES ON SCHOOL LAW & POLICY

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## Need to know: Legal literacy in school districts

Public education in the United States has never been so hyper-legalized an endeavor. For better or worse—probably some of each, truth be told—the law permeates the management and operation of public schools in ways that astonish the uninitiated. One general counsel for a major urban school district who came to the job from a prominent corporate practice with a major law firm confessed to having had no idea how intensely regulated school districts are.

Attorneys like this one—members of the NSBA Council of School Attorneys (COSA) who are in-house counsel to school districts—met last year to discuss an important part of their jobs: helping to raise the level of legal awareness among school district personnel.

The participants came at this question from different perspectives. On one hand, many saw this as a vitally important role for in-house lawyers, and some felt school district leaders do not always fully appreciate its importance.

As a preventive matter, an ounce of education can be worth a pound of litigation. Like in any other professional field—most of them less legally intensive than public education—educators must understand the legal context in which they operate. Every day, school officials inevitably must make dozens of quick judgment calls of potential legal import,

often without benefit of legal counsel.

Other participants, however, raised some caveats. School administrators have plenty on their plates as it is, this school of thought observed, without cramming their heads full of more and more law.

Besides, as lawyers are quick to point out, a little legal knowledge can be a dangerous thing. These voices urged their colleagues to consider carefully the appropriate balance between equipping administrators to make on-the-spot calls and encouraging them to seek legal counsel in tricky situations—a proposition that often is somewhat easier in a district with at least one in-house attorney.

This issue of *Leadership Insider* addresses the need for legal literacy among non-legal personnel in the school district—including teachers. It highlights various approaches and some new ideas. But it also attempts to grapple with the kinds of realities and pros and cons the COSA in-house lawyers discussed.

### The top legal issues—and for whom

Given the sheer volume of legal information that is important to schools, one threshold issue for improving school district legal literacy is setting priorities. Different school stakeholders may arrange the priorities somewhat differently.

The [February 2009 issue](#) of the *Ameri-*

*can School Board Journal* featured the results of a November 2008 survey of school attorneys about the most important legal topics confronting public schools today. In order, these were:

- (1) Employee discrimination/termination;
- (2) Finance adequacy and equity issues;
- (3) Student discipline;
- (4) Collective bargaining;
- (5) Employment issues related to changes in the Americans with Disabilities Act and the Family Medical Leave Act;
- (6) Private placement issues related to special education;
- (7) Disputes regarding attorney fees in special education cases;
- (8) Free speech;
- (9) Educator sexual misconduct; and
- (10) No Child Left Behind Act interventions.

The attorneys surveyed were not asked specifically which topics are most important for school personnel to be aware of. Some issues on this list, like finance adequacy, may not be the most urgent priorities in the day-to-day lives of educators. Others, like attorney fee disputes in special education cases, are almost exclusively the province of lawyers.

But it is telling that four of the top 10

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#### About NSBA

The National School Boards Association is the nationwide advocacy organization for public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education in the United States through local school board leadership. Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards and the school boards of the District of Columbia, Hawai'i, and the U.S. Virgin Islands. For more information, visit [www.nsba.org/na](http://www.nsba.org/na)

#### About the National Affiliate Program

The National Affiliate Program extends NSBA's services directly to local school districts. School districts are eligible to join provided they are members in good standing of their state school boards associations.

#### About the Council of School Attorneys

The Council of School Attorneys provides information and practical assistance to attorneys who represent public school districts. It offers legal education, specialized publications, and a forum for exchange of information, and it supports the legal advocacy efforts of the National School Boards Association.

## The dangers of not knowing: Why your teachers should be legally literate

By [David Schimmel](#) and [Matthew Militello](#)



Schimmel



Militello

Most teachers are uninformed or misinformed about the law. In a national survey of over 1,300 teachers we conducted in 2007:

- The mean percentage of correct answers to questions about students' and teachers' rights was 40 percent.
- More than 50 percent of the respondents were wrong or unsure about 11 of 17 questions, even about teachers' rights and responsibilities.
- Most surprisingly, respondents demonstrated a lack of knowledge about several legal issues that have been clearly resolved by the courts for more than a decade.

