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Evaluative Study of Legal Literacy Relative to Principals' Knowledge of the First, Fourth, Eighth, and Fourteenth Amendments and the Impact on Daily Decision-Making

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EVALUATIVE STUDY OF LEGAL LITERACY RELATIVE TO PRINCIPALS'
KNOWLEDGE OF THE FIRST, FOURTH, EIGHTH, AND FOURTEENTH AMENDMENTS
AND THE IMPACT ON DAILY DECISION-MAKING

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Title: Evaluative Study of Legal Literacy Relative to Principals' Knowledge of the First, Fourth, Eighth, and Fourteenth Amendments and the Impact on Daily Decision-Making

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The purpose of this quantitative study was to analyze Pennsylvania public school principals' knowledge of constitutional school law by determining if a descriptive difference existed between Pennsylvania principals' perceived level of knowledge and actual knowledge of constitutional school law, determining if a connection existed between principals' awareness of constitutional school law litigation cases and their daily decision-making, and ascertaining where principals felt as though they acquired their foundational knowledge of school law.

The participants in the study were Pennsylvania public school principals during the 2013-2014 school year. In total 139 participants completed a quantitative study in its entirety. The survey results were then entered in the Qualtrics program and code to answer the research questions. In addition, Chi Square crosstabulations were performed to look to descriptive differences in principals' perception of their knowledge and their actual knowledge.

Findings of this study did not reveal descriptive differences between perceived and actual knowledge. It was revealed that principals do not remain current on new case law. In addition, it was revealed that principals rely heavily on superintendents or their designee to provide them with updates in the area of school law.

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To Cohort 11, you rock! I am confident that as long as each of you actively engages in the world of education our children will prosper. Mr. Woods, I am counting the days until I get to refer to you as my good friend, Dr. Woods.

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CHAPTER 1

INTRODUCTION

In 1965, three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. The pupils, through their fathers filed a complaint under §1983 of Title 42 of the United States Code. The Supreme Court's decision in *Tinker v. Des Moines Independent Community School District* (1969) set the legal standard for student free expression rights. The wearing of armbands was "closely akin to pure speech" and protected by the First Amendment. School environments are permitted to impose limitations on free expression, but here the principals lacked validation due the omission of a substantial disruption. The principals had failed to show that the students' conduct would substantially interfere with appropriate school discipline. First Amendment rights light of the special characteristics of the school environment, are protected and available to teachers and students. The Court stated that it can hardly be argued that "neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. De Moines*, 1969).

Bull & McCarthy (1995) argued that school leaders have a responsibility to adhere to legal statutes, and ignorance of the law will not shield them from liability for violating protected rights (Bull & McCarthy, 1995, p. 619; *Wood v. Strickland*, 1975). Prior to the 1900's there were very few legal cases that directly impacted education. John Hogan (1985) estimated that from 1789-1896 there were only 3,096 total cases at the federal and state level that affected education. *Tinker* fundamentally changed the role of the principal. Since then, Reglin (1992) estimated that about 1,200 to 3,000 lawsuits a year are brought against teachers and administrators. In 2003 Common Good, a tort reform advocacy group hired by the Harris

Interactive surveyed public school teachers and administrators. The survey found that 82 percent of teachers and 77 percent of principals say the current legal climate has changed the way they work. More than 60 percent of principals surveyed said they had been threatened with a legal challenge.

In the years before *Tinker* traditional principal preparation programs lacked the precedent needed to manage school-related litigation issues. The fundamentals of the principalship became drastically different as a result of the wave of litigation. “The principal now is a *legal actor* and must therefore be a *legal expert*- at least in certain areas of the law” (Doverspike as cited in Brabrand, 2003). Alexander and Alexander (1984) stated:

During the past generation Americans have witnessed an explosion of litigation affecting education. Courts have become much more actively involved in aspects of education which were heretofore left entirely to the discretion of school administrators and school boards. Teachers’, students’, and parents’ rights have been asserted in legal actions against school authority producing a vastly expanding field of judicial precedents which have tended to reshape American education (p. 2).

In previous doctoral studies, principals rated school law as having high relevance, however; substantial evidence indicates that principal preparation programs are not preparing aspiring principals for legal issues faced daily (Brabrand, 2003; Caldwell, 1986; Moncrief-Petty, 2012, Schlosser, 2006, and Williams, 2010). School leaders need to learn to think, speak, and act in ways that reflect legal and moral considerations, and opportunities for such learning should not be restricted to discrete units or courses in educational leadership programs (Bull & McCarthy, 1995, p. 629). Given this spike in litigation, principals continue to rely on a superficial understanding of school law and lack a sense of urgency in deepening their

knowledge. Research indicates a need to determine the extent of school administrators' awareness of constitutional school law in relation to their job experience and preparation in school law. As Permuth and Mawdsley (2001) concluded; "For contemporary principals, avoiding the courtroom is directly related to understanding school law and court decisions that affect the day-to-day operations of schools" (p. 29). According to Doverspike (1990), a principal's "most powerful defense" against liability and litigation is an "extensive and adequate" knowledge of school law. Principals must continue to remain current in school law via graduate school principal certification programs, colleagues, literature, and continuing professional development sessions; including but not limited to, conferences, workshops, and in-services.

Lester's (1993) study, *Preparing Administrators for the Twenty-First Century*, found that by the year 2000, administrators at the superintendent level, middle/junior high and elementary levels stressed that school law would be one of the most important courses required for preparation of principals. More recent studies by Eberwein (2008), Christensen (2009), Provinzanzo (2010), and Smith (2010) stressed the importance of a solid foundation of legal knowledge, but they also agreed that it is not occurring in teacher or principal preparation programs.

