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A COMPARISON OF LEGAL LITERACY
AMONG TEACHER SUBGROUPS

A dissertation submitted in partial fulfillment of the requirements
for the degree of Doctor of Philosophy at Virginia Commonwealth University.

by

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Abstract

A COMPARISON OF LEGAL LITERACY AMONG TEACHER SUBGROUPS

By Candace Partridge Mirabile, Ph. D.

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy at Virginia Commonwealth University.

Virginia Commonwealth University, 2013

Charol Shakeshaft, Ph.D., Professor, Education Leadership, School of Education

This study determined the level of legal literacy among classroom teachers in a suburban metropolitan division in Virginia. I have focused on aspects of the law that relate to student safety and student rights, and my operational definition of legal literacy is the understanding of these laws. The results from 239 respondents indicated that teachers in this division are not knowledgeable of essential legal content specific to student/teacher interactions. The mean percent of correct answers hovered at the 50% mark on a survey of 20 true/false questions related to landmark cases, important legislation, and Virginia law. I was unable to trace legal literacy to a particular demographic, and I concluded that more than half of the respondents had received no training in legal issues. I propose that Virginia's licensure requirements be upgraded to include competence in legal literacy because knowledge of law is among the standards of the National Council for the Accreditation of Teacher Education (NCATE, 2008). Based on comments from respondents to my survey, teachers are interested in learning more about education law.

Chapter 1

Introduction

Classroom teachers use their knowledge of education law in their daily performance. This “legal literacy” can be obtained through undergraduate pre-service teacher preparation programs, or veteran teachers may add to their knowledge through graduate courses, in-service staff development provided by their school divisions, or other professional organizations. With both pre-service and in-service teachers, what is becoming increasingly evident is that teacher training in education law is inconsistent (Corcoran, 2007; Schimmel & Militello, 2008).

One root of the inconsistency of teacher training in school law may be that the traditional teacher preparation program is only one of several routes candidates may take to certification (Corcoran, 2007). Some prospective teachers change to a four year institution after two years at a community college, others earn their credentials through web-based coursework, and still others participate in career switcher programs which allow candidates to teach under provisional licenses while they complete pedagogy requirements. According to Corcoran, “Compared to the preparation of other professions, the preparation of teachers is chaotic” (p.314).

Certainly, competence in content and the ability to deliver instruction are critical; but once assigned to a position, teachers are legally responsible agents of the state who need at least a baseline understanding of students’ rights, parents’ rights, and their own rights (Militello & Schimmel, 2007). Gullatt and Tollett (1997) concur, “Preparation programs in medicine and business provide courses in legal issues for students. Teachers need appropriate knowledge and skills about legal matters affecting teaching and learning” (p.131). Indeed, the National Council for Accreditation of Teacher Education (NCATE) includes the ability to “apply knowledge related to professional ethics, law, and education policy” among its standards for all teacher

candidates (NCATE, 2008).

The most extensive study of legal literacy among classroom teachers examined responses from 1300 classroom teachers in seventeen states. Schimmel and Militello (2007) found that teachers responded correctly to questions regarding students' rights and teachers' rights with only 50% accuracy. This, coupled with the finding that 75% indicated that they had not taken a course in education law, prompted the researchers to recommend that every initial teacher preparation program require such a course. While they recognize that legal issues have historically been the domain of school administrators, Schimmel and Militello reason that "this tradition was born in an earlier era, before the public school became a law saturated system" (p.271).

Rationale for the Study

Teachers should understand educational law so that they can both protect the rights and ensure the safety of young people. Improved legal literacy will further ensure that teachers acknowledge their own authority as agents of the state. Those who have limited understanding of education law may fail to respond appropriately in critical situations (Schimmel & Militello, 2007). For example, teachers may hesitate to restrain students who are fighting to avoid personal liability.

Schimmel and Militello assert that a lack of legal literacy may lead to inaccurate responses by teachers. This begs the question, "What legal knowledge is necessary to be literate?" For this study, I have included those laws that I believe should be basic knowledge for teachers. To protect young people, for example, I believe that teachers should understand the historical impact of *Brown v. Board* on equal education opportunity and the significance of *Tinker v. Des Moines* on students' rights to express themselves.

I think that all teachers should be competent in implementing the laws designed to benefit children with disabilities such as the Individuals with Disabilities Education Act of 1975 (IDEA) and the Rehabilitation Act of 1973. Likewise, classroom teachers should appreciate the significance of civil rights laws (particularly Titles VII and IX) as they apply to both students and employees. Because the profession is highly influenced by legislation, a systematic and comprehensive method for keeping pace with changes in the law is essential.

If teachers are better informed about legal matters, litigation costs for school divisions will likely decrease. It is the school division, usually through its insurance company, which is liable for any type of monetary awards gained by plaintiffs through litigation. It should be noted that while the number of court cases overall has not risen significantly in recent years; the number of cases related to special education has increased (Wagner, 2008; Zirkel, 2006). This increase is likely due to greater emphasis on the quality of special education services as dictated by the No Child Left Behind Act of 2001 (NCLB) and the Individuals with Disabilities Education Improvement Act (IDEIA) in 2004.

Overview of the Literature

The literature review in Chapter 2 examined two themes. I considered studies which have directly investigated the legal literacy of classroom teachers. Most of these were dissertations which focused on single geographic regions or areas of interest such as special education law. These studies included teachers and teacher candidates of various demographics, and all revealed that participants possessed only a marginal understanding of education law topics. The correlation between state standards and licensure examinations was discussed in this section.

Finally, I examined the current state of education litigation in the United States. I contrasted the opinion of the education reform group Common Good (which claims that most teachers

approach their work with a fear of litigation) with independent researchers who claim that the courts are ruling in favor of school authorities more often than not. Trends in the prevalence of certain types of cases (such as negligence, special education, and employee disputes) were reviewed. This section also provides an opinion of the Education Law Association (ELA) whose expert membership includes attorneys, professors, and school administrators.

Purpose of the Study

The purpose of my study was to determine the level of legal literacy among classroom teachers. I was motivated to study legal literacy because, as a veteran teacher, I found that my colleagues and I responded differently to potentially legal concerns. I wondered if we were following division policy, state, and federal laws consistently.

The participants were public school teachers employed by a suburban metropolitan school district in Virginia. Comparisons were made among subgroups of (1) female and male teachers, (2) elementary and secondary teachers, (3) new and experienced teachers, (4) teachers who had chosen the traditional teacher preparation path to licensure versus an alternative or “career switcher” path, (5) teachers who had participated in-state and out-of-state certification programs, and (6) teachers who had experienced different types of training in education law. The results provided baseline data for designing meaningful content and an effective method of delivery for expanded staff development in the area of education law.

Research Questions

The study answered the following research questions:

Q1: What is the current level of legal literacy among classroom teachers?

Q2: Are there differences in legal literacy based on demographics and teacher preparation?

- (a) Is there a statistical and practical difference in the level of legal literacy between female and male teachers?
- (b) Is there a statistical and practical difference in the level of legal literacy between elementary and secondary teachers?
- (c) Is there a statistical and practical difference in the level of legal literacy between new teachers and experienced teachers?
- (d) Is there a statistical and practical difference in the level of legal literacy among teachers who have chosen different paths to certification?
- (e) Is there a statistical and practical difference in the level of legal literacy between teachers who have participated in-state, certification programs and those who have participated in out-of-state, certification programs?
- (f) Is there a statistical and practical difference in the level of legal literacy among teachers who have experienced different forms of training in education law?

Methodology

A random sample of 750 teachers was invited to complete an online survey which included ten questions related to landmark cases and seminal federal legislation and ten questions specifically referenced in the Code of Virginia. Respondents were asked to provide demographic information related to gender, level of school, years of experience, endorsements, path to certification, location of preparation, and sources of training in education law. These descriptors allowed me to conduct independent t-tests and analyses of variance to show whether or not relationships existed between the independent and dependent variables. A pilot test of 30 classroom teachers prompted minor adjustments to the survey.

Statement of the Problem

It is the opinion of the Education Law Association (ELA), whose expert membership includes attorneys, professors, and administrators, that classroom teachers need better preparation in education law. When polled to determine which legal literacy issues were most important to pre-service teachers, Bon, Schimmel, Eckes, and Militello found that ELA members ranked knowledge of special education and English language learners first followed by student freedom of expression, student due process and discipline, and discrimination and harassment (2008).

The National Council for the Accreditation of Teacher Education (NCATE) is the chief authority in establishing standards for teacher preparation programs, and it requires that a part of teacher education programs be dedicated to school law. According to Bon et al. (2008), however, only 8% of teacher preparation programs currently offer such a course. Even if all pre-service teachers completed coursework in education law, 88% of the teaching force has three or more years of experience already (Littleton, 2008).

Chapter 2

Review of Literature

Methodology of the Literature Review

Before conducting my literature review, I studied the history of law in American education for which I relied on the works of renowned authors who were especially familiar with Virginia law (Bosher, Kaminski, & Vacca, 2004). I created a timeline of landmark cases and important legislation which revealed the increased influence of the federal government over education policy which, prior to 1950, was considered primarily the domain of state governments. Sources for this preliminary study were generated through a catalog search and hand search of books in print in the Virginia Commonwealth University Library System. I used the LexisNexis database as a reference for quoting the exact verbiage of case law.

Resources for the literature review were obtained by conducting separate searches. I relied on the most current material, so primarily sources written after 2000 were included. First, I examined direct investigations of the legal literacy of classroom teachers. Few peer-reviewed, published studies were generated using the EBSCOHost search engine using the descriptors “education law” and “teacher preparation” and “school law.” The most helpful database was Education Research Complete which I later found uses the keyword phrase “Law and Legislation” for articles pertinent to my topic. A number of meaningful dissertations which included empirical studies were obtained using the ProQuest collection. For my ProQuest search, I used the descriptors “education law” and “school law” interchangeably with “teacher preparation.”

My second section assessed the current state of education litigation. For this section, the descriptors “education law” and “school law” were coupled with “litigation” and “teachers” and

“risk,” again using the EBSCOHost search engine. Additionally, it should be noted that individual reference lists for the journal articles and dissertations provided leads to some otherwise unknown sources.

The Legal Literacy of Classroom Teachers

This section considers the few published studies from journals and dissertations which directly investigate the legal literacy of classroom teachers. In this report, legal literacy refers to the understanding of laws related to student safety and student rights.

The first study of legal literacy is a strictly qualitative one about high school teachers in Southern Georgia. Brown (2004) chose a qualitative approach in order to open the dialogue about the lack of understanding of school law topics among teachers. Her study is based in critical theory and examined the idea that teachers can change the future of teacher preparatory programs. According to Brown, “Critical theory helps teachers to see that just as they have been shaped by the past, so will they shape the future for themselves” (p. 67).

Brown (2004) used interviews, observations, and school and teacher profiles to gather data on teachers’ legal literacy. She interviewed six volunteers from various content areas, some of whom were admittedly hesitant as they felt uneasy about their knowledge of school law. Only one volunteer, a special education teacher who held a doctorate degree, indicated that she was comfortable with her pre-service training. All of the participants were able to share anecdotal evidence of a professional legal matter (either through personal experience or on the part of a colleague).

Brown found that her participants were lacking knowledge of landmark cases taught typically in pre-service “foundations” courses. When interviewed, only one of six was able to explain cases related to students’ rights (such as *Tinker v. Des Moines*) or teachers’ rights (such as

Pickering v. Board of Education). She found that teachers were reasonably knowledgeable of issues related to contracts, privacy rights, and search and seizure. In her reflective journal, she indicated that current news events and television crime shows have contributed to the average person's knowledge of privacy rights and legal searches. She further noted that five of six volunteers felt that additional staff development in education law would be beneficial to teachers.

Matters of Special Education. In her dissertation, Hopps (2002) surveyed 451 regular and special education teachers from urban and rural elementary schools in South Carolina, Georgia, and Florida. She predicted that, regardless of experience, special education teachers would be more knowledgeable of special education law and inclusion implementation than regular education teachers; and her hypotheses were accepted. Teachers responded to a 22 question survey (yes, no, not sure) of statements rooted in federal special education law. For example, participants were asked if a regular education representative was required to assist in designing the individualized education plan. Only 85% of the regular education teachers knew that this was true; but 96% of the special education participants responded correctly. Other survey items related to parental consent, hearing/vision screenings, training for regular education teachers, assessment differentiation, and transition services. The mean scores for special education teachers in her one way ANOVA tests were indeed higher than the means for regular education teachers, but the highest mean (for experienced, special education teachers in an urban setting) was only 15.83 correct answers. This indicates that, on average, even the special education teachers missed 6 of 22 questions.

Another study focused specifically on the elements of the Individuals with Disabilities Education Act (IDEA). Brookshire (2002) surveyed 355 teachers using a 31-item questionnaire. He asserted that the pathways to certification are so varied that regular education teachers usually

do not receive vital special education training. His questionnaire provided vignettes for which teachers responded with “V” for violation of the law or “C” for compliance. Further, participants estimated their level of knowledge of special education law and level of pre-service training in special education on a Likert scale.

Brookshire concluded that neither special education nor regular education teachers know enough about IDEA. While special education teachers outscored regular education teachers in general, inconsistencies existed within the population of special education teachers regarding specific facets of IDEA. Surprisingly, special education teachers scored poorest on questions related to individualized education plans; however, they scored well on the vignettes about related services, appropriate evaluation, and zero tolerance. He found these differences statistically significant. He also determined that neither type of school (elementary, middle, high) nor years of experience impacted the mean scores.

