

# Should Principals Know More about Law?

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## **Abstract**

Educational law is a critical piece of the education conundrum. Principals reference law books on a daily basis in order to address the wide range of complex problems in the school system. A principal's knowledge of law issues and legal decision-making are essential to provide effective feedback for a successful school.

## **Introduction**

Everyday we have millions of students enter the doors of our schools in the United States public school system where teachers tell students to stand for the pledge and to change clothing if they are out of dress code. The problem is that the students have rights starting with due process, but in most cases the students' rights are denied. In the United States of America, school communities are governed by state and federal laws. They impact the education system, and they successfully help schools meet the guidelines of state and federal standards. Public school law is continuously changing due to the fact that every time the Legislature meets, we have portions of the Texas Education code changed or amended. We are seeing the increased involvement of the U.S. Congress in education because improvement is needed in the education system. We continue to have legal issues in the area of special education, personnel, student discipline, and religious views. The No Child Left Behind act (NCLB) became the law of the land at the beginning of January in the year 2002. The bill had one purpose, and the purpose was

to improve the education system for every child in America (Avery, 2007). The implementation of No Child Left Behind brought about a greater sense of accountability to schools and school districts. This in turn leads to questions, being asked by stakeholders: What do you want my child to know or learn? How will you let me know my child has mastered the material? What can we do to bridge the gap? If they don't learn what you are teaching, how can we partner to achieve the standards and ensure my child's success? The accountability level is held to a higher standard and under the NCLB Act schools are required to give answers to all performance questions.

### **Purpose of the Article**

The purpose of this article is to express the significance of law in public schools. In public school law you have a basic legal framework, and within the framework you have the roles of state and federal governments, which together establish and operate the Texas school system.(Walsh, Kemerer, and Maniotis, 2005, pg 1) It is imperative that educators become knowledgeable and comfortable with the constitutional rights of students. The questions educators need to ask themselves are: What legal parameters do I have to follow, and what should I do when I find out the parameters?

### **Knowledge of law**

In the realm of education, all stakeholders need to be cognizant of the law and their obligation to uphold the law. Teachers discipline and hold students accountable for appropriate as well as inappropriate behaviors. When teachers discipline students, they use various ways to discipline them, so it behooves teachers need to have knowledge of the law. Without the knowledge of the legal parameters of their actions, they might find themselves on the wrong side of the law (Moswela, B.pg 1). Educators wear many hats; they are the lawyers, the police, and at

times the nurse. Educators perform these duties without formal training. These jobs are necessary, but they are not the nucleus of the teachers business and you can find extensive data in court cases proving that the training is not taking place. There are many ways to acquire a minimal working knowledge of the law. Sperry states that there are at least three tasks an educator should accomplish to gain and maintain a minimal working understanding of the law. Educators must complete an introductory course on school law at a local university (Sperry, pg 28). While Administrators are required to take a course in law in the state of Texas, teachers are not, and at times they are the first people to encounter the students. Educators must become acquainted with the state educational codes and the state laws in which they are practicing (Sperry, pg 28). Most legal documents can be obtained from the school's law agency. This will help teachers become acquainted with the old and new laws. Unfortunately, most teachers and other school personnel are unaware of their ability to obtain such imperative information. The school law agency is an outstanding resource, but it is important that you insure they are not charging you by the hour because this will not be an effective and efficient use of resources. Educators should also become familiar with the rules and regulations of the board (Sperry, pg 28). The school boards represent the citizens in your community and have a decisive role in public education. The school boards have substantial influence over the educational decisions to the schooling process within the district. Ignorance of board policy and the implementation of such may compromise an educator's career. Kritsonis states that the school boards are unique and that they are involved in goal setting and policy making. In addition to the step Sperry stated, we must find a way to stay current. Along with the utilization of the school's law agency and knowledge of board policies, an educator may stay current with updates applying to school law by logging on to the Texas Education Agency's web site. This will allow a teacher to receive

email updates of current policies and referendums to such policies or laws. After logging on to the website, educators must choose a category in which they would like to remain current. They will need to select the topic and enter an email address, in order to receive updated information when it is available. Educators should plan to attend as many staff development opportunities as possible and bring the information back to the school.