The Interstate School Leaders Licensure Consortium (ISLLC) released the standards for school administrators in 1996. "Standard 5 required school leaders promote the success of all students by "acting with integrity, fairness, and in an ethical manner" (p. 18). School administrators must demonstrate they have acquired the knowledge of various ethical frameworks and perspectives on ethics, in order to be committed to bringing ethical principles to daily decision-making (Shapiro & Stefkovich, 2005). "Standard 6 required school leaders

promote the success of all students by “understanding, responding to, influencing the larger political, social, economic, legal and cultural context” (p. 19). Administrators are required to demonstrate knowledge and understanding of the laws related to education and schooling. While most would argue that a principal’s role is that of instructional leader, the operation of a public school has become an inextricable legal activity (Smith, 2010). Robert Arum, a sociologist and director of research at Steinhardt School of Education at New York University was quoted in the article *Legally Bound* (LaFee, 2005) as saying: “There’s a grain of truth that the fear is perceived, rather than real. It’s rare that an individual educator has been found liable for errors on the job, the exception being if they knowingly violate due process or commit a crime” (“Survey Says”, para 18). He also stated that “rare is real” and the huge costs to districts and to the professional lives of educators in defending against the lawsuits takes a significant toll financially and emotionally. Ullian (2006) contends that administrators should be able to answer two questions regarding school law, “What can I do, what should I do?” Ullian’s statements support the argument that principals must keep students’ best interests in mind when dealing with issues related to constitutional school law.

Statement of the Problem

Principals operate in a continuously increasing litigious environment. Administrators are frequently hesitant and indecisive when making decisions on a daily basis that might have legal ramifications (Cambron-McCabe, McCarthy, & Thomas, 2009). Confronted with difficult situations, administrators frequently rely on the rule of law to guide their work, however; most if not all of these situations require ethical rather than, or in addition to, legal decision making (Shapiro & Stefkovich, 2010). Nationally school districts are paying between \$45,000 to \$400,000 annually for legal expenses incurred in the aftermath of legal challenges to the actions

of their school personnel (Militello, Schimmel, & Eberwein, 2009; Petzko, 2001; & Schimmel & Militello, 2007). The excessive cost of education litigation is due, in part, to the decision making of school personnel who are not only unaware of the laws, but often are given misinformation about the protected rights of students and teachers. Public education has become a *hyper-legalized* enterprise in the United States. Researchers have reported that, on average, there are 3,000 legal claims filed annually against teachers and school personnel (Reglin, 1990, 1992; Stover & Cook, 2009). Finally, Underwood and Noffke conducted a study in 1990 where they found nationwide, school systems are averaged one lawsuit a year which cost the districts approximately \$13,500. Even though the districts prevailed in most cases, nationally this totaled \$417,000 (Underwood & Noffke, 1990). Principals must possess accurate knowledge of education law and understand that the law permeates every aspect of the principalship.

Purpose of Study

The role of the school administrator has gone from the position of being considered “The Law” to the position of being accountable under the law. The best way for a school administrator to avoid a lawsuit Zahler (2001) suggested is to have a thorough knowledge of school law (p 3). The purpose of this quantitative study was to analyze Pennsylvania public school principals’ knowledge of constitutional school law by determining if a descriptive difference exists between Pennsylvania principals’ perceived level of knowledge and actual knowledge of constitutional school law, determining if a connection exist between principals’ awareness of constitutional school law litigation cases and their daily decision-making, and ascertaining where principals feel as though they acquired their foundational knowledge of school law.

Theoretical Framework

Starratt (2004) defines an ethical framework as a basic assumption about beliefs, values, and principles used to guide choices. Traditionally, courts have been hesitant to tie schools officials' hands when it comes to making decisions related to practice and thus have given practitioners considerable discretion in day-to-day decision making (Shapiro & Stefkovich, 2005). At the same time, there have been actions on the part of school personnel that courts have ruled as legal, which other educators have criticized as bad law or bad practice. Foster (1986) stated, "administration at its heart is the resolution of moral dilemmas". Foster's statement implies that most if not all of these education-related legal opinions carry with them ethical consequences.

Understanding that adults possess a great deal of power in determining students' best interests and realizing how easy it is to ignore the voices of those who literally have the most to lose, it is critical that administrators make ethical decisions that truly reflect the needs of students. This requires self-reflection, open mindedness, and an understanding that making ethically sound decisions profoundly influences others' lives. (Shapiro & Stefkovich, 2005)

Best Interests of the Students

The term "best interests" is rooted in the philosophy of the law known as legal jurisprudence. The courts refer to the "best interests of the child" in cases involving child labor, custody, and compulsory education (Goldstein, Solnit, Goldstein & Freud, 1996). School administrators tend to interpret this phrase in a variety of ways, and often disagree on the best course of action or what is truly in the best interests of the student. Shapiro and Stefkovich (2005) propose a three Rs model; rights, responsibilities, and respect. The authors state that

students' best interest are at the center or core of the ethic of profession, which encompasses the ethics of justice, care, and critique and is strongly influenced by the community. To better understand the interconnectedness of these models it is important to examine each one individually.

Ethic of Justice

Shapiro and Stefkovich (2005) outlined that justice provided the basis for legal principles and ideals. They challenged the public to “ask questions related to the rule of law and more abstract concepts of fairness, equity, and justice” (p. 9). Starratt (1994) categorized the core values of ethic of justice as fairness and equal treatment. The ethic of justice consistently raised questions about the justness and fairness of laws and policies according to Shapiro and Gross. On the other hand, Shapiro and Stefkovich asserted that the ethic of justice sustained the principle of due process and protected the civil and human rights of all individuals.

Ethic of Care

The ethics of justice and care are intertwined, but the ethic of justice shifts “the emphasis on rights and laws to compassion and empathy” (p. 10). Shapiro and Stefkovich (2005) stated that when “ethic of care is valued, school leaders emphasize relationships and connections in the decision-making process, rather than strategies and rules associated with a hierarchical approach” (p. 10-11). To transcend the ethical decision-making process and strive to balance caring, nurturing, and focusing on the intrinsic worth of students, rather than focusing on rules and techniques school administrators utilized the ethic of care to create the appropriate climate. (Shapiro and Stefkovich, 2005).

Ethic of Critique

Challenging the status quo and giving a voice to students that are marginalized in education is the mission of the ethic of critique. (Shapiro & Gross, 2002; Shapiro & Stefkovich, 2005). The ethic of critique forced school administrators to confront moral issues when the benefits of some groups outweighed other groups in society even when resources and the application of rules were equally distributed (Starratt, 1994). Troy (2009) summarized the ethic of critique by saying that it “forced school administrators to rethink, redefine, and reframe concepts such as privilege, power, culture, and social injustice” (p. 12).