The regular education teachers admitted that they needed more training in special education law. About half indicated that they had sufficient knowledge, but only about 35% felt that they had had sufficient preparation before teaching (indicating that they had learned much of what they knew on-the-job). These conclusions are reflected in Brookshire’s data. On the other hand, more than 94% of the special education teachers indicated that they were competent. Brookshire finds this perception of teachers’ knowledge is in conflict with his data.

The Influence of Teacher Preparation. Paul (2001) researched the impact of exposure to a school law course and/or years of experience on teachers’ understanding of legal issues. He conducted a study of 505 pre-school through 12th grade teachers in Georgia. His study focused on legal rights of teachers with specific emphasis on employment, freedom of expression, religious freedom, ethics and lifestyle, and tort liability. Participants were asked to respond to 45

true/false questions based on applicable federal or state laws. For example, participants were asked if they were required to conform to an established dress code or if they could discuss controversial topics in class which were related to the curriculum. Only 6.5% of the participants achieved a passing score of 70%, and the overall mean score was 50.71%.

Among subgroups examined, teachers with previous school law experience via a course or workshop had the highest mean percent of correct answers of 55.13% and 56.65% followed by teachers with 21 to 30 years of experience ($M = 54.60\%$). Actually, those with more than 30 years of experience scored lower ($M = 47.24\%$) as did those with 0 to 3 years of experience ($M = 48.31\%$). An ANOVA showed no significant differences in knowledge of law based on race, gender, or certification, school level, or region of the state.

In a second study related to teacher preparation, Wasburn-Moses (2005) examined 194 participants who had completed either a traditional teacher preparation program or an alternative certification program in Texas. Her study was prompted by current trends to expand the routes by which teachers become certified based on NCLB requirements, particularly those related to special education. She chose Texas because it has more alternative certification programs in special education than any other state. Of the 194 participants, 126 were in the process of becoming certified through alternative programs as compared to 65 who had recently completed a traditional program. More than half of the respondents were teaching (either as student teachers or alternative candidates) at the elementary level. Of the alternative program respondents, 21% were male; only 2% of the traditional respondents were male. Most of the traditional candidates were between 20 to 29 years old; more than half (56%) of the alternatively certified candidates were 30 years old or older.

Participants were asked to rate their preparation for the teaching career as a whole as well as their preparation in specific areas: revisions to the Individuals with Disabilities Act (1997), the No Child Left Behind Act of 2001, standards and content, assessment, and access to the general education curriculum. On a Likert scale of 1 (strongly disagree) to 6 (strongly agree), candidates responded to statements such as “My program taught me how to make modifications, accommodations, and adaptations for my students in general education settings” (p.37). Of the five specific areas, the lowest preparation rating was for NCLB ($M = 3.78$), and the highest was access to general education ($M = 4.29$). The mean for overall preparation was 4.21. Traditional candidates rated their overall preparation higher than did alternative candidates.

In an open-ended question format, Wasburn-Moses asked candidates to write three provisions included in the 1997 revision of IDEA and three provisions included in NCLB. The qualitative data were coded and assessed a score of 0 (if the candidate was unable to answer or if the response was too vague to be coded), a score of 1 (if the candidate provided a partially correct response or alluded to an earlier version of IDEA), or a score of 2 (if the candidate provided a fully correct response). In general, responses about NCLB were stronger than those for IDEA (1997). Wasburn-Moses noted that the NCLB responses included relevant vocabulary such as the phrases “highly qualified teacher” and “school improvement.” On the other hand, responses about IDEA 1997 often included phrases such as “least restrictive environment” and “free and appropriate education” which actually originated in 1975 with the Education for All Handicapped children Act, P.L.94 -142. Wasburn-Moses also asked 12 questions about compliance with IDEA (97) and NCLB. For example, candidates were asked to describe students who are required to participate in statewide testing, to define educational accountability, and to provide required elements of an IEP. The overall mean score was only 5.6 correct out of 12.

In a later study, Wagner (2006) asked 276 teachers, principals, and professors to make recommendations for legal content in teacher preparation programs. Through a web-based survey, Wagner confirmed an earlier finding by Littleton, Higham, and Styron (2001) who claimed that teachers are less likely to have taken a course on education law than are principals. Of his respondents, 98% of the principals had taken a course and 26% of teachers had done so. This data also reflects findings from an earlier study by Gullatt and Tollett (1995) which found that teachers have had limited training in school law. Moreover, Wagner noted that some had taken a law course as many as 30 years earlier.

Wagner's respondents were asked to make recommendations for legal content in teacher preparation programs. The most important areas for teachers were discipline policies, child abuse reporting, physical contact with students, IDEIA,¹ and teacher termination. The principal respondents agreed with the teachers' recommendations but added 504 Plans, NCLB, and due process. The professor respondents added freedom from discrimination to the list.

Teachers' Perceptions. In 2003, Wheeler surveyed 265 seniors from 20 teacher preparation programs in Louisiana. His instrument used affective questions to determine how much seniors felt they knew about six domains of education law: church-state relations, curriculum and instruction, students' rights, discipline, conditions of employment, and liability/grievance/due process for teachers. For example seniors were asked, "Do you have ample knowledge of the law with regard to the expulsion and suspension process?" which was immediately followed by "In your opinion, what is the level of importance of knowledge in this area?" (p.127). There were 25 questions of the first type for which a point was awarded for a "yes" response. For the second

¹The Individuals with Disabilities Education Improvement Act of 2004

type of question, the respondent provided a value of 1 (no importance) through 5 (high importance) based on his or her perceptions and coursework experience.

Wheeler found a mean of 7.7 out of 25 on the content questions which clearly represented a deficit of knowledge in education law. The overall valuation mean, however was 4.3 out of 5 which indicated that seniors felt that knowledge of education law was important. Of the six areas, pre-service candidates felt most knowledgeable in curriculum and instruction. Specifically, they were most comfortable with their understanding of copyright law and least comfortable with regard to grievance procedures. There was a statistically significant difference in the valuation of education law between seniors in public universities and seniors in private universities with $p = 0.04$ and $F = 4.26$. The mean valuation scores were 4.37 for public university seniors and 4.14 for private university seniors, respectively.

A study by Schimmel and Militello (2007) examined 1300 teachers of varying demographics (gender, experience, degree) and school types (elementary, secondary, suburban, rural). They used a purposeful sample to survey teachers from seventeen states. Teachers responded to true/false questions on pertinent education law topics related to students' rights and teachers' rights. Respondents also assessed their personal awareness of education law and indicated their sources for legal information.

Schimmel and Militello found that 60% of the respondents answered more than half of the questions related to students' rights questions *incorrectly* (or indicated that they were unsure). For example, only 40% of those surveyed knew that students who refused to recite the Pledge of Allegiance were not required to stand in silence; in fact, they may remain seated. Only 53% of those surveyed understood that students could express their religious and political views in a non-disruptive manner.

Additionally, 50% responded *incorrectly* (or indicated that they were unsure) to more than half of the questions related to teachers' rights. For instance, only 3% of the teachers surveyed understood that leaving the classroom unattended is not necessarily a cause for liability. In fact, teachers are only liable if they act negligently (without reasonable care). Less than half of the teachers surveyed knew that they could not choose classroom texts on their own; in fact, school boards must approve text books.

Schimmel and Militello also found that 75% of the teachers had *not* taken a course on education law. Many indicated that they sought out other teachers for information regarding their daily practice and legal issues. More than one-half of the teachers indicated that fear of litigation influenced their daily decision-making and that they had adopted personal defensive teaching strategies to protect themselves against liability.

State Standards, Licensure, and Legal Literacy

Only the state of Nevada requires that undergraduates in teacher education programs take a separate course devoted to education law (Gajda, 2008). McCarthy (2008) explains, "The most common reason voiced for not offering a stand-alone course in teacher education is that there is no room in the curriculum or that relevant legal concerns can be addressed in other courses" (p.61). Interestingly, Washington state health professionals who elect to work in a school environment (such as nurses and physical therapists) are required to complete a course in education law (Wagner, 2008).

While state licensing authorities rely on teacher preparation programs to ensure that candidates for certification are knowledgeable of education law, they rarely hold candidates accountable for such knowledge (Gajda, 2008). Based on her study of all 51 licensing agencies

(all states and Washington, D. C.), she concluded that “teacher standards of most states do not systematically articulate knowledge and skills related school law or legal issues” (p.19).

Gajda found that most states assess four or more criteria before awarding a license. The most frequently considered criteria are scores on pedagogy and content examinations, academic transcripts, possession of a bachelor’s degree, and approval from the candidate’s preparation program. Since the examinations are theoretically aligned with individual state licensing standards, it is notable that 56% of the agencies indicated that the standards do not address school law or legal issues (2008).

Respondents from the 51 licensing agencies were asked to name which of the following eleven domains were included in their state’s teaching standards: special education, abuse and neglect, U. S. and state constitutional law, discrimination/harassment, student freedom of expression, search and seizure, contract issues/employee rights, liability regarding student injuries, and teachers’ academic freedom (Gajda, 2008). Special education was addressed more often than others with 47% affirmative responses; but some respondents were unsure about which of the domains, if any, were addressed. Only the standards for Oregon and Texas included all eleven domains. Virginia’s Standards for the Professional Practice of Teachers do not explicitly list any of the domains above, but they refer to differentiation of instruction, a safe learning environment, and ethical teacher behavior (www.doe.virginia.gov).

Notably, one-third of the teachers obtaining a teaching license nationwide are doing so through alternative certification programs which do not require completion of foundations courses inherent to traditional programs (where education law topics are often covered). According to the National Center for Alternative Certification, there are 136 versions of alternative programs among 48 states and the District of Columbia, and Virginia is among the

states where the number of alternatively certified teachers is increasing (www.teach-now.org). In Virginia, alternative certification (AC) candidates in the Career Switcher Program must have five years of work experience in addition to a bachelor's degree and passing scores on their examinations (www.doe.virginia.gov). They are required to complete 180 hours of pedagogy instruction, and they are partnered with a mentor to facilitate their transition into the profession.

In their meta-analysis of research related to the effectiveness of traditionally certified teachers and alternatively certified teachers, Buck and O'Brien concluded that there is limited empirical evidence to suggest that differences exist. They comment that: "The variability in the structure and requirements among alternative routes to certification make it difficult, if not impossible, to make generalizations about these programs" (2005, p.39). Mikulecky, Shkodriani, and Wilner concur regarding the dearth of research on alternative certification: "...sufficient research has not been conducted to answer lingering questions about the quality of such programs. This ambiguity makes it difficult to judge whether alternative certification programs provide quality preparation comparable to traditional routes to teaching" (2004, p. 3).

The Current State of Litigation

Schimmel and Militello found that 50% of their teacher participants approached their work with a fear of litigation (2007). This phenomenon is recognized by Philip K. Howard who, in 2002, founded the reform group Common Good "with the mission of rebuilding reliable legal structures that will permit Americans to use their common sense" (www.commongood.org). According to the group's website, "America's public schools are drowning in law. There is a rule for everything—so many that teachers and administrators cannot possibly know them all. Fear of getting dragged into a legal proceeding has made educators defensive. They hang

back when they should act. Many schools seem to be run by rules instead of by people”
(www.commongood.org).

Common Good has solicited research assistance from Public Agenda, a non-profit and non-partisan group dedicated to political and social issues such as education litigation. In 2003, Public Agenda convened three focus groups to determine the impact of litigation on professional lives of educators (Johnson & Duffett, 2003). Johnson and Duffett noted that their study was limited by its narrow geographic scope; only superintendents, central office staff, principals, and teachers from Illinois and New York were interviewed. Nonetheless, the researchers corroborated anecdotal data from their focus groups with data from other national studies they had conducted (including *Trying to Stay Ahead of the Game: Principals and Superintendents Talk about School Leadership* (Public Agenda 2001), *Stand By Me: What Teachers Really Think About Unions, Merit Pay, and Other Professional Matters* (Public Agenda 2003), and *Rolling Up Their Sleeves, Principals and Superintendents Talk about What’s Needed to Fix Public Schools* (Public Agenda 2003).

In the Johnson and Duffett study, principals and superintendents indicated that litigation concerns had become a “time-consuming and often frustrating part of the job” (p.3). Teachers thought that threat of litigation allowed parents to make excessive demands on school systems. Even so, a consensus revealed that minor adjustments to current safeguards were favored over major changes with the exception of central office staff and principals who indicated that the legalities related to special education were excessive. Notably, educators agreed that they were willing to take extensive measures (including litigation when necessary) to protect children from physical and sexual abuse. Teachers indicated that fear of an accusation of physical or sexual abuse prevented them from touching students or being alone with students:

For the teachers we spoke with, the possibility of an accusation or lawsuit was a perpetual fear – one that seemed to reside just beneath the surface as they went about their daily routine. One veteran teacher, for example, reported that he was no longer so quick to break up a fight, “...Now the climate is different,” he commented. “It’s more thinking of litigation. What’s going to happen if? [When I broke up fights] back then, I was thinking about the kids. The two kids are fighting, I don’t want them to hurt each other, and I don’t want other kids to get involved...But that kind of simplistic thinking is over now”(p. 5).