Results like these are not the fault of teachers. It is because 85 percent of teachers have not taken any courses in school law and because they get most of their misinformation from other teachers, who are similarly uninformed.

According to one researcher, only Nevada requires a school law course for teacher certification. A 1996 study found that only 8 percent of teacher-preparation programs even offered a course in education law at the undergraduate level.

The only source of legal information that a majority of teachers in our survey identified was other teachers. Less than half (45 percent) cited the school administration as a moderate or substantial source of legal information.

One veteran teacher commented that administrators "have created an environment of fear surrounding negligence and liability that effectively destroys a teacher's desire to be innovative and enrich the curriculum."

These realities put school districts at risk, but the risk can be avoided.

### Dangers of legal illiteracy

Significantly, more than half of the teachers in our survey reported that their behavior would be different if they knew the answers to the survey questions. Many teachers were concerned and candid about their lack of knowledge.

One respondent wrote, "After taking the survey, I realize that my knowledge of school law is minimal to nonexistent." Another confessed, "The survey makes

me realize that I have no clue what I am doing."

There are both economic and educational costs of legal illiteracy. The costs of lawsuits for school districts range from \$45,000 to \$400,000 per year, and more than \$200 million is spent nationally on attorney fees. In addition to the financial costs of school litigation is the enormous time spent by teachers and administrators to avoid and prepare for litigation.

Even more important than the economic costs are the pervasive, untold educational costs of legal illiteracy—the many unfortunate decisions made in every school district every day based on misinformation. Here are three key problems:

- **Failure to intervene**—Teachers might avoid taking actions they think are right because of the desire to avoid legal hassles. Our findings indicate that misunderstanding about student rights encourage both students and teachers to believe that students have far greater legal rights than they actually do.

As a result, many teachers hesitate to discipline students for disruptive conduct when they should. In one elementary school where teachers were told by their principal to "never touch a student," for example, a second-grade teacher was afraid to put a restraining hand on the shoulder of a boy who kept leaving his seat every few minutes, continuously disrupting instruction.

Clearly this teacher and her principal seemed unaware of the federal Teacher Liability Protection Act of 2001, which protects educators from being held liable for using reasonable force to discipline students and maintain order.

Many teachers incorrectly believe they can be held personally liable for any student injury that is a result of their conduct. They therefore won't use reasonable force to break up a fight because they fear they could be held liable if a student is injured.

In fact, the worries about being held personally liable for student injuries are far greater than the realistic risk. State laws allow teachers to use reasonable

force to protect themselves and their students. The low risk of teachers being held personally liable for negligence is reflected in the low cost of teacher liability insurance: In 2003 it cost the National Education Association less than \$15.40 to provide each member with \$1 million of liability insurance.

• **Unnecessary and inappropriate discipline**—Many schools have implemented zero-tolerance policies inappropriately. One elementary school with zero tolerance for harassment overreacted by suspending a third-grade boy after he kissed a second-grade girl on the cheek.

Similarly, an outstanding sixth-grade student was suspended for violating a zero-tolerance policy against weapons because her mother mistakenly had put a butter knife in her lunch box. In such cases, zero tolerance makes zero sense—and can land the district in legal trouble.

• **Internal friction**—As one high school principal said, “Although I haven’t had any major lawsuits, it’s the little legal misunderstandings that take up most of my time.”

For example, she told about one of her teachers who sent a student to her office to be suspended for refusing to take off an “offensive” anti-Bush T-shirt.

Because the principal knew the student had a First Amendment right to wear the shirt, she refused to suspend him. As a result, the teacher felt publicly embarrassed and unsupported by the principal, causing unnecessary friction between them. On the other hand, if the principal had backed the teacher and suspended the student, this might have led to conflicts with the parents and possibly a lawsuit, that the school would have lost.