Ethic of Community

An ethic of community was proposed by Furman (2003) and specifically targeted educational leaders to address the daily life challenges in schools through moral responsibility and development to pursue moral practices. Furman (2003) argued that the ethic of community meant all who were morally responsible for schooling comprised the concept of community. Shapiro and Stefkovich (2005) argued that the ethic of community included the customs, rituals, and expectations embraced by the community.

Ethic of Profession

The ethic of the profession as originally defined by Shapiro and Stefkovitch (2005) considered “the ethics of justice, care, and critique as well as what the profession expects, what happens when personal and professional ethics clash, and how the community influences educators’ ethical decision making” (p. 14). Shapiro and Stefkovich (2005) refined the definition to state that the ethic of profession “calls for school leaders to consider professional and personal ethical principles and codes, standards of the profession, and individual professional codes to

create a dynamic model that places the best interests of the student as central” (p. 14). The figure below illustrates the ethic of the profession.

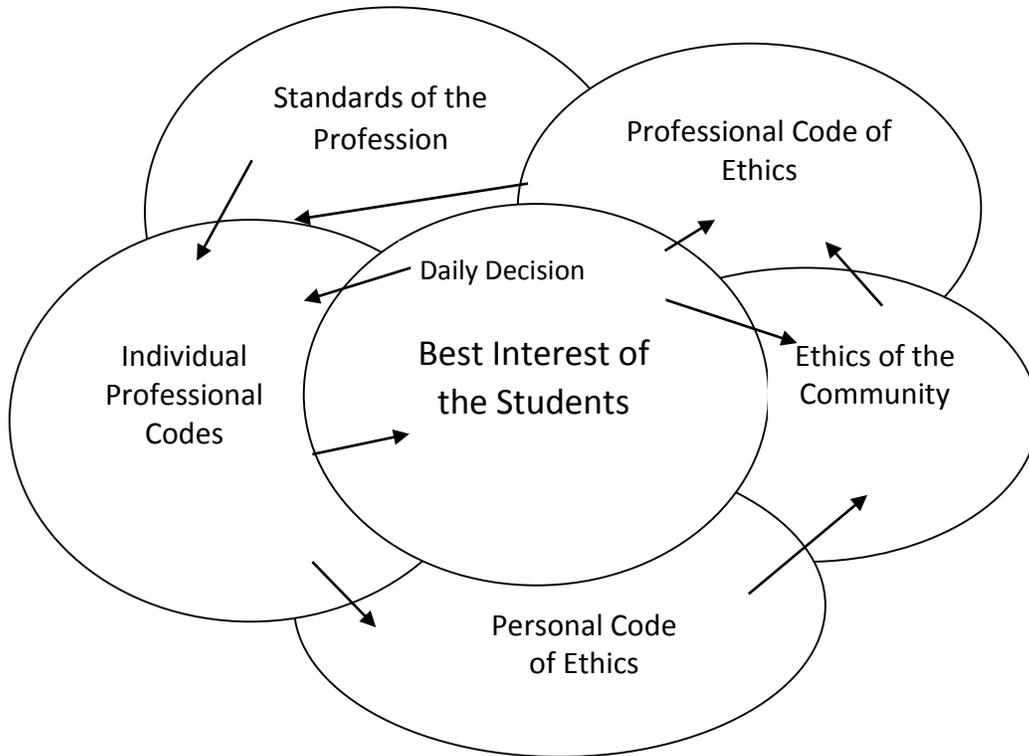


Figure 1. Adapted from *Ethic of the profession* J.P. Shaprio & J.A. Stefkovich (2005) (p. 15).

The students’ best interests are at the center of the ethic of profession, which encompasses the ethics of justice, care, and critique and is strongly influenced by the community. Starratt (1994) explained it in this way:

Each ethic needs the very strong connections embedded in the other; the ethic of justice needs the profound commitment to the dignity of the individual person: the ethic of caring needs the larger attention to the social order and fairness if it is to avoid an entirely idiosyncratic involvement in social policy; the ethic of critique requires an ethic of caring if it is to avoid cynical and depressing ravings of the habitual malcontent; the ethic of justice requires the profound social analysis of the ethic of critique in order to move

beyond the naïve fine-tuning of social arrangements in a social system with inequities built into the very structures by which justice is supposed to be measured. (p. 55)

Rights

This *best interests* model portrays rights granted to all human beings, universal rights, and rights guaranteed by law as essential in determining students' best interests. Some fundamental rights under the U.S. Constitution include freedom of religion, free speech, privacy, due process and freedom from unlawful discrimination. In cases such as *Tinker* and *Blackwell* the Supreme Court has recognized that although students are entitled to these basic rights, they are limited in the school context. In addition to these rights the "best interests" model includes a right to dignity and protection from humiliation and two rights that are not considered to be fundamental under that U.S. Constitution, the right to an education, and the right to be free from bodily harm, which includes corporal punishment.

Responsibility

Bethel v. Frazer (1986) illustrated that students have a right to free-speech but the courts have found that they also have a duty to exercise this right responsibly. In another example nonviolent protests are clearly a student's right under the Free Speech Clause of the First Amendment, bullying and harassing other students is not. The ethics of justice provides a foundation for discussions of responsibility.

Respect

In the best interests model respect is defined as treating all students with respect but also expecting students to treat others in the same manner (Shapiro & Stefkovich, 2005). The emphasis is on equity as well as equality, tolerance, self-respect, an appreciation and celebration

of diversity, and a commitment to finding common ground in an increasingly multicultural, pluralistic society.