Zirkel (2006) vehemently argues that flaws in this study and others conducted by Public Agenda on behalf of Common Good present an inaccurate picture of the state of education litigation. He contends that no crisis exists if for example, as reported by Johnson and Duffett, none of the teachers in the focus groups had been cited in a law suit. Moreover, Zirkel points out bias in the Johnson and Duffett sample with his own study, *Special Education Law, An Empirical Trends Analysis* (Zirkel & D’Angelo, 2002), in which he found that New York and Illinois are the most litigious of all fifty states with regard to special education. Zirkel contends that Common Good’s major reports on education litigation present an “...often one-sided and oversimplified assessments of the relevant legal environment” (p. 485). He reports that the number of court cases nationwide has not risen consistently in past decades except in the area of special education and that court decisions have historically favored school authorities.

In a comparison of court decisions from the mid 1970’s to the mid 1990’s, Lupini and Zirkel (2003) found a 5% increase over 20 years in cases decided conclusively in favor of school authorities. Subsequently, there was a decrease of 5% in cases decided conclusively in favor of students, employees, and others. Remaining virtually unchanged were the numbers of cases which were split decisions, deferred decisions, or partial victories for either party.

Lupini and Zirkel used keywords such as desegregation, special education, and employees to obtain a random sample of published cases from the West Law database. Initially, their search

generated 1,794 decisions during the years 1974 through 1976 and 1,845 decisions from 1994 through 1996. After stratifying the sample further, they ultimately examined 317 cases for the 1974-1976 span and 318 cases for 1994-1996.

Lupini and Zirkel sorted these 635 cases by plaintiff type using three categories: students, employees, and others. For each, they recorded the forum (federal or state court), year, and outcome. The subcategories for cases brought by student plaintiffs included negligence, behavior issues, and equal educational opportunity issues. For employees, the subcategories included discrimination, employment actions (such as suspensions, transfers, terminations, and non-renewals), retirement benefits, and negligence torts. Suits brought by others were related to contract issues, religious activities, and negligence.

Lupini and Zirkel used a seven point scale to document the outcome of each case. A value of 7 was awarded to cases for which the court's decision was a "conclusive decision largely but not completely favoring school authorities," (p.264) and a value of 1 was awarded to cases for which the outcome was a "conclusive decision completely favoring of students, employees, or others" (p.265). For these extremes, the court had often decided a summary judgment in favor of either the defendant or plaintiff (indicating that the proceeding was dismissed without a full trial). Decisions which awarded more than 50% of the monetary damages claimed were awarded a score between 1 and 7 as were split decisions and decisions of preliminary injunction (which called for a future trial). On average, Lupini and Zirkel determined the mean score to be 4.97 out of 7 points. This result indicates that school authorities are prevailing more often than not in such cases and refutes the idea of a litigation crisis. They explain, "The lack of a statistically significant difference in overall outcomes between the two time periods for the total sample does

not lend support to the “crisis” characterization of school liability. Rather, the data show a continuing propensity of the courts in favor of school authorities”(p.270).

Moreover, Lupini and Zirkel found that within the student category, the mean score for the 1974-1976 period (4.14) increased to 5.02 for the 1994-1996 period. Lupini and Zirkel suggest that the earlier period may have been influenced by the landmark *Tinker v. Des Moines (1969)* decision in which courts ruled favorably for the students in their freedom of expression claim. Conversely, Lupini and Zirkel remark that the Columbine incident of 1999 underscored school authorities’ need for support in the battle against violence. They suggest that courts support “heightened judicial deference to school authorities as a matter of safety and security for students, who are regarded as the primary victims of this war” (p.275). Notably, the researchers mention that the favorability towards school authorities does not appear to be a manifestation of improved legal literacy among educators.

Still, a myth exists that teachers are likely to be targeted in lawsuits and held financially accountable for unforeseen accidents during daily performance (Imber, 2008). In fact, the employer is usually liable for any type of monetary awards gained by plaintiffs through litigation. Citing Leonard (2007), Imber notes that the likelihood of a teacher being named in a negligence lawsuit is 1 in 1000 (p.91).

In her dissertation, Leonard (2007) expanded on a study by Imber and Gayler (1988) which found that the frequency of education litigation increased dramatically between 1960 and 1977 yet curtailed between 1977 and 1986. Leonard used the West Law database to similarly track cases from 1986 to 2004. She notes that while Lupini and Zirkel’s 2003 study quantified litigation outcomes, administrators need more data is needed litigation trends. Leonard comments, “Without accurate knowledge of the trends of education-related litigation, school

decision makers are left to make policy choices based on guesses, faulty assessments, and emotions, rather than more accurate choices based on empirical research... The more well-informed school leaders can become concerning the trends in education litigation, the more well-informed will be their faculties and staff personnel” (p. 3).

Leonard found that there was, on average, 580 cases per year during the time period of 1986 to 2004. She concluded that there was a slight increase over time as the average cases per year increased from 540 (1986-1994) to 616 (1995-2004). She separated the cases into categories such as torts and negligence, civil rights, finance, teacher dismissal, and special education.

Leonard found that the growth rate for the aggregated education cases was 1.08 over a five year period which also reflected increases in what she called the “educational enterprise” (teacher positions and students) over the same period. Notably, civil rights cases grew at a rate of 1.43 which Leonard attributes to changes in special education policy. Leonard went on to say that historically, civil rights cases had been associated with desegregation. Instead, civil rights cases from the 1980’s and 1990’s related to equal access for students with disabilities. More recent cases (through 2004) concerned high quality of instructional delivery to students with disabilities. She further noted that the number of special education cases grew at a rate of 1.26. The civil rights and special education trend lines followed similar patterns from year to year.

Leonard further notes that the number of cases related to fiscal matters has remained steady, and the number of cases related to teacher dismissal has declined. The growth rate for negligence suits, 1.15 per five year period, is higher than the overall rate.

In addition to her database search of cases, Leonard reported survey data from 121 superintendents which represented 3% of the public school population. She collected data on 1,376 suits for the three year period from 2001-2004 (459 per year). Using 3% as the basis, she

projected that 14, 825 cases are filed each year in the U. S. which approximates Imber's 2008 estimate. In simpler terms, this statistic translates to 1 lawsuit per 3,200 students per year.

Of the 1,376 suits, 43% were filed by students, 36% were brought by employees, and 20.5% were initiated by others outside of the school system. Notably there is a 10% increase over Imber's 1988 data in the number of cases initiated by others, and Leonard warns that those suits are primarily negligence claims. She cautions school leaders, "Now, overall, the suits by outsiders have increased, and the increase has been in the area of negligence. Thus, these more recent numbers imply that schools and school districts need to become better risk managers to avoid this type of litigation. Also, more precautions may be necessary at events where the school is playing host to the community. School superintendents, school boards, and all personnel involved would be well advised to remember that, of all reported cases, negligence was the most common cause of legal action" (p.44). In fact, Leonard coded more "negligence" claims than any other within the 43% of student-initiated lawsuits. The second most frequently used code was "equal education opportunity" followed by "special education." Notably, there were no cases coded as "desegregation."

Among the claims brought by employees, the most frequent type was "discrimination" (in hiring and promotion) followed by "employee discipline" claims. Leonard explains that "negligence" was not frequently coded for employees as most states are functioning under Worker's Compensation laws which cover job-related injuries regardless of the negligence of the employer. Leonard found it interesting that technology related claims were not prevalent as of 2004.

Finally, Leonard quotes the National School Board Association in this advice to school leaders:

School districts involved increasingly in lawsuits can insure that already high insurance rates will continue to rise (NSBA, 2001). These rising rates will compete for the dollars necessary to increase salaries. Therefore, personnel at all levels would be well served by in-service training regarding education-related litigation regarding all areas from rising insurance rates stemming from all categories, thereby helping to enlist the cooperation of all personnel in the avoidance of litigation. Some report that judgments against school boards between \$25,000 and \$1 million and beyond are not uncommon, and therefore the ability to practice litigation prevention and to avoid as many lawsuits as possible becomes important to everyone in the field; even one lawsuit could be financially devastating to a small school district (p.51).

In a similar study, Mead analyzed 130 federal and state cases which cited a teacher as plaintiff in an employment dispute (2008). She found that school authorities prevailed most of the time but emphasizes that improved legal literacy among educators could have prevented some unfortunate outcomes altogether. Using the West Law database, she used the descriptor “adverse personnel action” and limited her search to the K-12 environment for years 2000 – 2008. The 54 federal cases were dominated by First Amendment claims related to freedom of speech and Fourteenth Amendment claims related to due process. The courts conclusively decided in favor of school authorities in 14 of the 22 First Amendment claims and in 12 of 13 of the due process claims.

At the state court level, cases were dominated by statutory claims related to procedural issues such as teacher tenure. The courts ruled in favor of school authorities in 23 of 31 suits related to procedural issues. Similarly, in cases associated with collective bargaining (often transfer and reduction-in-force claims), school authorities prevailed in 15 of 20 cases.

These findings reveal that school systems are generally not threatened by teachers’ claims in adverse personnel actions, but Mead provides several unfortunate examples where improved legal literacy could have prevented litigation in the first place. She cites *Nunez v. Simms, 2007* wherein a teacher mistakenly associated her contractual agreement with her teaching license.

Unknowingly, she allowed her license to expire and was dismissed by school authorities. In *Barnes v. Spearfish School District (2006)*, a South Carolina teacher argued her right of academic freedom in directing curriculum for her class. The school board chose to non-renew her contract citing the common legal interpretation that only school boards have the right to direct curriculum. In a third case (*Lee v. York County School Division, 2007*), a teacher erroneously thought that she had a right to convey her religious beliefs via a common school bulletin board. Arguably, the knowledge gained through a pre-service course in education law would have better prepared these teachers to handle professional legal matters; nonetheless, the courts upheld districts' decisions in all three cases.

Finally, in a 2011 study of the prevalence of lawsuits arising from school fights, Holben and Zirkel explained that No Child Left Behind Act of 2001 included the Paul Coverdell Teacher Liability Protection Act which provides immunity to teachers who act in good faith to avoid student injury. Even so, the researchers argued that the likelihood of a teacher being sued for intervention or non-intervention was 1 in 2000. Using a sample from the West Law database, Holben and Zirkel found 90 cases between 1990 and 2009 in which a student plaintiff filed a claim for injuries sustained after teacher's intervention or non-intervention in a student fight. In all cases, the defendant was either a teacher or the school system and the negligence claims were based on Section 1983 which relates to Fourteenth Amendment rights.

The definition of intervention ranged from a verbal warning or a physical attempt to separate students, but 75% of the cases were documented as "non-intervention." As in an aforementioned study, the researchers used a seven point scale to document the outcomes of the cases. A score of 7 was awarded to cases in which were decided conclusively in favor of school authorities; a

score of 1 was awarded to cases which were decided conclusively in favor of student plaintiffs. Holben and Zirkel found that school authorities prevailed 62% of the time.

Holben and Zirkel were interested in determining the likelihood of a teacher being named in a suit of this type. They used an estimate 187,890 as the number of attacks reported to law enforcement during this time period based on data from the National Center for Education Statistics. They intimate that this figure is probably low as it does not count attacks with weapons or sexual assaults. Given a sample of 90 cases, they determined that the likelihood was only 0.048%.

Synthesis of the Literature

Before completing the literature review, I studied the most salient legal milestones in the history of American education. Central to this discourse is the understanding that the U. S. Constitution dictates no federal authority over education. Instead, the citizenry relies on the Tenth Amendment which grants unassigned responsibilities to individual states. Constitutional challenges within schools, however, often focus on the protection of First Amendment rights of children and parents with regard to speech, expression, and religion and Fourth Amendment rights regarding privacy. In matters of equal education opportunity, citizens have come to rely on the Fourteenth Amendment which provides for equal protection under the law without regard to race, gender, or creed.

The aforementioned direct investigations of teachers' legal literacy reveal that while they may value its importance, teachers have only a marginal understanding of education law. The studies focused on students' rights, teachers' rights, and exceptional education. Participant groups included pre-service and in-service teachers at all levels, some of whom had attended traditional teacher preparation programs and some of whom had followed an alternate certification route.

Based on interviews and survey responses, teachers were deficient not only in complex details inherent to exceptional education legislation but also in general topics commonly covered in foundation courses. The research indicated that experienced teachers who had taken a separate course in education law were the most proficient. A thorough investigation of licensure agencies revealed that, in most cases, neither state teaching standards nor examinations reflect education law topics. While not validated by recent trends, a substantial number of educators approached their work with a fear of litigation.

An analysis of education litigation cases over the past fifty years revealed that the number of cases has increased at about the same rate as the “educational enterprise,” according to Leonard (2007). She found that the overall rate of increase in education cases was 1.08 over a five year period which is similar to increases in teaching positions and student populations. Moreover, Lupini and Zirkel (2003) found no litigation watershed. There was a slight tendency for the courts to favor school authorities when comparing the 1970’s with the 1990’s. Leonard noted, however, that greater rates of increase are evident civil rights, exceptional education, and negligence cases.

These opinions were contradicted by the reform group Common Good which contends that educators are under pressure to teach defensively in order to avoid lawsuits. The idea of defensive teaching is substantiated by respondents in the 2007 Schimmel and Militello study of 1,300 teachers. Finally, based on her 2008 study, Mead commented that improved legal literacy among teachers could avert unfortunate employment disputes and personnel actions.