Thus, legal illiteracy can result in teachers failing to act when they should—they might ignore misbehavior, permit disruptions, and be intimidated by frivolous threats of legal action—or, with the best of intentions, they might violate the law by acting when they should not.

### The principal as law instructor

School principals hold the keys to unlocking legal literacy for their teachers. Since very few teacher preparation programs include a course in school law, the most feasible way teachers can learn about laws that affect them and their students is through in-service professional development programs. However, several barriers must be overcome before we can expect principals to take responsibility for ensuring teachers are knowledgeable about legal issues.

• **Awareness**—We must help principals become aware that teaching about school law is not an additional task. Instead, we need to illustrate how all principals already teach about school law through an informal curriculum: in their day-to-day decisions, in their hallway conversations, and at staff meetings. When principals advise teachers never to touch a child, they are teaching law, although incorrectly.

The question is not whether principals are law teachers, but rather whether they can become conscious of when and how they teach school law.

• **Resources**—Once educators become aware that they teach law, the next challenge is to provide them with the resources they need to be competent law teachers. Our research has found that 85 percent of principals have taken a course in school law, as contrasted with fewer than 15 percent of teachers. However, the fact that a person has taken a course in a subject does not mean that he or she is competent to teach that subject.

To overcome this barrier, school leaders should be made aware of the large and

costly legal fees in the future.

Where the principal’s role as law instructor is strengthened, legally literate teachers will get their information about school law from knowledgeable sources—not from teacher lounge rumors and myths. As practitioners of preventive law, they will know when to consult with informed colleagues and administrators.

As a result they will be able to anticipate and prevent legal problems. Acting with accurate information, teachers will be able to protect their school, their rights, and the rights of their students and not fear being a victim of the legal system.

### It’s worth the effort

We recognize that there are formidable challenges to overcome before well-planned, relevant, and accessible school law lessons become a standard part of most teacher in-service programs. However, we believe there are strategies, materials, and resources available to enable most principals to become conscious, informed, and effective law teachers of their staffs.

At the end of our survey, we invited

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## Lack of legal literacy “contributes to an environment of fear surrounding negligence and reliability.”

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growing number of school law books, reference materials, and lesson plans they can use for in-service workshops.

• **The principal-lawyer partnership**—Even with appropriate resources and lesson plans, some principals might be hesitant to include school law information in their in-service programs without a legal consultant to check their plans, to ensure the instruction is consistent with state law and local policy, and to know that there is someone they can call if teachers ask questions they cannot answer.

This barrier can be overcome through a principal-lawyer partnership. Principals should be able to consult with the school district’s attorney, and the attorney should be available to review the school law lesson plan in advance and answer questions that come up that the principals cannot answer. Even busy school lawyers should want to encourage and support principals’ efforts to teach preventive law accurately. For the school district, this should be a worthwhile legal expense that could end up preventing

teachers to share their reactions. A typical comment reflected the fears and rumors that are commonly heard in the teachers lounge: “I’m always afraid of getting sued...because you always hear about the absurd cases where teachers get sued for unbelievable reasons.”

Another teacher concluded, “If I had known more about school law, I most certainly would have avoided many days of anguish and humiliation.”

If school districts address those fears by proactively improving legal literacy among school staff, teachers will be able to focus on what school should be about: educating students. School boards can help make this happen. ■

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# Free education law resources in the Internet age

By [Kevin Brady](#) and [Justin M. Bathon](#)



Brady



Bathon

On Feb. 11, 2008, the nonprofit organization [Public.Resource.Org](#), whose mission is to make government information more accessible to the public, published online approximately 2 million pages of federal case law, without any copyright restrictions or costs to users of its website. The website included all U.S. Supreme Court cases and federal circuit court cases decided since 1950.

This was the latest example of a strong trend toward free online legal information. As recently as the 1990s, despite the growth of the Internet, it was still quite difficult to find legal information online without subscribing to Lexis-Nexis or Westlaw, the two leading private legal information companies.