Law is comprised of four divisions which are constitutional, statutory, administrative, and judicial (Walsh et al. 2007).

### **Constitutional Law**

Just as the laws of our Constitution have paved the way for many improvements within our nation since it's founding, it has done the same for schools and the people who enter the doors of those schools. Although the constitution plays an invaluable role in the creation of policies and procedures utilized to protect all stakeholders, it has also given states the discretions on how to address public schooling.

The Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (Tenth Amendment, pg 1509). This means that, the power over education does not solely belong to the Federal government; it is a state fuction. The Tenth Amendment proclaims that all powers not entrusted to the Federal government are reserved to the state (Kritsonis, pg.177). The Tenth Amendment gives the state power over schools, but the state does not have to set up the public school system. The court decided in the 1973 csae of San Antonio I.S.D. vs. Rodriquez, that education is not a fundamental right for all persons (Walsh et al. 2007).

Probably the most significant provision established by the United States government is that of the 1954 Brown vs. Board of Education in Topeka, Kansas. This judicial turning point

assisted in the dismantling of “the legal basis for schools and public facilities” (<http://brownvboard.org/summary/> retrieved December 5, 2009). It was declared that racially segregated schools “violate the 14<sup>th</sup> amendment to the United States ...” (Retrieved December 5, 2009 <http://brownvboard.org/summary/>) “The Fourteenth Amendment mandates that states may not deny equal protection to citizens” (Kritsonis, pg. 179).

It is interesting that the same laws and provisions that school districts depend on sometimes put them in litigation. Principals who are not abreast of school law will find themselves in such a situation as well. Often-times principals believe those professionals who walk through their halls and teach their students on a daily basis are their property. They feel they have the right to determine the behaviors that are conducted or not conducted by those said professionals. The truth is that “Teachers have the same basic protections as other citizens under the Constitutions, but these rights may be interpreted differently” (Kritsonis, pg. 177). As we all know, at any point that there is an opportunity for things to have multiple interpretations, you must be well versed in that area to avoid the agonizing consequence of your misinterpretations of any given situation or right. Your uncouthly road of negligence can lead you to an equally uncouth court room. It is often hard for administrators to fathom that their teachers have the right to “Freedom of Speech.” Although teachers enjoy such a right, however, it is “somewhat restricted” (Kritsonis, pg 183).

### **Statutory Law**

The statutory law is an important source because it deals with the daily functions of the school, the duties of the State Board of Education, the Texas Education Agency, charter schools, School boards, and personnel (Walsh et al. p.2 2007). During the 1980’s, legal statues were put in place to help ensure improvements in the education system. “The first reforms mandated that

schools offer a balanced curriculum for specific subjects and the legislator passed House bill 72 in 1984 that changed Texas public schools” (Walsh et al. p.2 2007). Later in the 1980’s the paradigm shifted again. This shift brought the responsibility of education back to district and district personnel after little evidence showed any improvement in education. These new findings initiated the Legislature to completely revamp the Texas Education code, the first since 1949. The reconstruction of the Texas Education code provided stakeholders with a more user friendly interpretation of the Texas Education Code (TEC), while at the same time allowing districts, school personnel, and parents more ownership of the education system (Walsh, pg 2).