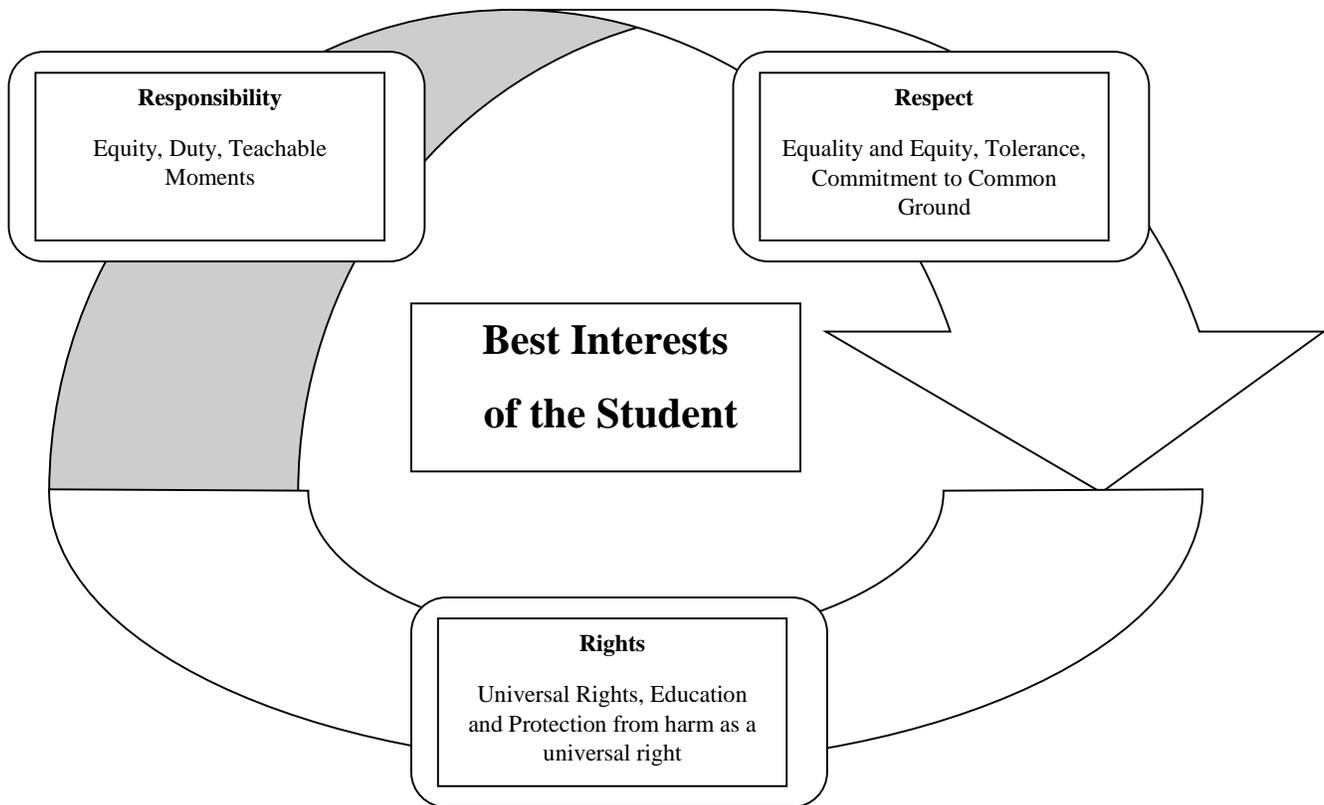


Figure 2. Adapted from *Best Interests Model* adapted J.P. Shapiro and J.A. Stefkovich (2005) (p. 26).

The *best interests* model emphasizes the importance of students' rights and of accepting responsibility for actions associated with these rights. Administrators must model responsibility in order to teach it. This highlights the importance of legal and ethical decision-making models that allow administrators to make informed decisions about resolving the conflicts that arise in practice. Walker (1998) asserted: "the educational decisions and policies related to children must be, at the very least, grounded in applied jurisprudential and ethical considerations" (p. 300).

Operational Definitions

The following are phrases, terms, and acronyms that are commonplace to educational practitioners, but may be unfamiliar to those outside of education. The definitions below are provided for clarity and specificity.

Interstate School Leaders Licensure Consortium (ISLLC) “is a consortium of 32 education agencies and 13 education administrative associations that have worked cooperatively to establish an education policy framework for school leadership” (Retrieved from <http://www.ecs.org>).

Pennsylvania Department of Education (PDE) is the educational regulatory agency for the State of Pennsylvania.

Principal for this dissertation is defined as a certified administrator in a Pennsylvania public elementary, middle/junior high or high school.

School Code refers to The Public School Code of 1949 (24 P.S. § § 1-101-27-2702) is a collection of laws on a common topic and in Pennsylvania the statutes of the General Assembly concerning public education are collected in The Public School Code of 1949 and other statutes.

Research Questions

This study will examine the following research questions:

- 1) Does a descriptive difference exist between Pennsylvania principals’ perceived level of knowledge and actual knowledge of constitutional school law?
 - Do principals believe that they are knowledgeable?
 - Are principals in fact knowledgeable?
- 2) Does a connection exist between principals’ awareness of constitutional school law litigation cases and their daily decision-making?

- Are principals aware of precedent setting school law cases?
 - Do principals intend to modify their behavior after learning about constitutional school law?
 - Do principals act in the best interests of the students based on their knowledge of constitutional school law?
- 3) Where do principals feel as though they acquired their foundational knowledge of school law?
- What level of law training has principals participated in both pre-service and ongoing?
 - How do principals obtain legal knowledge beyond formal training?

Significance of the Study

Past research documents that principals are failing to stay current in the areas of constitutional school law and are failing to demonstrate an understanding of how school law litigation impacts their daily decision-making. The spike in litigation also supports that principals are not making informed decisions with regards to the best interests of the students (Zirkel 1998; Frick, 2006, Eberwein, 2008; Provinzanzo, 2010). In addition, the research documents improvements in continuing professional development is needed (Zahler, 2001; Valadez, 2005; Copenhaver, 2005). During a review of literature no comprehensive studies were found that were conducted in Pennsylvania that address each of the First, Fourth, Eighth, Tenth and Fourteenth Amendments. Recommendations from Copenhaver (2005), Smith (2010), Williams (2010) and Moncrief-Petty (2012) support the need for further research in other states in the area of principal knowledge of school law. Each state presents unique challenges that impact a principal's daily decision-making in relation to all areas of school law and further research is

needed to address these challenges (Doverspike, 1990). Prior research studies were restricted to a limited extent of school law topics. Kalafatis (1999) confined his study to the issues of the Fourth Amendment, while Singletary's work (1996) was limited to First Amendment rights. Brabrand (2003) omitted special education, while Grasso (2008) focused her study specifically on this one area. The review of literature for this dissertation included each of these areas in the above cited studies, and included areas of school law specifically related Pennsylvania.