On May 11, 1990, the U.S. Supreme Court began a two-year experimental program called Project Hermes. The major goal of this project was to provide online access to the Court's opinions to as wide an audience as possible.

Three years later, Cornell Law School launched its groundbreaking Legal Information Institute, the world's first public legal information website. In 1994, several U.S. law schools, including Case Western, Emory, and Villanova, began publishing federal circuit court decisions online.

Despite the impact of the Internet, however, the majority of court cases, statutes, regulations, and other legal information is still published, either in hard copy or online, for a relatively high cost for educational practitioners. Compared to other legal specializations, moreover, the field of education law has been noticeably slow in its integration of electronic media technologies, such as specialized websites or blogs focusing on education law.

Fortunately, primary education law resources—federal and state education statutes and regulations—are beginning to become more accessible online, although frequently on non-integrated and difficult-to-find state and departmental websites. More recently, court decisions in education law, too, have been made more readily available online, posted and updated primarily by the jurisdictions that decide the cases and indexed by search engines.

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**“Primary education law resources are beginning to become more accessible online.”**

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Unlike education statutes and cases, however, legal periodicals and other secondary sources that specialize in education law issues often are not readily available on the

Internet without membership access to one of the expensive commercial legal publishers.

## A survey on education law research

In November 2008, we presented the results of an online survey we conducted that examined the impact of the Internet on professionals who research legal issues in education on a fairly regular basis. Our survey was guided by three questions:

(1) To what extent is the Internet changing education law research?

(2) What specific aspects of the Internet are being used by education law professionals?

(3) How and why are people interested in education law topics using free, online resources?

Our survey respondents were 100 professionals interested in education law research, comprising school attorneys and education professors teaching school law to aspiring school administrators. Ninety percent of the survey participants agreed that the availability of online education law resources has significantly changed how they conduct legal research on educational law topics.

Among the other major findings:

- Attorneys specializing in education law issues and research had significantly greater access to fee-based legal information services than researchers who are not attorneys.
- Use of free education law resources varied widely in the amount of usage, the topics covered, and the websites used.
- U.S. Supreme Court cases and federal and state education statutes were seen as relatively more accessible in a free, online format.
- Federal and state education law administrative materials, school district legal policies, and education law journal and news information were seen as considerably less accessible.

## A growing list of online resources

In our survey, respondents identified four free, online education law resources as the ones they relied on most for researching education law-related topics:

- (1) [Findlaw](#);
- (2) [NSBA's school law](#) website pages;
- (3) NSBA's weekly [Legal Clips](#) e-newsletter; and
- (4) [Google](#).

While our survey revealed that people researching education law issues are using free, online resources, most are not aware of the growing list of such resources. These include:

- [AltLaw](#), a search engine that is a joint project of Columbia Law School's Program on Law and Technology and the Silicon Flatirons Program at the University of Colorado Law School. It provides full text search of U.S. Supreme Court and U.S. appellate court decisions from the last few decades.
- [PreCydent](#), an open access legal information search engine intended to become comparable to fee-based, commercial legal databases.

In addition, a growing number of blogs specialize in education law issues and research. They can be loosely grouped into three categories.

Recently updated examples of general education law blogs include:

See Resources on page 5

# A view from the silo: The future of education leadership programs

By [Sarah E. Redfield](#)

Legal literacy in schools is a subject I've written about a bit before, but, more important, it is a subject that, as a law professor, I've thought about, practiced, and lived with for years.

My experiences from the world of higher education, illustrated here by three stories I will share, all lead me to this main point: It is time we deconstruct the silos of professional schools and bring our would-be school lawyers together with our would-be education leaders to learn from, and with, one another.

## Oh, just too much

Most of the educators I know would say the law is too much with them—that from federal to state to local law and policy, education is essentially a regulated industry. They worry that the law has taken their creativity and replaced it with requirements. I agree.