Although the Legislature has provided a sense of independence towards schools districts, it must be said that the districts, school personnel, and students are still governed by the state. At any point the state has the right to change the playing field and the requirements of such. For instance, those students entering high school prior to the school year 2007-2008 were only required to complete three courses in the area of Math and Science to complete their high school graduation requirements for their core content. However, in 2006 at a Texas Education Agency Board meeting, the graduation requirements were revised. This revision determined that students under the recommended and distinguished graduation plans must complete a fourth year of Math and Science (along with other requirements), in order to fulfill their graduation requirements for their core content (Retrieved on December 5, 2009

<http://www.tea.state.tx.us/index2.aspx?id=6108> ). Although most were not impressed with this change, it is a change that was determined and mandated by the state. Simply put, this means “non-negotiable.” It is imperative for educators to realize that mandates determined by the state may not be altered.

## **Administrative Law**

Administrative law is another entity of educational law that must not be overlooked. It “consists of the rules, regulations, and decisions that are issued by administrative bodies to implement state and federal statutory laws” (Walsh, p. 3). The responsibility of such laws is to incorporate such laws that may be applied to “real world” events and issues. Those who have any experience in the field of special education have experienced the affects of such laws and the regulations attached to them. Special Education is built on laws that were implemented on the basis of administrative law. For instance, The Individuals with Disabilities Education Act (IDEA) “was developed by the administrative agency, the Office of Special Education” (Wlash et al. pg. 3).

The laws and regulations of such laws may often seem overwhelming; in fact the “length of a statute’s regulations often exceeds that of the statute itself” (Walsh pg 3). The purpose of this plethora of extensive detail attached with each regulation is to alleviate room for any amount of uncertainty. Due to the amount of information attached to these regulations, more often than not, educators fail to become familiar with their responsibilities in reference to these regulations.

## **Judicial Law**

Lastly, when a conflict arises in the area of Constitutional, Statutory and/or Administrative Law, Judicial Law steps in with authority to have the final say (Walsh et al. pg. 6). If educators fail to arm themselves with the knowledge and understanding of such laws, they too will find themselves among the four walls of a courtroom. Ignorance will not excuse a crime in the eyes of a judge. Therefore, the importance of being knowledgeable on school law is noted for all educators and administrators.

The importance of school law is not only to keep educators out of the courtroom, but is also

meant to assist in the safety of all parties involved.

### **Determining Rights**

The constitution was unheard of until around the 1850's. This was when Horace Mann convinced the courts of Massachusetts that the state would be well-advised to make education free to the children of the citizens (Avery, 2007). Yes, there were community schools, but they were run by the parents and they had no government supervision or funding. The schools were not mandatory and there were no compulsory attendance laws. The parents could send the students to school or not. The courts assumed that the parents had the authority of and over schools, giving birth to a doctrine known as the phrase *loco parentis*. In *loco parentis*, the students had no rights of their own. They were considered to be the property of their parents. The teachers who accepted the students during the school day could do whatever they deemed necessary as long as they returned the children undamaged at the right time, which the law calls *bailment*. The doctrine *loco parentis* did not have much power after the parents had no choice where they could send their children to school. The state of Connecticut was one of the first states to say every parent should be held accountable for sending their children to school. This led a father of two teenage children to challenge the Connecticut law because his land was being seized without due process (Avery, 2007). It was being seized because his daughters were forced to attend school and therefore couldn't help with farming duties.

### **Decision Making**

As educators acquire a current educational law knowledge base, it is hoped that this acquisition of such knowledge will guide their decision making in everyday experiences inside and outside of the school environment. Although it is important for a school principal to utilize such knowledge, the use of this knowledge alone will not relieve one of further responsibilities.

Principals must also, have an “understanding of how to make decisions involving legal (or potential) problems” (Sperry, pg. 61).

### **Landmark Cases**

Throughout the years our education system has undergone some sudden and excruciating changes. This is due in part to the direction of our nation and the people within it. Before we may begin to investigate or determine our future, we must first understand our past. We have several landmark cases in the United States of America which we as educators need to become familiar with. In 1954 the United States of America made one of the most significant court turning points in the development of our nation. The case began with Charles H. Houston and then was turned over to Thurgood Marshall and his legal team who ended racial segregation in schools by declaring that it violated the 14<sup>th</sup> amendment to the constitution, effecting school as well as other public places. Brown vs. Board of Education was the foundation of shaping the nation’s policy on human rights. Brown v. Board of Education was not only about the students in education; it was about the human’s prejudice and tendencies in whatever capacity.