The information gathered in this study looked to analyze the relationship of principals' actual knowledge of school law and perceived knowledge, principals' awareness of the impact of litigation on daily decision-making and the professional development opportunities for principals. Studies of principals' knowledge of school law have focused in South Carolina (White, 2012), Arkansas (Smith, 2010), Texas (Schlosser, 2006; Valadez, 2005), Virginia (Brabrand, 2003; Caldwell, 1986), and Florida (Steele, 1990). Disaggregated data revealed strengths and weaknesses in Pennsylvania principals' knowledge of school law in relation to constitutional law focusing on the First, Fourth, Eighth, and Fourteenth Amendments. Finally, the results of this study can be used by Pennsylvania colleges and universities to assess the efficacy of school law training provided in principal licensure programs. Levine (2005) reported that 91% of principals took courses in school law and noted, "principals put a premium on classes they had taken that were most relevant to their jobs" (p. 28). As stated earlier in this chapter, despite the claim that school law had high relevance, substantial evidence suggests that principal preparation programs are inadequate in preparing aspiring principals for legal issues faced daily (Brabrand, 2003; Caldwell, 1986; Moncrief-Petty, 2012; Schlosser, 2006; Williams, 2010). Even with the acknowledgement of the importance of daily decision-making in regards to school law, administrators often are uncertain about the legal ramifications of their decisions

(McCarthy, Cambron-McCabe, & Thomas, 1998) and are generally poorly informed about school law (Fischer, Schimmel, & Kelly, 1987; Zirkel, 2006).

Summary

The review of literature with an emphasis of doctoral dissertation reviews illustrated that although principals consider school law an integral part of their preparation and their daily decision-making, they still lack a foundation of school law (Eberwein, 2008; Christensen, 2010; Moncrief-Petty, 2012). Eberwein's study found 33% of the respondents were faced with litigation during their time as principal. Educating principals in the area of school law continues to be the utmost importance for principal preparation programs and state education officials. Smith (2010) stated that "in school settings, legal scenarios rarely occur in isolation, which requires that principals be skilled in disaggregating the multiple layers of issues and addressing each in compliance with laws, regulations, policies, and procedures" (p. 133). Finally, Smith (2010) cites a quote from Fischer (1987) "it is increasingly clear that educators ignore the law at their own peril!"(p. 1). This quantitative study analyzed Pennsylvania public school principals' knowledge of constitutional school law by determining if a descriptive difference exists between Pennsylvania principals' perceived level of knowledge and actual knowledge of constitutional school law, determining if a connection exist between principals' awareness of constitutional school law litigation cases and their daily decision-making, and ascertaining where principals feel as though they acquired their foundational knowledge of school law. It will also provide recommendations to the approved forty-three colleges and universities that offer principal preparation programs. The information gathered will promote an educational environment that supports principals' actions in making decisions based best interest of the students, assist in professional development programs, create a sense of urgency for principals to engage in

preventative law practices, and provide support for the research necessary to ensure graduate principal programs prepare future principals for the legal responsibilities that accompany the role of the instructional leader.

CHAPTER TWO

LITERATURE REVIEW

Introduction

The review of literature is broken into five main sections. Section one of this literature review focuses on the legal framework of American public education. School operational decisions are made from a guiding framework of state and federal constitutional and statutory provisions (McCarthy et al., 1998). Policies and practices at any level of education must align with legal mandates from higher authorities. “The overlapping jurisdictions of federal and state constitutions, Congress, and state legislatures, federal and state courts, and various governmental agencies present a complex environment for administrators to comply with legal requirements” (Thomas, Cambron-McCabe, McCarthy, 2009, p. 1). Section two examines the current principal legal environment. Section three focuses on the explosion of litigation beginning with the landmark desegregation decision of *Brown*. Section four focuses on preventative law. Section five explores past and current principal preparation programs.

Section 1 Overview of Legal Framework for Public Schools

In the United States, differing from almost every other country of the world, the national government has no direct control or authority in the field of public education (Reutter, 1970). Article IV, Section 2, states that the Constitution “shall be the supreme law of the Land.” In other words, any state and federal court decisions, legislation, administrative agencies and/or local school policies that vary from the Constitution are considered null and void (Fischer & Sorenson, 1996). The U.S. Constitution does not specifically mention education, leaving state constitutions as the avenue for decision-making on individual provisions to sweeping mandates that provide funding for public schools (Alexander & Alexander, 2001).

The hierarchy of legislation that exists in public schools is as follows; federal Constitution, federal statutes, state constitution, state statutes, regulations of state-level educational agency, and regulations of local –level school authorities. A lower body of the system may not act in a manner in which is inconsistent with a higher authority. Most law is referred to as common law. This means that it does not follow a precise organized pattern, but rather is found in court opinions where judges have resolved controversies and recorded their reasoning (LaMorte, 2002; McCarthy et. al, 1998; Valente & Valente, 2001). In the United States there are three specific sources of legislation; federal, state, and local levels. Essex (2012) sums it up best by stating “public education is a federal interest, a state function, and a local responsibility” (p.13).

Federal Level

Public school leaders must function under a multitude of school law sources ranging from the Constitution and its amendments, statutes, rules and regulations of administrative agencies, case law (LaMorte, 2002; Reutter, 1970; Dunn & West, 2009). Although the federal Constitution does not contain the word education, constitutional interpretation by the judiciary has had unquestionable impact on educational policymaking.

School law, also referred to as education law involves all those areas of jurisprudence that all United States public school operations rely (Alexander & Alexander, 2005; Reutter, 1970). There are five sources of school law, and the federal Constitution is the first source. The second source, statutory law embodies the legislative acts of federal and state law-making bodies. The legislative branch is responsible for creating the law. The legislative branch may not enact laws that violate the federal Constitution.