Of course, most lawyers would say otherwise, the law being the source of their

expertise and their work. I appreciate this as well.

What concerns me in this tiny snapshot of views is that lawyers might not sufficiently appreciate the educator perspective, and vice versa.

One of my early exposures to this dynamic came at the first Education and Law Conference 15 years ago at Franklin Pierce Law Center in New Hampshire. An impressive panel of three lawyers was talking about a civil rights harassment issue to an equally impressive audience of superintendents, principals, and educators.

The audience's body language seemed to reflect boredom—or more likely miserable confusion—until a superintendent stood up and said, essentially, “It is all well and good for you all to say ‘on the one hand’ and ‘on the other hand,’ but every day we have to make real decisions and need to know which hand it is.”

One of the panelists responded immediately with something like this: “We are lawyers; we don't really know which hand it

is until the fifth vote is cast in the Supreme Court, and even then we only know it until the next case when a slightly different fact pattern comes along. But for you, you need to use your expertise as an educator and leader and make a decision that is best for the students before you. Act in good faith. Think carefully about the facts before you. We will be able to defend you later.”

Can it be so simple? Well, no, not quite. But the exchange of “first principles,” if you will, is telling. Lawyers go to school, and then they go to law school. Most of them (even those who teach) don't go to education schools or ever take any kind of education course. Educators go to school and then go on to higher education. Many of them, particularly higher-level administrators, do take an overview law course—but many do not.

So how is it possible for one community of professionals to understand the thinking and needs of the other?

See Silo on page 6

## RESOURCES

from page 4

- The [School Law Blog](#), maintained by *Education Week* reporter Mark Walsh.

- The [Edjurist](#), maintained by Justin Bathon, a co-author of this article and currently an assistant professor at the University of Kentucky's Department of Educational Leadership Studies.

Recently updated examples of law blogs dealing with special education law include:

- The [Special Education Law Blog](#) maintained by Charles P. Fox of Chicago, a parents' attorney and adjunct instructor at DePaul Law School's Special Education Clinic, who is also a parent of a child with special needs.

- The [Special Education Law Blog](#) maintained by Jim Gerl, a West Virginia-based attorney and due process hearing officer who also maintains the special education law facebook group, which has nearly 200 members.

- [Wrightslaw Way](#), maintained by special education parents' advocates Pete and

Pam Wright, who also are adjunct professors of law at the William and Mary Law School.

Recently updated examples of state education law blogs that focus on only one state, include:

- The [Connecticut Education Law Blog](#), maintained by the school law firm of Berchem, Moses & Devlin PC.

- The [Pennsylvania Education Law Blog](#), maintained by the school law firm of Fox Rothschild LLP.

- [Texas Teacher Law](#), maintained by Pamela Parther, a private attorney in Austin, Texas, who represents teachers.

[Links to all of the resources listed here can also be found on the NSBA website in the collection of [additional online resources](#) that accompanies this issue of *Leadership Insider*.]

## Many unaware of free resources

Results from our survey revealed a

substantial access gap between individuals who have access to fee-based, online education law resources and those who rely almost exclusively on free online resources. More important, many professionals are unaware of the availability of powerful free, online retrieval search engines and specialized blogs that can significantly improve their access to legal information without incurring costs.

This increase in the availability and quality of free online resources undoubtedly will improve the accessibility to and awareness of the nation's education law issues. This in turn, can help practice and administration within our schools. ■

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### Oh, what does one really do?

Another story that comes to mind is from one of my own education law classes. The class included both second and third-year law students, as well as educators.

We were discussing an important library case, *Board of Education v. Pico*, 457 U.S. 853 (1982). The U.S. Supreme Court found that a school board could not order the removal of books, such as Kurt Vonnegut's *Slaughter House Five*, Langston Hughes' *Best Short Stories of Negro Writers*, and Bernard Malamud's *The Fixer* from the junior high and high school libraries based on the board's view that the content was "anti-American, anti-Christian, anti-Semitic, and just plain filthy."