Summary

The evidence provided by Zirkel and others seems to refute Common Good’s perception (and teachers’ comments as reported by Schimmel and Militello) regarding their feelings about the

litigious nature of education in the public school. The eight studies reviewed here provide empirical data on the legal literacy of teachers and their perceptions of preparation in education law, but none focuses on Virginia teachers. Only one study (by Paul, 2001) examines teachers' understanding of state laws. This study provides a timely update and new data regarding the level of legal literacy among classroom teachers in 2013.

Chapter 3

Methodology

The purpose of my study was to determine the level of legal literacy among public school classroom teachers. I conducted the study with the Research and Planning Department of a suburban metropolitan school division in Virginia. A committee of educational researchers from the division reviewed my proposal in June 2012 and approved the study with minor modifications in August 2012. Virginia Commonwealth University's Institutional Review Board approved the study in December 2012.

The study addressed the following research questions:

Q1: What is the current level of legal literacy among classroom teachers?

Q2: Are there differences in legal literacy based on demographics and teacher preparation?

(a) Is there a statistical and practical difference in the level of legal literacy between female and male teachers?

(b) Is there a statistical and practical difference in the level of legal literacy between elementary and secondary teachers?

(c) Is there a statistical and practical difference in the level of legal literacy between new teachers and experienced teachers?

(d) Is there a statistical and practical difference in the level of legal literacy among teachers who have chosen different paths to certification?

(e) Is there a statistical and practical difference in the level of legal literacy between teachers who have participated in-state, certification programs and those who have participated in out-of-state, certification programs?

(f) Is there a statistical and practical difference in the level of legal literacy among teachers

who have experienced different forms of training in education law?

Type of Study

This was a survey study aimed at identifying the level of legal literacy of respondents. In addition, I explored differences in legal literacy across a number of independent variables. The independent variables were gender, level of school, years of experience, route to certification, locality of preparation program, and source of training in education law. The dependent variables were defined by mean percent of correct answers on ten questions related to landmark case law and federal legislation, ten questions related to education law as referenced in the Code of Virginia, and a combination of all twenty questions.

Research Setting and Population

The school division serves almost 49,000 students in its 71 facilities and employs 3,365 teachers. With 56% of its teachers having earned a master's degree and 43% having earned a bachelor's degree, the educational attainment of its teaching force is in line with state levels (www.vdoe.gov). As of 2012, 99% of its teachers were considered "highly qualified," and only 2.7% of its teachers were teaching under provisional licenses.

In order to draw additional comparisons to the sample demographics, I collected statistics on the teacher population. Of the 3,365 teachers, 79% are female and 21% are male. The ratio of elementary teachers to secondary teachers is 46% to 54%. Approximately half of the teacher population has 3 to 10 years of experience (49%); 20% of the teachers have been teaching for 3 years or fewer, and 30% have been teaching for more than 10 years..

Survey

The *Education Law Assessment for Classroom Teachers* was comprised of three sections (see Appendix A). The first section assessed knowledge of landmark cases and federal legislation

familiar to certified teachers. The second section assessed knowledge of education law specifically referenced in the Code of Virginia. All questions were written in a “true/false/unsure” format. According to McMillan and Schumacher, the “unsure” option reduces the chance that respondents will guess and provides an alternative for respondents who do not think that the statement is completely true or false (1997). Furthermore, use of the true/false/unsure format is consistent with previous studies for comparison purposes. The third section included multiple choice questions regarding the respondents’ demographic data including gender, level of school, years of experience, primary endorsement, path to certification, locality of preparation program, and primary source for training in education law. Respondents were also asked if they had ever been involved in a lawsuit related to their professions as educators. An answer key is found in Appendix B.

Seven of the ten questions related to land mark case law and federal legislation were adapted with permission from Schimmel and Militello’s 2007 study. They designed the *Education Law Survey* after an exhaustive review of 77 studies of legal literacy prior to their study of 1300 teachers (Eberwein, 2008, p.91). Their instrument was modified after its own pilot and adapted again by Eberwein in the *Principals’ Education Law Survey* in 2008. The question sets cover a variety of topics; but, for clarity, each question is designed to assess knowledge of a single legal matter.

Pilot Study

A pilot study of 30 part-time teachers was conducted to verify respondents’ understanding of survey instructions, to check that the survey could be successfully completed within the 10 minute time limit, to troubleshoot any technology issues related to survey dissemination or response collection, and to insure that analysis frameworks were appropriate. Ahead of the pilot study, the survey was pre-tested with my research committee of four professors of education,

including one attorney. A second attorney (who specializes in school law) was consulted in designing the survey to provide insight into specific issues related to education law among teachers in my state. My advisors encouraged me to include questions related to the release of student records, educator sexual misconduct, and sovereign immunity for teachers. I also chose to include issues which come up frequently in my school such as recommendations of behavioral evaluation and/or medication and administration of prescription drugs. The shootings in Newtown, Connecticut immediately preceded the survey which had already included a question regarding firearms on campus.

The pilot revealed one minor grammatical error which was adjusted before the larger study. There were 13 respondents to the pilot, but one provided demographic information only. Nonetheless, the responses of 12 others were downloaded from the survey development company (Survey Monkey) and analyzed using SPSS. Descriptive statistics were generated to show frequencies related to the demographic questions about gender, level of school, years of experience, path to certification, area of endorsement, sources of training in education law, location of preparation for teaching, and involvement in lawsuits related to the profession. Preliminary t-tests and analyses of variance were run to compare subgroups of teachers, but no statistically significant differences were found. Before surveying the larger sample, the survey name was changed to the *2013 Education Law Survey for Classroom Teachers*, and the pilot data were removed from the survey site.

Sample

Because the Research and Planning Department updates its database regularly, there was a one-to-one correspondence between the sampling frame and the survey population. According to Dillman, Smyth, and Christian (2009, p. 56) an appropriate sample size can be determined using:

$$N_s = \frac{(N_p)(p)(p - 1)}{(N_p - 1) \left(\frac{B}{C}\right)^2 + (p)(1 - p)}$$

where N_s = the completed sample size needed for the desired level of precision

N_p = the size of the population

p = the proportion of the population expected to choose one of two response categories

B = margin of error (half of the desired confidence interval width: .05 = ± 5 percent

C = Z score associated with the confidence level (1.96 corresponds to the 95%)

Given a population size of 3,365 teachers, my goal was to obtain completed surveys from 336 respondents, when $p = 0.5$, the margin of error is ± 0.05, and the confidence interval is 95%.

A random sample of 750 teachers was generated by the Research and Planning Department.

In accordance with both division and University stipulations for consent, participants who choose to access the electronic link agreed to be a part of the study. To minimize the non-response rate, a reminder communication (see Appendix D) was sent to the sample two weeks before the close of the survey window. According to Dillman, Smyth, and Christian (2009), early and late participants may provide markedly unlike responses, so a balance was needed to eliminate bias.

Data Collection

The survey was electronically sent (using Survey Monkey) to prospective respondents in January 2013 accompanied by a cover letter from me (see Appendix C). The invitation explained the purpose of the research, the four-week window for completion of surveys, the amount of time required, and security measures to protect confidentiality. There were no tangible incentives, but I emphasized that I was seeking input from respondents regarding the current state of legal literacy in order to determine staff development needs. According to Dillman, Smyth and Christian (2009), response rates are higher when benefits to respondents are well-explained.

The cover letter and all subsequent communications were sent using the address of the Research and Planning Department; my identity and university affiliation were included within the communications. Dillman, Smyth, and Christian cite the Leverage-Saliency Theory documented by Groves, Singer, and Corning (2000). In this theory, the researchers claim that the “legitimacy of the sponsoring organization” impacts response rate (2009, p. 21). This distribution process maximized the response rate as communications were disseminated to singular addressees, all of whom had internet access via county issued computers.

Data Analysis

Data was exported into SPSS software via an Excel file. Descriptive statistics were generated for demographic information so that the sample could be characterized with regard to gender, level of school, years of experience, endorsement, path to certification, locality of preparation, and source of training in education law. Qualitative data were recoded as numeric data in order to conduct means tests. There were few missing data items, but these were recoded as “non-response;” they were not included in computations. To insure that there were no systemic patterns for missing data, I conducted Little’s MCAR (Missing Completely at Random) test. The significance level was 0.531, indicating the existence of missing data was random.

For each set of ten questions, correct responses were awarded 1 point; incorrect and unsure responses were awarded no points. An item analysis provided the percentage correct for each question. Means and standard deviations for the two question sets were computed as well as combined mean scores and standard deviations.

To answer research questions 2a, 2b and 2f, independent t-tests determined if statistical and practical differences existed between the means of 1) females and males, 2) elementary and secondary teachers, and 3) teachers who attended in-state preparation programs and teachers who

attended out-of-state preparation programs. Analyses of variance tests were conducted for research questions 2c, 2d, and 2g to determine if statistical and practical differences existed among 1) teachers with varying years of experience, 2) teachers who had chosen different paths to certification, and 3) teachers who have experienced different types of training in education law. Eta² was used to determine variance accounted for or the practical significance and meaning of the findings.

Delimitations

The survey included the most critical legal issues faced by classroom teachers today. Even so, there were a number of salient issues (perhaps inherent to specific geographic regions or populations) which were not addressed in the survey. The respondents in this study represent public school teachers in suburban Virginia where the political climate is not particularly contentious with regard to teachers' rights. Specifically, membership in professional organizations which provide exposure to legal issues (such as the Virginia Education Association) is marginal.

The complexity of legal terminology can make even the simplest statements arguable, but questions were intentionally designed to have only one correct answer. To keep completion time within 10 minutes, there was no attempt to ensure that respondents answered in like manner to differently worded questions on the same topic. Finally, while the survey was designed to objectively assess the current level of legal literacy in a non-evaluative manner, no attempt was made to ensure that teachers did not access legal resources while completing the survey.

Chapter 4

Results

I conducted this study to determine the level of legal literacy among classroom teachers in a suburban metropolitan school division in Virginia. Survey questions were designed to collect data related to knowledge of federal and state laws as they apply to student/teacher interactions. In this chapter, I present descriptive statistics which characterize the sample of 239 respondents with respect to demographic information. I also provide a comparison of teacher subgroups using independent t-tests of mean scores on the twenty-item true/false portion of the survey. Finally, I compare teacher knowledge of federal case law precedents to state-specific law referenced in the Code of Virginia.

2013 Education Law Survey for Classroom Teachers

Sample Demographics. In January of 2013, the *Education Law Survey for Classroom Teachers* was sent via web link to a random sample of 750 teachers in a suburban metropolitan school division in Virginia. Potential respondents were allowed four weeks to respond to a 29 item survey. There were 239 teachers who started the survey (32% response rate). Twelve respondents skipped one or more questions.

According to Dillman (2009), nonresponse error happens if there are meaningful differences between those who complete the survey and those who are sampled but do not complete the survey. To investigate this, a comparison of early respondents to late respondents was conducted to determine if differences existed between means (percent of correct answers). According to Sax, Gilmartin, and Bryant (2003), the current trend in web-based surveys is to consider “late” respondents as “non-respondents.” If there are no significant differences in the means among waves of early and late respondents, the sample results will more likely reflect the characteristics

of the population. When these analyses were done, there were no statistically significant differences in means of percent correct answers.

With regard to gender, the sample reflects the population: 75% of the respondents were female while the 79% of the teachers in the division were female. Secondary teachers comprised 65% of the sample but only 54% of the population, so a greater proportion of secondary teachers completed the survey than existed in the population. The sample and population were similar in educational attainment in that 62% of the respondents held a master's degree as compared to 56% of the population. The majority of those who completed my survey were veteran teachers with more than 10 years of experience (53%). However, division data shows that only 30% of its teachers have 10 or more years of experience. Thirty-six percent of the sample reported that they had been teaching between 3 and 10 years, but actually 49% of the teachers in the population have been teaching for that period of time. Only 8% of the respondents indicated that they had been teaching fewer than 3 years, but 20% of the population is comprised of novice teachers. The sample demographic data are presented in Table 1.

The sample was diverse with regard to area of endorsement. About 39% indicated that they were endorsed in general education at the elementary or middle school level. Endorsements in mathematics or science at the secondary level comprised 18%, and 25% indicated that they were endorsed in secondary language arts, humanities, or a world language. A small percentage, 5%, indicated that they were endorsed in performing arts or fine arts at the elementary or secondary level. Similarly, 6% reported endorsement in career and technical education. There was only one respondent who reported an endorsement in special education or gifted education, and there were no respondents endorsed in library science. "Other" was marked as the endorsement for 7% of the sample.