Common law is considered the third source of school law. When no statute or provision exists, state and federal courts rely on common law for direction. Several factors are examined when referring to common law, these include general precedents that apply statewide, enforcement of decisions by courts, jury decisions, and prior judgments (Alexander & Alexander, 2001).

Two remaining sources of school law are comprised of a list of regulations sanctioned by state departments of education, chief state school officers, school boards, and the opinions of attorney generals (Alexander & Alexander, 2001). These sources of school law utilize guidelines or directives established to enforce the law and the interpretation of what the law means regarding a certain issue or question. Thomas, Cambron-McCabe, & McCarthy (2009) asserted that the legal control of public education remains a sovereign power of states due to the lack of language in the US Constitution to address education.

State Level

“Major state-level sources of law include the state’s constitution, statutes, case law, state board of education policy, state department of education directives, rules and regulations of administrative agencies, and local school boards”(LaMorte, 2002, p. 33). State constitutions may not knowingly contradict the rights listed in the federal Constitution. All state constitutions recognize a specific responsibility to providing education. The verbiage varies among states, but the message is consistent. States must ensure the establishment and maintenance of a thorough and uniform effective system of schools. State constitutions have such broad language which provides the authority to create constitutional offices for education officials such as the superintendent of schools and state board members. In addition the provisions listed in the state constitution may even create local school systems that allow for the selection and number of

members of school boards, qualifications and selection of school superintendents, and possibility the authority for local taxation for school purposes.

State statutes are a significant source of law for education due to their explicitness in the outline of broad constitutional directives or organize case law. Alexander and Alexander (2001) noted:

Statutes, in our American form of government, are most viable and effective means of making new law or changing old law...The public schools of the United States are governed by statutes enacted by state legislatures...Rules and regulations of both state and local boards of education fall within the category of statutory sources of school law. (p. 2-3)

State statutes perform four additional purposes. These include regulating governmental functions (i.e. method of selection, terms, and responsibilities of state-level education officials), stipulate the type of local school systems, financing of public schools, and addressing issues of personnel (i.e. tenure, retirement, collective bargaining, fair dismissal procedures (Essex, 2012; LaMorte, 2002; McCarthy et al., 1998; Palestini & Palestini, 2001; Valente & Valente, 2001).

Case law is a valuable component to educators with regards to school law when there is no policy direction from statute law, the constitution, the state board of education, or local rules and regulations. Case law also referred to common law consists of judgments, opinions, and decisions of courts adopting and enforcing preceding usages and customs (Essex, 2012; Dunn & West, 2009). A decision by one state's highest court does not serve as binding precedent in another state. It does provide educators with the rationale or philosophy of another state's highest legal body regarding an area of conflict. Case law can also be referred to as unsettled law because occasionally courts render conflicting rulings within their jurisdictions. Finally, in

general, states are historically reluctant to overturn existing school policies in the absence of clearly unreasonable, capricious, or arbitrary conduct on the part of school officials (LaMorte, 2002).

State boards of education have six main legal powers:

1. establish certification standards for teachers and administrators
2. establish high school graduation requirements,
3. establish state testing programs,
4. establish standards for accreditation of school districts,
5. review and approve the budget of the state education agency,
6. develop rules and regulations for the administration of state program (Retrieved from <http://www.ecs.org>).

Courts were reluctant to impose their judgment regarding decisions that are made within the state board of education's authority unless there was substantial evidence that the arbitrary or capricious acts or a violation of an individual's constitutional rights has occurred. Traditionally schools had broad discretion in determining policies to maintain order and discipline in the school environment (Maddox, 2012). Essex (2012) cited the court case, *Board of Education of the City of Rockford v. Page* and the court's decision;

that it will go no further than to determine 1. whether the board acted within its jurisdiction, 2. whether it acted according to law, 3. where its action was arbitrary, oppressive, or unreasonable and represented its will rather than its judgment, and 4. where the evidence was such as that it might reasonably make the order determination in question.

Public schools are governed by a complex body of regulations that are grounded in constitutional provisions, statutory enactments, agency regulations, and court decisions (McCarthy et al., 1998). Principals and school personnel must act reasonably and protect the rights of others as defined by the Amendments in the Bill of Rights.

The Bill of Rights

The Bills of Rights is the primary source of individual rights and freedoms under the U.S. Constitution. The first ten amendments under the Constitution are viewed as fundamental liberties of people because they place restrictions on the government's authority. It is within the states sovereign powers to create statutes about education so long as these statutes are not in violation of the provisions of the United States Constitution. The Tenth Amendment to the United States Constitution 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." States reserve the right to make decisions regarding public education. "The United States Supreme Court can declare that something not mentioned in the Constitution is so closely related to something that is mentioned in the Constitution that the unmentioned power is a fundamental interest, which rises to constitutional protection" (Retrieved from <http://www.departments.bucknell.edu>). To date the Supreme Court has not declared that education is a fundamental interest and has left the decision making powers to the school districts (Essex, 2012; McCarthy et al., 1998). This means that states have absolute power in the area of education. For the purpose of this study the public school principals will be asked to provide insights into how daily decision-making is related to their knowledge of the First, Fourth, Eighth, and Fourteenth amendments.

First Amendment

Courts presume that rules and regulations are valid unless there is a clear abuse of power and discretion on the part of the school (Alexander & Alexander, 1984).

During the first half of the 20th century, the Bill of Rights was rarely referred to when students challenged the constitutionality of school rules. Courts used the reasonableness test to judge school policies. The school rule would be upheld if a reasonable relationship between the rule and some educational purpose could be established. This was true even if the judges felt the rule to be unwise, unnecessary, or restricted freedom of expression (Schimmel, Stellman, & Fischer, 2011). School boards had wide discretion and courts did not substitute their judgment for that of school officials because they were considered the experts in the educational field.