The Justices could not reach a majority opinion. Leaving aside the intricacies of all this, the law students in the class were hell-bent on discussing each of the Justice's opinions. A high school librarian in the class asked, "Monday morning, if a parent demands that I take May Sarton's books off the shelf in my high school, do I have to do it? How should I think about it?"

Suddenly the conversation shifted. The discussion was instantly real in a way that a hypothetical question posed by a law professor could not be. New questions arose: Who was May Sarton? (A lesbian author.) What books were involved? (In that library, mostly her poetry.) Who wanted them removed? (A parent and her minister.) Who should decide and how? What does the *Pico* decision have to do with it?

Every day, issues like this arise in schools. In fact, this example is probably a relatively tame one.

Think of the "simple" questions about the responsibility of school staff to supervise students on the playground. Is a student's poem a threat or is it speech protected by the First Amendment? Consider the questions of discipline and safety in their many appearances in federal and state statute, in case law, in school board policy, and in the constitutional right to due process. Or the thousands of pages of federal and state statute devoted to No Child Left Behind and the Individuals with Disabilities Education Act.

The list is seemingly infinite. And with the list is the concomitant list of liabilities and responsibilities: liability for contractual obligations, liability for negligence, liability for harassment, liability for violating—or exercising—students', parents', or teachers'

constitutional rights.

In this environment it is hardly surprising that educators are quick to "settle"—that is, to do what they see or imagine at the moment as the safest thing in terms of potential litigation. One of my educator colleagues called this "presumptive concession." And it is hard not to concede when faced with a court complaint and a claim for damages. While lawyers are trained to accept such service of legal process with aplomb as part of their stock and trade, the rest of the community is not.

### Oh, the places we'll go!

With apologies to Dr. Seuss, the final story derives from a new and somewhat different place in my own career. I had an opportunity to bring the pedagogy and human resources of the legal community to work in the K-12 arena through "pipeline" programs designed to close the achievement gap—in this case, by exposing students with educational disadvantages to the real possibility of legal careers.

Pipeline initiatives, which emphasize collaboration, illustrate the value of lawyers and educators working together outside of our respective silos. From such programs, educators have gained partners with particular expertise and a powerful pedagogical approach. Lawyers have gained invaluable understanding of their school systems and appreciation for students' capabilities.

Can this approach in K-12 really be so simple? Like the earlier discussion about liability, probably not, but it illustrates common principles.

My own experiences and those of my colleagues who are lawyers, who are educators, and, indeed, who are both—self-described "recovering lawyers" now teaching in high schools—all convince me that silos are not the way to promote understanding among professionals in law and education. And they do need to learn from and appreciate one another's perspectives, whether they are working on pipeline efforts, litigation, or legislative or agency strategy and policymaking.

Why should educators want to know the law? Sometimes it seems educators are in denial about the extent to which the law is embedded in their work. But denial is limiting.

Educators should want to know the law because doing so helps educators act reasonably and preventively. Law-informed

educators and leaders are in a position to better avoid or minimize conflict and costly litigation. Knowing the law allows educators to limit their liability under the typical immunity doctrines. And knowing the law allows educators, as well as lawyers, to serve as our society's informed "gatekeepers" for legislative and legal school policy.

Why should lawyers want to know about education? Lawyers have a professional responsibility to advise their clients reasonably and preventively, to avoid and minimize conflict, to limit liability, and to assist their clients on policy matters. They will deliver their advice and counsel far more effectively if they fully understand the reality of schools.

### Breaking down the silos

Partnerships are the way to go. What is needed are new collaborations stretching across universities and into the field. The experiences I have described convince me of the need for increased attention to educating educators and lawyers together—to call for more universities to establish joint programs between their education and law schools for joint classes, certificates, and degrees and to call for more universities and their constituencies to practice more in one another's domains all around.