TABLE 1 *Demographic Variables*

Variables	n	Percent
Gender	227	
Male	57	25.1
Female	170	74.9
Level of School	227	
Elementary	79	34.8
Secondary	148	65.2
Highest Level of Education	226	
Bachelor's	86	38.1
Master's	139	61.5
Doctorate	1	0.4
Years of Experience	226	
Less Than 3 Years	19	8.4
3 to 10 Years	81	35.8
More Than 10 Years	126	55.8
Area of Endorsement	226	
General Education at the Elementary Level	76	33.6
General Education at the Middle School Level	12	5.3
Secondary language Arts or Humanities	44	19.5
Secondary Mathematics or Science	40	17.7
Secondary World Languages	12	5.3
Performing Arts or Fine Arts at the Elementary or Secondary Level	11	4.9
Library Science	0	0
Career and Technical Education	14	6.2
Special Education or Gifted Education at the Elementary or Secondary Level	1	0.4
Other	15	6.6

Teacher Preparation. To answer the research questions specific to subgroups of teachers, I collected information on the professional preparation of each respondent. I differentiated teachers who had chosen traditional teacher preparation certification paths from those who chose to major in fields other than education in order to shed light on how foundations courses might affect legal literacy. Of the 227 teachers who responded, 38% had taken a traditional path to certification by completing a bachelor's degree in education. Secondly, 20% had become certified teachers as undergraduates by taking additional courses in education outside of their

majors. A third category was comprised of those who initially earned a degree outside of education but chose to return as postgraduates to earn teaching licenses (34%). A small percentage of alternatively certified respondents did not hold a degree in education (7%). Two respondents indicated that they were not certified at all or that none of the categories accurately described them. See Table 2.

TABLE 2: *Teacher Preparation*

<i>Variables</i>	<i>n</i>	<i>Percent</i>
<i>Path to Certification</i>	227	
<i>I earned a bachelor's degree in education</i>	86	37.9
<i>I earned a bachelor's degree in a field other than education, but as an undergraduate I completed additional coursework to be eligible for a teaching license</i>	46	20.3
<i>I earned a bachelor's degree in a field other than education, but I went on to earn a post baccalaureate degree in teaching or education to be eligible for a teaching license</i>	78	34.4
<i>I completed an alternative certification program which did not require a degree in education</i>	15	6.6
<i>I am not certified or none of the above describes me</i>	2	0.9
<i>Primary Source of Training</i>	226	
<i>I completed a separate course in education law as an undergraduate</i>	13	5.7
<i>I completed a separate course in education law as a graduate student</i>	39	17.2
<i>I have participated in staff development activities directly related to education law</i>	40	17.6
<i>I have gained knowledge through my professional organizations</i>	10	4.4
<i>I have no training in education law</i>	125	55.1
<i>Location of Preparation</i>	227	
<i>In Virginia</i>	182	80.2
<i>Outside of Virginia</i>	45	19.8
<i>Involvement in Lawsuit as an Educator</i>	227	
<i>No</i>	224	98.7
<i>Yes</i>	3	1.3

I asked respondents to name their primary source of education law training. As in previous studies (Schimmel & Militello, 2007), about half of the respondents indicated that they had no training in education law (55%). Among those who reported some training, 6% said that they

had completed an undergraduate course in education law, 17% said that they had completed an education law course as a graduate student, 18% relied on staff development (presumably within their school divisions), and 4% indicated that their professional organizations were their primary sources for training.

I was particularly interested in learning how much the respondents knew about local and state interpretation of education laws, so half of my survey questions were generated from the Code of Virginia. Accordingly, I wanted to know which respondents had been prepared in and outside of the state. Of the 227 respondents, 80% reported that they had been trained as teachers in Virginia; 20% indicated that they had been trained outside of Virginia. Only 3 respondents (1.3%) indicated that they had been involved in a lawsuit as an educator.

Q1: What is the current level of legal literacy among classroom teachers?

Assessment of Legal Literacy. Legal literacy among classroom teachers was assessed using 20 multiple choice questions for which there were three choices: True, False, and Unsure. The first ten questions were generated from landmark cases at the highest state and federal levels and seminal legislative acts considered to be familiar to certified teachers. The second ten questions originated from specific references within the Code of Virginia.

It should be noted that while states are generally required to follow federal policy in spirit, there are areas of regulation for which states and local governments are granted some latitude in interpretation. For example, in order to provide an optimally safe environment for students and teachers, Congress passed the Gun-Free Schools Act (GFSA) in 1994. This act rescinds federal funding to schools which do not adhere to its requirement that individuals found in possession of a weapon on a school property be expelled for at least one year (Bosher et al., 2004). Even so,

the Code of Virginia allows school authorities or the school board itself to determine if special circumstances exist for which expulsion is not appropriate (§ 22.1-277.07).

In order to compare knowledge of federal and state case law precedents to knowledge of Virginia laws, I created three mean scores for each respondent. The landmark mean score is the percentage of questions answered correctly from the first half. The Virginia mean score is the percentage of questions answered correctly from the second half. The total mean score is the percentage of all questions answered correctly. Since there a definitive correct response for each question (either True or False), a response of “Unsure” was considered incorrect.

The landmark mean score for the sample as a whole was 43.51%. Of the 222 respondents, the average number of questions answered correctly on the first half was slightly more than 4 out of 10. The sample was more knowledgeable of Virginia law as the mean score for the second half was 50.62% ($n = 225$). A paired sample t-test was conducted to determine if the difference in means (percent correct answers) was statistically significant. The difference in means was statistically significant ($t = -5.445, p = .000$). The total mean score was 47.2% ($n = 218$). These results align with those of other researchers for whom the literacy levels hovered around 50% (Schimmel & Militello, 2007).

Landmark Items. Percentages of correct and incorrect responses among the entire sample were computed for each individual question, and these are found in Table 3. The results are surprising for a number of questions including the first which references the constitutional right to an education. Most of the sample incorrectly marked this question as true. Although the U. S. Constitution guarantees notable rights and freedoms under its first ten amendments (the Bill of Rights), there is no constitutional mention of the right to an education. Rather, the language of the Tenth Amendment yields to the states on this and other specific domains not mentioned in

TABLE 3 *Landmark Items*

Percent Correct	Question
17.2	<i>The U. S. Supreme Court has declared that education is a right protected under the U.S. Constitution.</i>
25.4	<i>The first amendment protects student speech that is offensive, provocative, and controversial.</i>
59.3	<i>School officials may legally search a student’s personal belongings without a specific reason.</i>
47.9	<i>Students that choose to participate in competitive athletics may be subjected to random drug testing.</i>
58.7	<i>Students have the right to promote their political beliefs to other students at school.</i>
67.4	<i>School authorities may not impose disciplinary actions based the division’s regular code of conduct for students with disabilities.</i>
88.3	<i>A school board can fire a teacher for having a consensual sexual relationship with a student in his or her school even if the student is over 18.</i>
40.3	<i>Teachers are granted qualified immunity for their good faith actions in breaking up a fight even if student injuries result.</i>
7.0	<i>The Family Educational Rights and Privacy Act (FERPA) requires written consent of parents to release educational records.</i>
22.3	<i>School officials must permit students to distribute controversial religious materials on campus if it does not cause a disruption.</i>

the U. S. Constitution. Given the current debate related to the achievement gap and equal educational opportunity in general, the fact that 82.8% of teachers thought the right to education was afforded by the U. S. Constitution is revealing.

Among the freedoms guaranteed by the First Amendment is the right to free speech. This has historically been questioned in public schools, especially in recent years with the onset of social

networking which provides an avenue for anonymity among those students, parents, and educators who choose to engage in offensive, provocative, and controversial speech via the Internet. Indeed, such speech is protected by the First Amendment as long as it does not interfere with instruction. Of the 227 teachers who responded to this question, only 25.4% recognized that controversial speech was allowable as long as it did not interfere with instruction.

The U. S. Supreme Court has given schools the authority to regulate expression within the scholarly environment. In *Bethel School District v. Fraser (1986)*, it denied students the right to use inappropriate language in schools. In *Hazelwood v. Kuhlmeier (1988)*, this power was extended to student newspapers. According to *Hazelwood*, school authorities “do not offend the First Amendment by exercising . . . control over the style and content of student speech in school-sponsored expressive activities” (Bosher et al., 2004, p.89).

With regard to search and seizure, a majority of the teachers (59.3%) were aware that school officials have the right to legally search a student’s belongings without a specific reason. School authorities are allowed to search students and their belongings in order to maintain safety and discipline within the school environment. In *T. L. O. v. New Jersey (1985)*, a teacher found a student smoking cigarettes in the school rest room. She escorted the student to the vice-principal who conducted a search of her purse and found contraband, including marijuana. The student asserted her Fourth Amendment right that the search was illegal without probable cause. The Court decreed that the nature of the school environment afforded school authorities the liberty to take action based on “reasonable suspicion” rather than “probable cause” (Bosher et al., 2004).

The respondents were evenly divided with regard to the question about drug testing for student athletes. Just under half (47.9%) of the sample correctly responded that athlete may be subjected to random drug testing. In *Vernonia School Dist. 47J v. Acton (1995)*, the Court ruled

that random drug testing of student athletes was lawful in the interest of discouraging overall drug use among the student population (Schimmel et al., 2008). The voluntary nature of student participation in athletics led to a similar court ruling in *Board of Education of Independent School Dist. No. 92 of Pottawatomie City v. Earls (2002)* which permitted school authorities to conduct drug testing among students engaged in extra-curricular activities.

The majority of respondents (58.7%) knew that students could promote their political beliefs to other students in school. This standard was born of the landmark case on freedom of expression, *Tinker v. Des Moines (1969)*, in which high school students challenged that their rights to express themselves were violated when they were suspended for wearing black arm bands to protest the Vietnam War. The U. S. Supreme Court agreed that the armbands were “protected form of symbolic speech” and asserted that “Students do not shed their Constitutional right to freedom of speech at the schoolhouse gate” (Schimmel et al., 2008, p.71).

The majority of the respondents (67.4%) recognized that the regular code of conduct could be applied for students with disabilities. School authorities must determine if the infraction was a function of the student’s disability. If it is found to be unrelated to the disability, the regular code of conduct applies. This is sometimes called the “manifestation determination.”

A convincing percentage of teachers (88.3%) recognized that a student’s legal age of 18 does not afford a teacher the right to engage in consensual sex. Technically, the legal age of consent varies from state to state. Since teachers are considered “persons of trust,” the courts have disallowed consensual relationships even after students have graduated (*Flaskamp v. Dearborn, 2004*).

Fewer than half (40.3%) understood that they could be granted qualified immunity in their good faith actions to break up a student fight, even if injuries result. Such immunity is allowed by the Teacher Liability Protection Act passed by Congress in 2001 (U.S.C. §§ 6731-6738).

In certain cases, such as those involving a court order, a parent's approval is not required for release of student records. An overwhelming majority of teachers (93.0%) indicated that a parent's approval was always required by the Family Education Rights and Privacy Act (FERPA).

While landmark cases such as *McCullum v. Board of Education (1948)*, *Engel v. Vitale (1962)*, and *School District of Abington Township v. Schempp (1963)* have clearly directed school authorities to avoid entanglement with religion, courts have allowed students the right to promote their beliefs as long as such activities do not disrupt instruction. Most teachers in my sample were unclear on this issue as 77.7% indicated that students were not allowed to distribute controversial religious materials.

Virginia Items. The majority of teachers surveyed (65.9%) were aware that they did not have the authority to select primary textbooks for their classes. In Virginia, school boards select primary texts for classroom instruction from a list of the approved materials generated by the Board of Education (Code of Virginia, § 22.1-238). The Virginia items are listed in Table 4.

Similarly, 79.7% of the respondents knew that Virginia's public school divisions have the authority to mandate student uniforms under certain conditions. Specifically, if boards include the community and parents in the decision making, constitutional concerns such as freedoms of speech and expression are addressed, and ability to pay is considered, they may require school uniforms for students (Code of Virginia, § 22.1-79.2).

TABLE 4: Virginia Items

<i>Percent Correct</i>	<i>Question</i>
65.9	<i>In Virginia, teachers have the legal authority to select the primary textbooks for their classes.</i>
79.7	<i>Virginia's public school divisions have the authority to mandate student uniforms under certain conditions.</i>
15.4	<i>In Virginia, a school board is required to expel, for a period of not less than one year, any student who is found in possession of a firearm on a school campus regardless of circumstance.</i>
9.7	<i>The Code of Virginia requires that a parent be contacted whenever a child indicates that he or she intends to commit suicide.</i>
72.6	<i>According to the Code of Virginia, school divisions are required to establish a daily moment of silence in each classroom.</i>
59.0	<i>In Virginia, a trained school board employee who administers epinephrine to a student for whom it is prescribed is not liable for civil damages or negligence related to such treatment.</i>
94.7	<i>In Virginia, teachers are required to provide alternative dates to assessments scheduled on religious holidays recognized by the school board.</i>
72.2	<i>Virginia teachers who report suspected child abuse or neglect are immune from civil or criminal liability unless such a report is made with malicious intent.</i>
30.4	<i>Instructional personnel may neither recommend the use of behavior-altering medication or behavioral evaluation by a medical practitioner in Virginia.</i>
5.3	<i>According to the Code of Virginia, a student may be exempt from learning the Pledge of Allegiance if his or her parent or guardian objects on religious or philosophical grounds.</i>

Only 15.4% of the sample responded correctly regarding the expulsion of students for possessing a firearm on campus regardless of circumstances. According to the Code of Virginia

(§ 22.1-277.07), a school administrator or school board may determine that special circumstances exist for which expulsion is not appropriate.

Typically, teachers are encouraged to immediately contact the school counselor, and administrator, or a parent if a child indicates in writing or verbally that he or she intends to commit suicide. If, however, the risk of suicide relates to parental abuse or neglect, the Code of Virginia requires that the local department of social services be contacted instead (§ 22.1-272.1). Only 9.7% of the sample responded correctly.