There are two different common law principles that courts used to render school disciplinary actions invalid, ambiguity or vagueness of the rules, and arbitrary or capricious application of the rules (Alexander & Alexander, 1984; McCarthy, Cambron-McCabe et al., 2004; Valente & Valente, 2001). In addition, school rules and regulations will not be upheld if they deny individual rights or freedoms as outlined in the Federal and state constitutions (Alexander & Alexander, 1984; Dunn & West, 2009; Essex, 2006, 2012; McCarthy et al., 1998 & Palestini & Palestini, 2002). This does not mean however; that rights or freedoms are not without limitations (Essex, 2006, 2010; Maddox, 2012). All students are subject to reasonable restraints because without these restraints schools would not be able to adequately function. For example, it is clear that students cannot be permitted to come and go at will or to ignore rules regarding food throwing in the cafeteria. Courts have sought to balance students' constitutional rights against the necessity for order (Alexander & Alexander, 1984). The interests of the school are balanced against the students' loss of a particular freedom or right. This "balance of interest" is

at the heart of the United States Supreme Court's decision in *Tinker*. The *Tinker* case established that school rules and regulations are to be based on a determination of the school's legitimate interests. Administrators and teachers must examine their policies to determine their legitimacy (Dunn & West, 2009). Neither students nor teachers shed their constitutional rights of speech or expression in the school environment. The Court ruled that students who wore black armbands to school as a way of expressing their opposition to the Vietnam War and should not have been subjected to punishment. Smith (2010) stated "the 'fear' of disruption did not justify censoring of the students' right to express a political position" (p. 29). The balance of interest as required in *Tinker* was not met and the principal's suspension was therefore a violation of the students' rights.

The new standard to emerge was if the schools could provide evidence of material and substantial disruption. One example of this is *Blackwell*. Essex (2002) stated that "a principal banned the wearing of political buttons in response to a disturbance by students noisily talking in the hallway when they were scheduled to be in class. The students wearing the buttons were found to be pinning the buttons on to students that objected" (Retrieved from <http://files.eric.ed.gov>, p. 66-67). Classes were interrupted, instructional time was lost. Students wearing the buttons were warned not to wear the buttons that day and the next day. Violators were suspended and asked to leave the campus. While leaving the campus the students attempted to convince other students to leave with them. The Fifth Circuit justices wrote in its opinion that it is always within the jurisdiction of schools to provide regulations of forbidding acts and outline the appropriate punishment of acts that are set to undermine the school's routine. (*Blackwell v. Issaquena County Board of Education*, 1966). The school was able to prove that the balance of interest applied. The same was true with *Bethel School District No 403 v. Fraser*,

478 U.S. 675 (1986). A student (Fraser) gave a speech nominating his friend for a student body office at the school assembly, and described his friend's attributes by using sexually explicit metaphors. The teacher previewed the speech, the speaker was warned against giving the speech, but the student chose to do it anyway. After the speech a teacher complained that he had to take time to explain the speech to the younger students thus causing a disruption to the day. The student was suspended for three days. The Supreme Court held that even though the speech did not create a substantial disruption; lewd, vulgar, indecent, and plainly offensive student speech is unprotected in a school setting. If it would have occurred outside of school it would have been protected.

The Supreme Court to date has yet to decide on a student speech that occurs outside the school. For example during its 2011-2012 term, U.S. Supreme Court denied petitions for certiorari filed in four U.S. Court of Appeals decisions in which schools punished students for speech made off-campus and posted on the Internet. Four such cases included *Doniger v. Niehoff* (2008); *Kowalski v. Berkeley County Schools*; *Layshock ex. rel. Layshock v. Hermitage School District* (2011); and *J.S. ex rel. Snyder v. Blue Mountain School District* (2011). In *Layshock v. Hermitage School District*, the Third Circuit Court of Appeals stated:

We are asked to determine if a school district can punish a student for expressive conduct that originated outside of the schoolhouse, did not disturb the school environment and was not related to any school sponsored event. We hold that, under these circumstances, the First Amendment prohibits the school from reaching beyond the schoolyard to impose what might otherwise be appropriate discipline (Retrieved from <http://www2.ca3.uscourts.gov>).

The First Amendment also protects against censorship when related to written messages, but the Supreme Court has limited students' free-speech rights in school. In *Hazelwood v. Kuhlmeier* (1988) the Supreme Court held that school officials can exercise editorial control over the style and content of school sponsored student speech so long as their actions are reasonably related to legitimate pedagogical concerns. In addition the Supreme Court held that in *Morse v. Frederick* (2007) schools could punish students who engage in speech advocating illegal drug use while in school. However two cases currently pending in Pennsylvania in which federal judges have issued injunctions against school districts for violations of students' free-speech rights. In *B.H. v. Easton Area School District* (2011), the court granted a preliminary injunction in favor of two middle school students, enjoining the school district from enforcing its ban on breast cancer bracelets. The court concluded that the ban was not justified under *Tinker* because when the school instituted the ban there were no incidents of disruption, only a general fear of disruption.

First Amendment rights have also been challenged in the distribution of non-school materials by students. In *K.A. v Pocono Mountain School District* (2011), the court granted a preliminary injunction to prohibit the district from preventing a fifth-grade student from distribution invitations to a 2011 Christmas party at a local church. In this case the court held that the district could not articulate a specific and significant fear of disruption if it allowed K.A. to pass out the flyers. It was unlikely parents would view this as a school-sanctioned event since parents know that many items which students bring home are from non-school venues. Even if the proper analysis is a forum analysis, the district could only regulate the time, place and manner of distribution.

In conclusion, student speech may be restricted and a student may be subject to discipline if under *Tinker*, it is reasonably foreseeable that it will create a substantial disruption in the

school environment and/or invade the rights of others or under *Fraser*, the speech is plainly rude, offensive or otherwise illegal.

School Sponsored Prayer

The United States Supreme Court and lower federal court decisions have been consistent with declaring that Bible reading for sectarian purposes during normal school hours to be unconstitutional. This issue and others dealing with religious activities at public schools continues to be highly charged and emotional. This has caused a stream of litigation. In an effort to ensure a separation of church and state the framers of the Constitution included language in the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. These words provided the basis for courts to determine the constitutionality of such questions as allowing prayer and Bible reading in the public schools during normal school hours, permitting Bible reading at graduation exercises or football games, conducting baccalaureate services, permitting Bible study or religious clubs, or other religious tracts or observing religious holidays. Thomas et al., (2009) explained that the first major Establishment Clause decision, *Everson v. Board of Education* (1947), the Supreme Court concluded that the Establishment Clause (and its Fourteenth Amendment application to states) means:

Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.... In the words of Jefferson, the clause against establishment of religion by law was intended to erect “a wall of separation between church and state.”