What would this look like? Here is one vision: a business executive model graduate program based on summer and weekend courses on-site at a university, with additional online courses and projects at students' home locations. Classes would include both educators and lawyers. The curriculum would incorporate both the education model of authentic project-based learning and the legal pedagogy of a focus on critical thinking to solve real problems. Classes would be taught by faculties of law, education, and other disciplines, especially business management.

Students who are lawyers would get advanced training, and perhaps an LLM degree. Educators would get advanced training, and perhaps advanced certification or a joint degree. All students would learn profoundly from one another.

This idea is not new. It has been the subject of some preliminary discussions with NSBA, the National Education Association, and other organizations. And, of course, some institutions do offer

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## LEGAL LITERACY

Continued from page 1

issues relate to employment law. Run-of-the-mill employment law is the kind of subject that might receive less attention in graduate courses and professional development programs designed to prepare educators for managerial roles than do the legal topics that are more specific to education.

Teachers, school law instructors, and principals identified different priorities in the survey that guest authors David Schimmel of the University of Massachusetts at Amherst and Matthew Militello of North Carolina State University highlight in their article on the legal literacy of educators, which starts on page 2.

The top four legal topics teachers were most interested in were:

- (1) Liability regarding student injuries, the kind of topic most people have in mind about when they think about lawsuits;
- (2) Student freedom of expression, a topic that always generates headlines;
- (3) Student due process and discipline, a daily imperative in schools; and
- (4) Abuse and neglect, a priority that may reflect teacher awareness of their mandatory reporting obligations.

For the school law instructors at colleges of education, who typically teach required courses to aspiring school administrators, the top priorities for instruction were:

- (1) Contract issues and employee rights;
- (2) Teachers' academic freedom, perhaps rather an esoteric issue to rank quite this high but one that probably resonates in the academy;
- (3) Search and seizure; and
- (4) Abuse and neglect.

School principals said they felt most keenly the need for information on:

- (1) Special education and serving English language learners, educational imperatives that also are particularly fraught with legal minutiae;
- (2) Discrimination and harassment;
- (3) Student due process and discipline, the day-to-day issues on which school-level administrators are on the front line; and
- (4) Liability regarding student injuries.

Practically speaking, a school district that has weathered a controversy or been involved in litigation over a certain issue may be more inclined to set its training priorities in response to that issue. Sometimes legal training is even required of a

school district defendant as part of a judgment or a settlement of a lawsuit.

Proactive districts may anticipate the legal issues on the horizon that call for some awareness-raising in advance. For example, a district facing the possibility of layoffs or NCLB interventions might decide principals and assistant principals need more training to prepare for tough employment decisions.

### Best practices and ideas

Many school attorneys, whether serving as district employees or in private practice, include legal training for school personnel in the portfolios of services they offer their school district clients. At their gathering, the COSA in-house school attorneys shared some of their practices. These included:

- In-service training or guidance documents on the most frequently recurring issues in schools, such as child abuse reporting requirements, sexual harassment of students by teachers, legal considerations involving visitors and school safety, and copyright requirements;
- In-service training concentrating less on actual legal substance than using common sense in legally sensitive situations, such as exercising discretion and good judgment and knowing when and how to request guidance and assistance;
- Materials and training aimed primarily at developing issue-spotting skills, so school employees develop radar-like ability to determine when to seek legal guidance; and
- Timely and brief memos with legal and practical pointers, issued before a scheduled event for which questions might arise. Examples could include a review of parents' rights and custody issues before parent-teacher conferences, a review of religious rights before the annual "Meet You at the Pole" event, suggestions for how to handle student-organized "Day of Silence" or "Day of Truth" observances, and reminders about peanut allergies before the first day of school.

In addition, as some of the key sources of expertise on school law within their respective states, some state school boards associations provide legal programming not only for board members and superintendents but also for and in the school districts themselves.

For example, the Connecticut Associa-

tion of Boards of Education ([CABE](#)) conducts workshops at the request of member districts for their teachers and administrators.