A daily moment of silence is required by the Code of Virginia so that students who choose to engage in religious observation may do so (§ 22.1-203). Teachers are obligated to ensure that students refrain from distracting behavior during this time. While a majority of the sample (72.6%) knew that the moment of silence was mandatory in each classroom as written in the Code, more than one-quarter answered this question incorrectly.

More than half of the sample (59.0%) knew that trained school board employees who administer epinephrine to a student for whom it is prescribed are not liable for civil damages or negligence related to such treatment (Code of Virginia, § 22.1-274.2). This issue is important because teachers must stand in for the school nurse on field trips. Currently under consideration in Virginia is immunity for administration to a student for whom the drug is not prescribed. School nurses, not teachers, are generally allowed to make the call to administer without prescription.

Overwhelmingly, respondents understood that alternate assessments dates must be arranged for students who are observing religious holidays (Code of Virginia, § 22.1-254). The practice of scheduling assessments around holidays has become commonplace due to this county's diverse population; 94.7% of the sample answered this question correctly.

Although child abuse training is required for all Virginia teachers, 27.8 % of the respondents were not aware that teachers are immune from civil or criminal liability unless a claim is made with malicious intent (Code of Virginia, § 22.1-291.3). Virginia teachers are mandated reporters of child abuse and neglect.

Only 30.4% of the respondents distinguished the ability to recommend a behavioral evaluation from a recommendation of behavioral medication. As non-medical professionals, teachers are not allowed to recommend medicines, but they may recommend medical evaluation (Code of Virginia, § 22.1-274.3).

Finally, only 5.3% of the sample realized that while students are not required to recite the Pledge of Allegiance, they are required to learn it (Code of Virginia, § 22.1-202).

Q2: Are there differences in legal literacy based on demographics and teacher preparation?

Comparison of Means. In order to compare subgroups of teachers, independent t-tests were conducted to determine if statistically significant differences existed between mean scores. A statistically significant difference between mean scores was found in only one subgroup comparison.

Gender. An analysis of gender resulted in two statistically significant differences in the mean percent of correct answers for the landmark items and the combined items. On the landmark items, the mean percent of correct answers for females ($M = 0.42$, $SD = 0.15$) was significantly lower than the mean percent of correct answers for males ($M = 0.48$, $SD = 0.17$) for a two-tailed test with an alpha level of 0.05, $t = -2.256$, $p = 0.016$, and $\eta^2 = 0.026$. The raw scores for females and males were higher for the Virginia items; there was no statistically significant difference between females ($M = 0.50$, $SD = 0.15$) and males ($M = 0.52$, $SD = 0.14$). For the combined

mean, there was again a statistically significant difference between females ($M = 0.46$, $SD = 0.12$) and males ($M = 0.50$, $SD = 0.13$) for a two-tailed test with an alpha level of 0.05, $t = -2.046$, $p = 0.032$, and $\eta^2 = 0.021$. While the differences in mean scores are statistically significant, the eta squared values are too low to indicate practical differences. See Table 5.

TABLE 5 *Comparison of Means (Percent of Correct Answers) by Gender*

	Females		Males		<i>t</i>	<i>p</i>	η^2
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>			
Landmark	165	0.42(0.15)	55	0.48(0.17)	-2.256	0.016	0.026
Virginia	168	0.50(0.15)	57	0.52(0.14)	-1.121	0.278	0.005
Combined	163	0.46(0.12)	55	0.50(0.13)	-2.046	0.032	0.021

Level of School, Educational Attainment, and Years of Experience. There was no statistically significant difference between the mean scores for elementary teachers and secondary teachers for any of the three means, nor was there a difference when comparing teachers with bachelor's degrees to those with master's degrees. Only one respondent had earned a doctorate, so no comparisons were made with that category. Since there were three categories for years of experience (less than 3 years, 3 – 10 years, and more than 10 years), an ANOVA was conducted for each of three dependent variables: landmark mean score, Virginia mean score, and combined mean score. No statistically significant differences were found among the means for years of experience; however, the raw scores of teachers with more than 10 years of experience were slightly higher than those teachers with fewer years of experience on all three comparisons.

TABLE 6 *Comparison of Means (Percent of Correct Answers) by Level of School*

	Elementary		Secondary		<i>t</i>	<i>p</i>
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>		
Landmark	77	0.42(0.16)	143	0.44(0.15)	-0.945	0.346
Virginia	78	0.51(0.15)	147	0.50(0.15)	0.485	0.628
Combined	76	0.47(0.12)	142	0.47(0.12)	-0.386	0.700

TABLE 7 Comparison of Means (Percent of Correct Answers) by Years of Experience

	Less than 3 Years		3 to 10 Years		More than 10 Years		<i>F</i>	<i>p</i>
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>		
Landmark	18	0.42(0.17)	81	0.42(0.14)	120	0.45(0.16)	0.714	0.491
Virginia	19	0.48(0.18)	81	0.50(0.14)	124	0.52(0.15)	0.627	0.535
Combined	18	0.46(0.12)	81	0.46(0.11)	118	0.48(0.12)	0.882	0.416

Path to Certification. With regard to path to certification, respondents were offered four choices. Analyses of variance were conducted to compare the means for subgroups of teachers who had (1) followed a traditional path by earning a degree in education, (2) become licensed by taking additional coursework in education while an undergraduate, (3) returned as postgraduates to earn a degree in education, or (4) become certified via an alternative program. There were no statistically significant differences between the means of these subgroups.

TABLE 8 Comparison of Means (Percent of Correct Answers) by Path to Certification

	Bachelor's Degree in Education		Bachelor's Degree Outside of Education with Extra Coursework		Bachelor's Degree Outside of Education with Graduate Degree in Education		No Degree in Education but Completion of Alternative Certification Program		<i>F</i>	<i>p</i>
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>		
Landmark	83	0.42 (0.17)	46	0.47 (0.15)	76	0.44 (0.14)	13	0.38 (0.18)	1.191	0.316
Virginia	85	0.50 (0.14)	45	0.51 (0.17)	78	0.51 (0.14)	15	0.49 (0.14)	0.232	0.920
Combined	82	0.46 (0.12)	45	0.49 (0.13)	76	0.47 (0.11)	13	0.43 (0.12)	0.883	0.475

Location of Preparation. The mean scores for teachers who had completed their preparations in the state of Virginia were in line with those who had completed their programs primarily outside of Virginia. In fact, both subgroups scored similarly on the Virginia items.

TABLE 9 *Comparison of Means by Location of Preparation*

Percent Correct	In Virginia		Outside of Virginia		<i>t</i>	<i>p</i>
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>		
Landmark	177	0.43(0.15)	43	0.44(0.15)	-0.581	0.563
Virginia	181	0.51(0.15)	44	0.51(0.14)	-0.030	0.976
Combined	176	0.47(0.12)	42	0.48(0.12)	-0.394	0.695

Sources of Training in Education Law. This study is motivated in part by the lack of consistent training in education law among classroom teachers. In order to encompass the varied sources of training, respondents were offered four choices and a fifth option which indicated that the respondent had no training. If the respondent had been exposed to training he or she could report the primary source as (1) an undergraduate course in education law, (2) a graduate course in education law, (3) staff development, or (4) professional organization(s). Each of these four

TABLE 10 *Comparison of Means (Percent of Correct Answers) by Training*

Mean Score	Law Course as an Undergraduate		Law Course as a Graduate Student		Participated in Staff Development		Relied on Information from a Professional Organization		No Training		<i>F</i>	<i>p</i>
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>		
Landmark	13	0.42 (0.14)	37	0.48 (0.16)	38	0.45 (0.15)	10	0.43 (0.11)	122	0.42 (0.16)	1.246	0.292
Virginia	12	0.48 (0.10)	38	0.53 (0.16)	40	0.51 (0.13)	10	0.48 (0.17)	125	0.50 (0.15)	0.363	0.835
Combined	12	0.46 (0.10)	36	0.51 (0.13)	38	0.48 (0.11)	10	0.46 (0.09)	122	0.46 (0.12)	1.318	0.264

choices was compared to the others as well as the fifth option of “no training” at all in an analysis of variance. No statistically significant differences were found. See Table 10.

TABLE 11: *Summary of Research Question 2*

Are There Differences in Legal Literacy Based on Demographics and Teacher Preparation?						
	Statistically Significant?			Practically Significant?		
	Landmark	Virginia	Combined	Landmark	Virginia	Combined
Gender	Yes	No	Yes	No	No	No
Level of School	No	No	No	No	No	No
Years of Experience	No	No	No	No	No	No
Path to Certification	No	No	No	No	No	No
Location of Preparation	No	No	No	No	No	No
Source of Training	No	No	No	No	No	No

Summary

In conclusion, 227 respondents (32% response rate) answered most questions on the *2013 Education Law Assessment for Classroom Teachers*. The sample was diverse with regard to years of experience, endorsement, path to certification, and sources of training in education law.

Overall, the scores ranged from 42% to 52% correct for the landmark, Virginia, and combined

means for all subgroups of teachers. The only statistically significant differences in percent correct means were found when comparing gender for the landmark and combined means. However, these means were not practically significant. There were very few questions for which teachers demonstrated a consistent level of understanding across subgroups. There were many items for which a substantial portion of teachers responded incorrectly. The results of Research Question 2 are summarized in Table 11.

Chapter 5

Discussion

Avenues for study in the area of education law are many, but I chose to focus on matters which arise in the daily interactions between students and teachers. Teachers are in the trenches, and I believe that their interactions with students are the most personal and powerful in the school building. In the span of five minutes in the company of children, a teacher makes multiple decisions based on what she knows to be just and lawful.

Like other studies, my research examined teachers' understanding of case law and legislation. I also explored the extent to which teachers know and understand law germane to the state of Virginia because, while public schools are required to align themselves with federal educational policy, there is some variance in the interpretation of education laws among individual states and local school divisions.

Comparisons to Other Studies

My research was highly influenced by Schimmel and Militello's 2007 study. Even though there are notable differences in the demographics of our respective samples and the survey questions themselves, it was my intent to be able to draw comparisons with this significant study in order to further research in this field and provide a renewed perspective on this topic. In general, my results reflect those of Schimmel and Militello as well as other researchers discussed in the literature review. Certainly, the level of legal literacy among classroom teachers is low (near 50% or below) across several studies of various demographics and time periods (Brookshire, 2002; Brown, 2004; Hopps, 2002; Paul, 2001; Wasburn-Moses, 2005).

Only 3 of 227 (1.3%) respondents reported involvement in a lawsuit related to their professions. Although my question did not specify a particular type of claim, the finding is

slightly higher than those reported by Zirkel and Holben (0.048% for suits involving student fights) and by Leonard (0.1% for negligence in general).

Addressing the Research Questions

Because of the narrow range of the three mean scores for all subgroups (42% to 52%), I can state that the current level of legal literacy among teachers in this sample of classroom teachers is low. Using my survey as a predictor, teachers know about half of the important content related to landmark cases and education legislation. They know slightly more about education law specific to the state of Virginia.

This level of legal literacy is not surprising given the lack of training in education law reported by respondents. In my study, 55% of the respondents indicated that they experienced no training in education law. When I compared the combined mean scores for subgroups based on sources of legal training (a law course, staff development, or professional organizations), none scored significantly higher than those with no training.

In an attempt to identify potential relationships between demographics and mean scores, I conducted means tests on gender, level of school, years of experience, path to certification location of preparation, and source of training in education law. Significant differences were found only in the gender comparison (for the landmark and combined means).

I compared those who had followed a traditional teacher preparation program to alternatively certified teachers. I surmised that teachers who had followed alternative certification paths were not exposed to typical foundations courses inherent to traditional preparation programs where the legal aspects of the profession are often taught. I predicted that these candidates would have marginal understanding of the legal issues covered in such courses. However, I found that those who followed the traditional path and those who were alternatively certified were similarly

prepared to answer my survey questions. It should be noted, though, that only 7.5% of my sample reported alternative certification. Demographic characteristics are not associated with either high or low scores among the means in my study. I conclude that targeting individual subgroups with additional training will not solve what seems to be a systemic problem.

Significant Gaps in Understanding

In designing this survey, my intent was to cover a variety of questions related to student/teacher interactions. Each question was written with one correct response in mind based on case law precedent or reference to legislation; however, there were no questions for which the correct response was obvious. While the overall measure of teacher knowledge was disappointing, there were some points of law for which teachers demonstrated an acceptable level of understanding. For example, 88% of the respondents were aware that because teachers are considered “persons of trust,” consensual sex with a student over 18 is unlawful. Nevertheless, 12% responded incorrectly on this most critical question regarding the protection of students. Also, 95% recognized that alternative assessment dates must be offered to those students for whom a religious holiday presents a conflict. In this locality, an unprecedented effort has been made in recent years to inform teachers of specific dates of such holidays among its diverse population. I interpret the latter result as a positive indication that these teachers are cognizant of religious freedoms guaranteed by the First Amendment.

Researchers may differ on the level of importance placed upon individual items, but I am concerned about frequently missed items which seemingly should have been straightforward. These questions address constitutional underpinnings and First Amendment issues. For instance, 83% of the sample mistakenly thought that education was a right guaranteed to all Americans by the U. S. Constitution.