Although the two previous cases are important, they are not the first cases to actually challenge the education system. Roberts v. City of Boston was fielded in 1849; this case was brought by African--Americans and it actually mandated segregated. The Brown v. Board case ignited the social reform in the United States and launched the Civil Rights Movements.

#### **Delaware – Belton v. Gebhart**

This case was first petitioned in 1951 and it challenged the conditions of the two black schools designated to the black children. The children were forced to go to school in the suburb of Clayton because the black students were banded from going to the local school in the city. The student had to ride a bus for an hour each way to Howard High School in Wilmington. The

school had inadequate facilities, teachers, staff development, and extracurricular program. The plaintiffs won the case but the ruling did not apply to all schools in Delaware.

#### Kansas – Brown v. Board of Education

The NAACP was led by McKinley Burnett in the 1950's and he took on the legal challenge of the 1879 State law that permitted some schools to remain segregated based on the population of that school. The NAACP gathered a group of 13 parents who agreed to be plaintiffs under legal counsel and go enroll their children in segregated white schools. In February 1951, the Topeka NAACP filed a lawsuit on Kansas.

#### South Carolina – Briggs v. Elliot

The NAACP in Claredon, South Carolina first tried to take legal action in 1947. The complaint they had was the racism they encountered while attending the schools. In 1951, the REV. J.A. Delaine convinced the parents of the black children to join him and the NAACP in an action suit because the teacher and transportation salaries were grossly inadequate when compared to the white children's school. The order to equalize the schools was ignored by the personnel and the school. Thus, the schools were never made equal.

1876 Texas Legislature establishes the school fund on a per capita basis (Walsh, et. al 2005).

1949 Gilmer-Akin bill established Minimum Foundation Program with local and state (Walsh, et. al 2005).

1954- Brown vs. Board of Education (Walsh, et. al 2005).

1973 San Antonio I.S.D. V. Rodriquez---U.S Supreme Courts (Walsh, et. al 2005).

1984 House Bill 72 established basic allotment for students (Walsh, et. al 2005).

1989 EDGEWOOD ISD V. KIRBY a landmark case concerning public school finance (Walsh, et. al 2005).

1990 Texas Legislator starts new financial system (Walsh, et. al 2005).

- 1991 Edgewood II ---Texas Supreme Courts decide financial system unconstitutional (Walsh, et. al 2005)..
- 1991 Edgewood IIF1/2 Texas Supreme Courts refused to override 1931 to prohibit use of local taxes (Walsh, et. al 2005).
- 1991 Texas Legislature created 188 districts to levy all taxes (Walsh, et al 2005).
- 1992 Carrollton—Framers Branch I.S.D. v. Edgewood I.S.D Courts find CED plan unconstitutional (Walsh, et al. 2005).
- 1993 Voters reject CED and other school financial plans (Walsh, et al. 2005).
- 1993 Texas Legislator passes Senate Bill 7 (Robin Hood) (Walsh, et al. 2005).
- 1995 Edgewood I.S.D v. Meno ( Edgewood IV)---Texas Supreme Court declared Robin Hood Constitutional (Walsh, et al. 2005).
- 2001 Property- wealthy school districts challenge constitutionality of Robin Hood plan (Walsh, et al. 2005).
- 2004 Special session of Texas Legislature called and ends with no plan (Walsh, et al. 2005).
- 2004 Robin Hood Litigation ongoing (Walsh, et al. 2005).

#### Concluding Remarks

In conclusion, some information and knowledge on educational law would be a great way to start the year. The teachers would be more cautious in dealing with our students and minimize the amount of legal problems school districts have. This would set the tone that teachers are fair, firm and consistent and the reason students will say that is because the staff will know the law.

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