The North Carolina School Boards Association ([NCSBA](#)) holds two-day School Law Academy programs twice a year that are designed for school administrators and central office senior administrators. One academy concentrates on legal issues related to students, the other on personnel issues.

The Maryland Association of Boards of Education ([MABE](#)) trains 700 to 800 school district employees annually at about six statewide seminars, as well as at "seminars to go" conducted on-site in school districts.

Both NCSBA and MABE also produce reference books on school law in their states that are very popular with school district staff.

Schimmel and Militello argue in their article that school districts should consider formalizing the role as de facto school law instructors that principals already play. The question is not whether this is an appropriate role for principals who don't happen to have law degrees, they argue. The reality is principals instruct teachers all the time on legal requirements when they make and explain day-to-day decisions.

Doing more to equip principals to do the job right, they say, simply acknowledges this reality. And this model, even if it has some shortcomings, surely is superior to the "law school" of the teacher's lounge.

Guest authors Kevin Brady of North Carolina State University and Justin M. Bathon of the University of Kentucky present the results of a survey on the online resources that various education stakeholders rely on. Their article (page 4) also lists a wide variety of free online resources on education law.

Finally, guest author Sarah E. Redfield of the Franklin Pierce Law Center (page 3) advocates revamping graduate programs in education to draw more systematically on such programs as law and business administration. This model, she argues, would benefit future school attorneys as well as future school administrators. School districts and the children they serve would be the ultimate beneficiaries of such an approach.

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## LEGAL LITERACY

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### More than avoiding pitfalls

The advantages of improving legal literacy among district personnel might extend beyond the more obvious ones. A provocative October 2008 draft paper by Frederick M. Hess of the American Enterprise Institute and Lance D. Fusarelli of North Carolina State University makes this point.

This paper, *Cages of Their Own Design? Superintendents and the Law*, suggests that school leaders frequently fail to employ the substantial legal authority they do enjoy in order to pursue school reform. Superintendents internalize the sensation of being hemmed in on all sides by legal constraints, the authors suggest, and their sense of legal helplessness becomes a self-fulfilling prophesy.

Outside observers who argue that legal fears among educators are exaggerated sometimes fail to appreciate a point school officials and attorneys know too well—one that NSBA frequently makes in its *amicus* briefs to the courts. As a practical matter, the real balancing point the law creates frequently is located at a very different place than what the text of the law or the resulting court decisions might suggest.

Instead, the very prospect of legal has-

sles or ruinous legal expenses is more than enough to deter a district from pursuing a desired course of action—even if the district would win the case in the end. This kind of aversion might have more to do with responsibility than with timidity.

Perhaps U.S. Supreme Court Justice Stephen Breyer best articulated this point in a 2006 opinion discussing a more particular legal proposition. “The problem . . .,” he wrote, “despite the predictions that the government is likely to prevail in the balance” is “the judicial need to *undertake the balance* in the first place.”

Still, observers like Hess and Fusarelli surely make a good case that, at some point, legal folklore can engender too much risk aversion in schools—especially at a time like this when the educational stakes for children are so high and when there is wide recognition that some longstanding ways of doing things in schools were better suited to the last century than the current one.

To that end, school district investments in ensuring that personnel are knowledgeable about the law can yield dividends beyond lawsuits avoided and fears allayed—they might pay big dividends for children.

— [Thomas Hutton](#), Editor

## SILO

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joint JD/PhD opportunities, and many have long allowed students to sample courses from other disciplines or offered joint degree programs.

In my experience, however, educational leadership programs that truly break down the institutional silos in university departments and prepare public education leaders with a rich and rigorously cross-disciplinary background are atypical. There are many institutional reasons for this, but most of them have little to do with two key questions: What skill sets should public school systems require of their future leaders? And how can these skills best be provided?

School districts could help break the impasse. As the organizations that will need these future leaders, they can help our institutions of higher learning understand the nature of their needs and the skills required to meet them. That in turn, might prompt universities to rethink how graduate programs can meet the challenge. ■

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