Teachers seemed to confuse the separation of church and state from students' rights to promote their own religious beliefs on campus. The majority of respondents, 78%, indicated that school officials were not obligated to allow students to distribute religious materials as long as instruction was not interrupted. In my opinion, this result is a function of the cautious nature public institutions have adopted in dealing with religious diversity in recent years.

On a related note, much has been written about the presence of the word God in the Pledge of Allegiance. Although students are not required to recite the Pledge in school, the Code of Virginia requires that students learn the Pledge as part of citizenship education in elementary schools. Notably, only 5% of all teachers understood this subtle difference. Among elementary school teachers, who are responsible for teaching the Pledge, 92% responded incorrectly.

I conclude that teachers have adopted a rather guarded approach to interactions with parents. For example, the decision to suggest behavioral evaluation or medication to a parent can be challenging for some teachers. Only 30% were aware that recommendation of behavioral evaluation is permitted by the Code of Virginia while recommendation of a specific medication is not. Furthermore, I infer that teachers do not want to fail in their efforts to communicate with parents. Most of the time, the appropriate response to a student's threat of suicide is a parental contact, but the Code of Virginia allows for exception to this rule in cases of parent neglect or abuse. Only 10% answered this item correctly. Teachers also indicated that parental approval was required for release of student records. This is not the case in cases of court ordered release, but only 7% answered correctly.

The range of "percent correct" among the items is wide (5% to 95%). Given the low mean scores, most of the items were answered incorrectly by a substantial number of respondents.

When this unfamiliarity is projected on the entire teacher population in this division or on other

similar localities, it is clear that improved efforts to improve legal literacy among classroom teachers are warranted.

Limitations

The use of random sampling precluded some of the common limitations found in studies of this nature. It was beneficial to be assured a one-to-one correspondence between the sampling frame and the survey population based on the use of electronic mail addresses already assigned to the respondents by the school division. Moreover, the transfer of data from the survey development company was seamless and immediate. In generalizing results, it should be noted that the sample is comprised of teachers from only one division in Virginia.

The results are limited by the number of responses. In order to avoid survey fatigue among potential respondents, this school division allowed only two communications with the random sample. Response rates are lower when respondents receive multiple requests in a short period of time (Adams & Umbach, 2012; Porter, Whitcomb, & Weitzer, 2004). Porter et al. found that college students responded more rigorously when asked to complete professorial evaluations in their academic major due to the salience theory that people respond to what is important to them. Although my survey window spanned four weeks, most responses were received within two or three days of the communications. I believe that potential respondents were either drawn into the topic right away, or they deleted the link immediately.

Reactions from the Respondents

Under my methodology, the identities of the respondents were untraceable. I provided my email address at the end of the survey for respondents to request the correct answers to survey items, however. About 12% of the sample (31 respondents) took advantage of this opportunity, and I was gratified by the personal comments they conveyed to me. Teachers are interested in

gaining a better understanding of education law, and they themselves are concerned about how little they know. Here are some of their thoughts:

“I would love to have the correct answers to the multiple choice questions of the survey...(taking the survey made me realize how much I do not know!)”

“I have just completed the survey on educational laws. I would be very interested in receiving the correct responses as I realized that I was not as familiar with many of the laws as I should be.”

“I would love to see the answers to the survey on school law. I took a course over 30 years ago, but haven’t heard too much about the law since!”

“...VERY surprised by some of the answers! Thank you for sharing!”

These sentiments echo those of respondents in previous studies. Schimmel and Militello reported that:

More than 70 percent of the respondents indicated they were interested or very interested in learning more about student freedom of speech, contract issues, student due process, and abuse and neglect; and more than 75 percent expressed such interest in teacher liability for student injury and in academic freedom (2007, p.266).

Conclusions

The following are supported by evidence in this study:

1. My findings are similar to those of other researchers in this field. Specifically, classroom teachers are knowledgeable of about 50% of essential legal content related to student/teacher interactions.
2. With the exception of gender, there were no statistically significant differences in mean scores among subgroups of teachers. Lack of legal literacy seems to be a systemic problem, so providing additional training to specific subgroups is not likely to be helpful.

3. There are many and varied points of law for which a substantial number of respondents demonstrated lack of knowledge. Specifically, these included constitutional issues related to the First Amendment and matters related to parental contacts.
4. Teachers are interested in improving their understanding of education law.

My Interest in Legal Literacy

This study was born of my experience in returning to the public school classroom as a veteran teacher. When I returned in 2004, I found that my new colleagues had followed differing paths to certification. Some were not certified at all as large companies had begun to downsize in light of a struggling economy; skilled mathematicians and scientists were making their way to the teaching profession.

As a young teacher in the 1980's, the vast majority of my contemporaries had completed a traditional teacher preparation program as I had. I had learned so much from my traditional program and on the job experience about advocating for children that I questioned how my neighboring teachers could catch up. Two years later, I prepared for National Board Certification with a cohort of 100 other teachers who had, again, followed different paths to licensure. I worked to meet a set of uniform standards that would be recognized as exemplary in all fifty states. The paradox was obvious: all of us were uniquely trained on the one hand yet striving to be alike on the other.

I began to have conversations with other teachers about their training. I concluded that we had little in common with regard to our pre-service experiences. The precursor to this study was a qualitative one early in my doctoral program in which I interviewed my colleagues to ascertain their knowledge of and interest in learning more about education law. I was motivated by the positive responses of fellow teachers who already recognized that they needed to know more

about the law and the teaching profession. One interviewee explained, “I don’t know what I don’t know” (Mirabile, 2010).

My studies expanded to teacher licensure as I examined the political levers could create policy change. I remembered that when I had returned to the classroom, I was expected to show competency in technology skills (such as web research, data entry, and word processing). These Technology Standards for Instructional Personnel (TSIPs) were required of all teachers in Virginia as a way of updating skills and ensuring uniformity among all certified teachers. Like technology skills, the legal influences on the teaching profession are always changing; so I contemplated the idea of a set of parallel standards for competency in legal matters.

Suggestions for Policy and Practice

Teacher preparation programs at colleges and universities are required to provide training in education law to align with NCATE standards. According to Schimmel and Militello (2007), the format in which legal content is presented varies; some programs may offer a separate course on education law and other may choose to spread out legal topics so that they are covered in the most relevant classes. They explain that the undergraduate curriculum rarely allows for an elective course in law because of the pressure on teacher education programs to emphasize content and pedagogy in light of historically low standardized test scores. Some programs may not have a resource person qualified to teach law, and there is some reliance on building principals to serve as a resource once teachers accept their first position.

Regardless of the NCATE standard, most states do not include a licensure requirement related to knowledge of education law (Gajda, 2008); nor are education law topics covered in required state exams (such as the Praxis in Virginia). Virginia’s licensure standards include graduation from an accredited college or university, success on state-designated teachers’

assessments, and completion of the Technology Standards for Instructional Personnel (Code of Virginia, § 22.1-298.1, 2007). McCarthy (2008) suggests that changes in licensure requirements may motivate teacher preparation programs to boost their efforts to teach education law:

“Because changes in licensure influence the content of preparation programs, there is some sentiment that if licensure requirements are altered to require competence in law, the content of teacher education courses will be modified accordingly” (p. 61).

I propose that Virginia’s licensure requirements be upgraded to include competence in legal literacy. In 1997, the Virginia General Assembly passed House Bill 1848 which required pre- and in-service teachers to show competence in technology in order to keep pace with educational demands related to electronic communication, informational access, and data organization. The Technology Standards for Instructional Personnel (TSIPS) have been embedded in the curriculum for undergraduate teacher preparation programs in Virginia since 1998, and in-service teachers (who graduated prior to 1998 or earned their degrees outside of Virginia) are required to complete TSIPS for license renewal.

The TSIP requirement was an outgrowth of changes in technology at the turn of the 21st century. I recommend that a parallel set of standards, the Legal Standards for Instructional Personnel (LSIPs), be adopted so that new and experienced teachers can keep up with changes in education law. In an unpublished study (2010), I confirmed that several school divisions in this area are already offering offer online training on various topics in staff development; and the Virginia Department of Education requires completion of online modules dedicated to child abuse reporting and suicide prevention. These are usually designed so that teachers can show competency by successfully answering follow up questions after viewing the modules. I recommend that the Virginia Department of Education expand its current online offerings to

include coverage of legal content relevant to student/teacher interactions. These offerings would become a resource for experienced teachers who need to be updated on changes in the law as well as candidates for teacher licensure.

This effort would require collaboration with Virginia's teacher education programs (including its Career Switcher Program) and other stakeholders. There would need to be agreement regarding current essential legal content for classroom teachers, and content would be require updating in line with litigation trends.

Current Constitutional Disputes and Litigation Trends

To this point, I have explained than knowledge of landmark cases and educational legislation will be helpful to teachers who want to safeguard the rights of students and parents. I have referenced a deep body of case law which has historically influenced education in the American public school. Several of the constitutional freedoms documented in older case law are currently being debated in current court cases as the technological advances impact the lives of teachers and students (Miller, 2011; Spung, 2011).

For example, Miller (2011) explains that teachers who choose to communicate publicly via social media are exercising their rights to freedoms of speech at the risk of public scrutiny. Facebook and other platforms do not always provide anonymity to adults who want to share details of their private lives or make contrary statements about their work or political topics. Moreover, when teachers "friend" their students, they jeopardize the teacher/student relationship. Such actions by teachers (seemingly benign) weaken the protection of students. She notes, "While parents and communities may want their students' teachers to set a high example, teachers are average people that go to parties (sometimes where alcohol is served) and rant out their frustrations of work or school to their friends (occasionally in unpleasant terms). Facebook

can make private conversations or social gatherings public—sometimes because of lapse of judgment on the teacher's part, and sometimes involuntarily or unwittingly...”(p.639).

Student cell phones present another constitutional issue for teachers and administrators. Spung (2011) explains that the standard established in *T. L. O. v. New Jersey* regarding a student’s privacy and the Fourth Amendment (wherein a school authority needs only reasonable suspicion rather than probably cause to search) may be too intrusive given today’s technology advancements. When a cell phone is confiscated, its contents are likely to be more expansive (and possibly incriminating) than expected based on an initial reasonable suspicion. For example, school authorities could likely find evidence of cyberbullying, sexting, or activities related to illegal drugs when they are suspecting something else. Spung calls for the justification of search and seizure of student cell phones to be revisited in order to protect students and safeguard against litigation: “The mounting uncertainty over the privacy students can expect in their cell phones against school officials’ intrusions has left schools vulnerable to widespread opposition and rights-based litigation. Students often reflexively believe that they should have more privacy rights in their cell phones than the established standard provides (p.111).

Connections to Civic Education

As this study has evolved, I have speculated on the extent to which a teacher’s level of civic engagement impacts her role as a model of citizenship. An empirical investigation is beyond the scope of this report, but the implications for citizenship education provide motivation for further study. There may be a connection between a teacher’s legal literacy, her level of civic engagement, and her role as model of citizenship.

Literature on this topic documents several typologies to describe the thinking and actions inherent to various levels of civic engagement (Iverson & James, 2010; Bohan, Doppen,

Feinberg & O'Mahony, 2008). For example, the Banks typology offers four categories which range from *legal citizenship* (inherent to those born in the United States) to *minimalist citizenship* (characterized by the simple act of voting in elections) to *active* (demonstrated by participating in community service opportunities) to the *transformative citizenship* in which the participant seeks to be a proponent of social justice and change (Banks, 1999).

Similarly, Westheimer and Kahne (2004, p.240) define three types of citizens: the *personally responsible citizen* (who contributes food to a food drive), the *participatory citizen* (who helps organize the food drive), and the *justice-oriented citizen* (who explores why people are hungry and acts to solve root causes). Iverson and James quote Westheimer and Kahne, "Educators who are committed to justice-oriented citizenship... "seek to prepare students to improve society by critically analyzing and addressing social issues and injustices" (p. 242). This justice orientation differs qualitatively from those who are committed to citizenship as personally responsible or participatory in nature. Educators focused on citizenship as being personally responsible emphasize character education and individual responsibility for leading a moral life and contributing to the community in cooperative and positive ways" (2010, p. 21).

Additionally, Gutmann (1993) espouses the theory that teachers should promote citizenship through democratic processes in the classroom. One of the tenets of her theory is that children who are engaged in activities which involve sharing resources, voicing opinions, making choices, and accepting differences among individuals are practicing for transfer of these skills in adulthood. I hypothesize that teachers are more deeply engaged as citizens will be better able to lead "democratic" classroom activities.

Summary

I believe that teachers want to understand more about education law out of a desire to be superior professionals. The evidence in this report indicates that teachers have a marginal understanding of the laws in place to protect and ensure the safety of children while acknowledging their freedoms as citizens. I found no evidence that lack of legal literacy is related to demographics or teacher preparation; it is a systemic problem. Subsequently, I have proposed a plan which calls for an additional licensure requirement to show competence in legal literacy. I believe that such an effort will strengthen the standards of the profession in this state and provide teachers with the information that they themselves seek.

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Appendix A

Education Law Survey for Classroom Teachers

Section 1: Please respond to the following statements about education law:

1. *The U. S. Supreme Court has declared that education is a right protected under the U.S. Constitution.*

- True
- False
- Unsure

2. *The first amendment protects student speech that is offensive, provocative, and controversial.*

- True
- False
- Unsure

3. *School officials may legally search a student's personal belongings without a specific reason.*

- True
- False
- Unsure

4. *Students that choose to participate in competitive athletics may be subjected to random drug testing.*

- True
- False
- Unsure

5. *Students have the right to promote their political beliefs to other students at school.*

- True
- False
- Unsure

6. *School authorities may not impose disciplinary actions based the division's regular code of conduct for students with disabilities.*

- True
- False
- Unsure

7. *A school board can fire a teacher for having a consensual sexual relationship with a student in his or her school even if the student is over 18.*

- True
- False
- Unsure

8. *Teachers are granted qualified immunity for their good faith actions in breaking up a fight even if student injuries result.*

- True
- False
- Unsure

9. *The Family Educational Rights and Privacy Act (FERPA) requires written consent of parents to release educational records.*

- True
- False
- Unsure

10. *School officials must permit students to distribute controversial religious materials on campus if it does not cause a disruption.*

- True
- False
- Unsure

Section 2: Please respond to the following statements about Virginia law:

1. *In Virginia, teachers have the legal authority to select the primary textbooks for their classes.*

- True
- False
- Unsure

2. *Virginia's public school divisions have the authority to mandate student uniforms under certain conditions.*

- True
- False
- Unsure

3. *In Virginia, a school board is required to expel, for a period of not less than one year, any student who is found in possession of a firearm on a school campus regardless of circumstance.*

- True
- False
- Unsure

4. *The Code of Virginia requires that a parent be contacted whenever a child indicates that he or she intends to commit suicide.*

- True
- False
- Unsure

5. *According to the Code of Virginia, school divisions are required to establish a daily moment of silence in each classroom.*

- True

- False
- Unsure

6. *In Virginia, a trained school board employee who administers epinephrine to a student for whom it is prescribed is not liable for civil damages or negligence related to such treatment.*

- True
- False
- Unsure

7. *In Virginia, teachers are required to provide alternative dates to assessments scheduled on religious holidays recognized by the school board.*

- True
- False
- Unsure

8. *Virginia teachers who report suspected child abuse or neglect are immune from civil or criminal liability unless such a report is made with malicious intent.*

- True
- False
- Unsure

9. *In Virginia, instructional personnel may recommend for students neither the use of behavior-altering medication nor behavioral evaluation by a medical practitioner.*

- True
- False
- Unsure

10. *According to the Code of Virginia, a student may be exempt from learning the Pledge of Allegiance if his or her parent or guardian objects on religious or philosophical grounds.*

- True
- False
- Unsure

Section 3: Please respond to the following questions about yourself:

1. *What is your gender?*

- Male
- Female

2. *At what level do you teach?*

- Elementary
- Secondary

3. *What is your highest level of education?*

- Bachelor's Degree
- Master's Degree
- Doctorate Degree

4. *How many years have you been teaching?*

- Less than 3 years
- 3 – 10 years
- More than 10 years

5. *Which of these best describes your path to certification?*

- I earned a bachelor's degree in education
- I earned a bachelor's degree in a field other than education, but as an undergraduate I completed additional coursework to be eligible for a teaching license
- I earned a bachelor's degree in a field other than education, but I went on to earn a postbaccalaureate degree in teaching or education to be eligible for a teaching license
- I completed an alternative certification program which did not require a degree in education
- I am not certified or none of the above describes me

6. *Which of these best describes your primary endorsement?*

- General education at the elementary level
- General education at the middle school level
- Secondary language arts or humanities
- Secondary mathematics or science
- Secondary world languages
- Performing arts or fine arts at the elementary or secondary level
- Library science
- Career and technical education
- Special education or gifted education at the elementary level or secondary level
- Other

7. *Where did you complete the majority of your certification program?*

- In Virginia
- Outside of Virginia
- Other

8. *Which of these describes your **primary** source for training in education law?*

- I completed a separate course in education law as an undergraduate
- I completed a separate course in education law as a graduate student
- I have participated in staff development activities directly related to education law
- I have gained knowledge through my professional organizations
- I have no training in education law

9. *Have you ever been directly involved in a law suit related to your work as an educator?*

- Yes
- No

Thank you for your assistance in conducting this research.

Please email mirabilecp@vcu.edu to receive a copy of the correct responses to the multiple choice section.

Appendix B

Answers to Education Law Assessment for Classroom Teachers

Section 1: Please respond to the following statements about education law:

1. *The U. S. Supreme Court has declared that education is a right protected under the U.S. Constitution.*

- True
- False
- Unsure

According to the Tenth Amendment, responsibilities not specifically assigned by the Constitution fall to individual states. Moreover, the language of San Antonio Independent School District v. Rodriguez (1973) underscores that education “is not among the rights afforded explicit protection under our Federal Constitution.”

2. *The first amendment protects student speech that is offensive, provocative, and controversial.*

- True
- False
- Unsure

The U. S. Supreme Court has given schools the authority to regulate expression within the scholarly environment. In Bethel School District v. Fraser (1986), it denied students the right to use inappropriate language in schools. In Hazelwood v. Kuhlmeier (1988), this power was extended to student newspapers. According to Hazelwood, school authorities “do not offend the First Amendment by exercising . . . control over the style and content of student speech in school-sponsored expressive activities” (Bosher et al., 2004, p.89). However, “controversial, provocative, and even offensive speech is protected by the First Amendment if it is not obscene, does not cause disruption or interfere with the rights of others, or promote illegal activity” (Schimmel & Militello, 2007).

3. *School officials may legally search a student’s personal belongings without a specific reason.*

- True
- False
- Unsure

The Court recognized the need for school authorities to maintain safety and discipline within the school environment in its ruling in New Jersey v. T.L.O. (1985). Initially, a teacher found a student smoking cigarettes in the school rest room. She escorted the student to the vice-principal who conducted a search of her purse and found contraband, including marijuana. The student asserted her Fourth Amendment right that the search was illegal without probable cause. The Court decreed that the nature of the school environment afforded school authorities the liberty to take action based on “reasonable suspicion” rather than “probable cause” (Bosher et al., 2004).

4. Students that choose to participate in competitive athletics may be subjected to random drug testing.

- True
- False
- Unsure

In Vernonia School Dist. 47J v. Acton (1995), the Court ruled that random drug testing of student athletes was lawful in the interest of discouraging overall drug use among the student population (Schimmel et al., 2008). The voluntary nature of student participation in athletics led to a similar Court ruling in Board of Education of Independent School Dist. No. 92 of Pottawatomie City v. Earls (2002) which permitted school authorities to conduct drug testing among students engaged in extra-curricular activities.

5. Students have the right to promote their political beliefs to other students at school.

- True
- False
- Unsure

In Tinker v. Des Moines (1969), high school students challenged that their rights to express themselves were violated when they were suspended for wearing black arm bands to protest the Vietnam War. The U. S. Supreme Court agreed that the armbands were a “protected form of symbolic speech” (Schimmel, Fischer, & Stellman, 2008) and asserted that “Students do not shed their Constitutional right to freedom of speech at the schoolhouse gate.”

6. School authorities may not impose disciplinary actions based the division’s regular code of conduct for students with disabilities.

- True
- False
- Unsure

Before imposing disciplinary action on a student with disabilities, school authorities must determine if the infraction was a function of the student’s disability. If the infraction is found to be unrelated to the disability, the regular code of conduct applies. This is sometimes called the “manifestation determination.”

7. A school board can fire a teacher for having a consensual sexual relationship with a student in his or her school even if the student is over 18.

- True
- False
- Unsure

According to Schimmel and Militello, “Schools can prohibit consensual sexual relations between teachers and students of any age to avoid conflicts of interest.” Technically, the legal age of consent varies from state to state. Since teachers are considered “persons of trust,” the courts have disallowed consensual relationships even after students have graduated (Flaskamp v. Dearborn, 2004).

8. Teachers are granted qualified immunity for their good faith actions in breaking up a fight even if student injuries result.

- True
 False
 Unsure

Qualified immunity is granted by the Teacher Liability Protection Act passed by Congress in 2001 (U.S.C. §§ 6731-6738).

9. The Family Educational Rights and Privacy Act (FERPA) requires written consent of parents to release educational records.

- True
 False
 Unsure

Written consent is not required under certain circumstance such as when the court orders the release of records.

10. School officials must permit students to distribute controversial religious materials on campus if it does not cause a disruption.

- True
 False
 Unsure

According to Schimmel and MIlitello, “Student freedom of expression includes the right to nondisruptively share controversial religious beliefs verbally or in writing.” Moreover, the First Amendment includes the Free Exercise Clause, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

Section 2: Please respond to the following statements about Virginia law:

1. In Virginia, teachers have the legal authority to select the primary textbooks for their classes.

- True
 False
 Unsure

In Virginia, school boards select primary texts for classroom instruction from a list of the approved materials generated by the Board of Education (§ 22.1-238).

2. Virginia’s public school divisions have the authority to mandate student uniforms under certain conditions.

- True
 False
 Unsure

If boards include the community and parents in the decision making, constitutional concerns such as freedoms of speech and expression are addressed, and ability to pay is considered, they may require school uniforms for students (§ 22.1-79.2).

3. In Virginia, a school board is required to expel, for a period of not less than one year, any student who is found in possession of a firearm on a school campus regardless of circumstance.

- True
- False
- Unsure

A school administrator or school board may determine that special circumstances exist for which expulsion is not appropriate (§ 22.1-277.07).

4. The Code of Virginia requires that a parent be contacted whenever a child indicates that he or she intends to commit suicide.

- True
- False
- Unsure

According to the Code of Virginia, social services should be contacted instead if the risk of suicide relates to parental abuse or neglect (§ 22.1-272.1).

5. According to the Code of Virginia, school divisions are required to establish a daily moment of silence in each classroom.

- True
- False
- Unsure

The moment of silence is required by the Code of Virginia in order to provide students the opportunity to engage in religious observation if desired. Classroom teachers are to ensure that students refrain from distracting behavior during this time (§ 22.1-203).

6. In Virginia, a trained school board employee who administers epinephrine to a student for whom it is prescribed is not liable for civil damages or negligence related to such treatment.

- True
- False
- Unsure

Immunity for administration to a student for which epinephrine is not prescribed is pending this school year; the current law allows administration (by a trained teacher or other employee) to a student for whom it has already been prescribed (§ 22.1-274.2).

7. In Virginia, teachers are required to provide alternative dates to assessments scheduled on religious holidays recognized by the school board.

- True
- False
- Unsure

Each local school board shall develop policies for excusing students who are absent by reason of observance of a religious holiday (§ 22.1-254).

8. Virginia teachers who report suspected child abuse or neglect are immune from civil or criminal liability unless such a report is made with malicious intent.

- True
- False
- Unsure

Virginia teachers are required to report suspected abuse or neglect; they are assured immunity from civil and/or criminal liability (§ 22.1-291.3).

9. Instructional personnel may neither recommend the use of behavior-altering medication or behavioral evaluation by a medical practitioner in Virginia.

- True
- False
- Unsure

Personnel may recommend evaluation, but they may not recommend medication (§ 22.1-274.3).

10. According to the Code of Virginia, a student may be exempt from learning the Pledge of Allegiance if his or her parent or guardian objects on religious or philosophical grounds.

- True
- False
- Unsure

The Code of Virginia requires that all students demonstrate knowledge of the Pledge of Allegiance; mandatory recitation is a separate matter (§ 22.1-202).

Appendix C

Cover Letter to Prospective Respondents

Virginia Commonwealth University
School of Education
Department of Educational Leadership
1015 Main Street
Richmond, VA 23284-2020

Dear Colleague,

Classroom teachers use their knowledge of education law every day. Many of us gain initial “legal literacy” through our certification programs and add to our knowledge through staff development training. I am conducting a study to determine training needs in this area, and I hope that you will participate. This study will help me to complete my doctoral requirements at Virginia Commonwealth University. **You have been randomly selected from a larger population, so your individual response is very valuable.**

By clicking the link which follows, you will access the *Education Law Survey for Classroom Teachers* which is a series of multiple choice questions related to education law. There is also a section which asks for demographic information, but your individual responses will be completely confidential. The survey should take about 10 minutes to complete. **The survey window will close on Monday, February 4, 2013.**

The study has been approved by the school division as well as the Virginia Commonwealth Institutional Review Board. I would be happy to answer any questions you have, so feel free to contact me at mirabilecp@vcu.edu. I am excited to receive your responses, and I thank you for your time and assistance.

Respectfully,

Candace Mirabile

Appendix D

Reminder Email Regarding Close of Survey Window

Virginia Commonwealth University
School of Education
Department of Educational Leadership
1015 Main Street
Richmond, VA 23284-2020

Dear Colleague,

I recently contacted you about my doctoral study. I am writing to let you know that the window for completing the *Education Law Survey for Classroom Teachers* closes on **Monday, February 4, 2013**. This survey will help me determine training needs the area of legal literacy, and I am interested in every individual response.

By clicking the link which follows, you will access a series of multiple choice questions related to education law. There is also section which asks for demographic information, but your individual responses will be completely confidential. The survey should take about 10 minutes to complete.

If you have already completed the survey, thank you for your response. Should you have any questions regarding the survey or my study, please contact me at mirabilecp@vcu.edu. I am grateful for your assistance.

Respectfully,

Candace Mirabile