In the early 1960’s a higher wall was determined to have been established between church and state. Two cases in the early 1960’s dramatically established the case law pertaining to prayer

and Bible readings. In *Engel v. Vitale* (1962) , the Court held that recitation of a prayer composed by New York Board of Regents, which was to be said in the presence of the teacher at the beginning of the school day, was unconstitutional and in violation of the Establishment Clause. In *School District of Abington Township v. Schempp*, the Court held the reading of the Bible for sectarian purposes and reciting the Lord’s Prayer in public schools during normal hours were unconstitutional. The Court asserted though that the Bible could be read as literature in an appropriate class and that the history of religion or comparative religion could be taught.

In *Wallace V. Jaffree*, (1985), a six-to-three decision held that setting aside classroom time for school-sponsored silent prayer, which was authorized in sixteen states at the time of the decision, was unconstitutional. A more in-depth analysis of the ruling suggested that a moment of silence may be constitutional. The issue was again examined in *Brown v. Gilmore*, 258 F. 3d 265 (4th Cir. 2001), cert. denied, 534 US 996 (2001). The court of appeals upheld a Virginia Law that authorized but did not require local school boards to establish a minute of silence in their classrooms.

The Establishment Clause was used consistently until 1992 when a majority of the justices voiced dissatisfaction with the Lemon test in the *Lamb’s Chapel v. Ctr. Moriches Union School District* (1993) decision. Justice Scalia, compared the *Lemon* standard to a “ghoul” that rises from the dead “after being repeatedly killed and buried” (*Lamb’s Chapel v. Ctr. Mount Union Free School District*, 1993). Instead of relying on the *Lemon* test some of the justices favor an *endorsement* standard which governmental action would be struck down if an objective observer would view it as having the purpose or effect of endorsing or disapproving religion. On occasion, the Court has applied the *coercion* test, which requires direct or indirect governmental coercion on individuals to profess a faith (Essex, 2012; Schimmel et al., 2011). Cambron-

McCabe et al. (2009) stated that “instead of replacing the Lemon test with another standard or a combination of standards, the current Supreme Court will likely continue to draw on various tests depending on the specific circumstances of each case” (p. 42).

This has left school administrators with concerns of proper separation of church and state and the discrimination that may ensue against allowable religious expression.

Pledge of Allegiance

Local policies and state statutes requiring student participation in patriotic exercises have often been challenged. The most common dispute centers on participation in the Pledge of Allegiance. In *Sherman v Community Consolidated School District 21*, 980 F. 2d 437 cert. denied, 508 U.S. 950 (1993), upheld a student’s position not to participate in the pledge on political or religious grounds and follows the rationale of other courts that have addressed this issue. The decision also upheld the disputed constitutionality of the words, “under God” in the Pledge of Allegiance.

Conflicts involving school officials and students continue to create legal challenges. School leaders must achieve the proper balance between maintaining a neutral position regarding free speech, freedom of expression, and religious issues while demonstrating sensitivity to the constitutionally protected rights of students.

Fourth Amendment

The Fourth Amendment’s prohibition of unreasonable searches and seizures applies to searches of students and their belongings by public school officials. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents of students, and they cannot claim the parents’ immunity from the Fourth Amendment’s requirements. The Supreme Court

has recognized that requiring a teacher or school administrator to obtain a warrant before conducting a search of a student suspected of violating either the law or a school rule would be impractical and would “unduly interfere with the maintenance of swift and informal disciplinary procedures needed in schools” (New Jersey v. TLO, 1985). School authorities have both the moral and legal responsibility to maintain order in the schools and to protect students from harming themselves or others (Alexander & Alexander, 1984). When students enter the school building they do not have the same level of privacy as in other settings.

New Jersey v. T.L.O. (1985) highlights this difference of probable cause and reasonable suspicion. Two students were caught smoking cigarettes in the school lavatory and taken to the principal’s office. The principal opened the one student’s purse and found a pack of cigarettes and a package of rolling papers. The principal conducted a more thorough search of the purse and some marihuana, a pipe, plastic bags, a substantial amount of money, and two letters implicating the student in marihuana dealing. The Court decided that the search by school officials was reasonable, under the circumstances because 1) the search by the principal was justified based on a reasonable suspicion that the search will turn up evidence that the student has violated or is violating either the law or rules of the school; and 2) the search was reasonably related to its objective and not extremely intrusive in light of the age and sex of the student.

In stark contrast the Supreme Court ruled in *Safford Unified School District v. Redding* (2009) that the school officials violated the student’s rights when she was subjected to a search of her bra and underpants for forbidden prescription drugs. Justice Souter delivered the decision for the court saying

Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution, but because there

is reason to question the clarity with which the right was established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

(Redding v. Safford, 2009)

Based on precedent setting case law and judicial opinions on search and seize educators were left with a great deal of latitude when seeking to create and implement policies aimed to be zero tolerance schools for weapons and drugs(Russo & Stefkovich, 1998). It is recommended that before conducting a search of a student and/or a student's possessions, school officials should specifically identify the facts supporting their reasonable grounds for suspecting that the search will turn up evidence of a violation of the law or school rules. The school district must also ensure that the search is not excessively intrusive under the circumstances and objectives of the search. Where the suspected violation is a serious infraction, the school district may want to contact law enforcement officials, particularly if the suspected evidence or contraband is not discovered by a search of the student's pockets or backpack. Russo and Stefkovich (1998) also recommended that administrators follow a prescribed process when dealing with the search and seizure of students ranging from beginning with less intrusive searches first, asking for parental consent, arranging for witnesses to be present, during the search match the gender of the student to the gender of the person conducting the search, generate specific guidelines and policies for searches that ensure student privacy, provide advanced search notice, document the need for searches involving drug testing and finally, update policies frequently to ensure they are up-to date.

Eighth Amendment

Straus (1994) defined corporal punishment as “the use of physical force with the intention of causing a child to experience pain, but not injury, for the purpose of correction or

control of the child's behavior"(p. 4). The Eighth Amendment which prohibited cruel and unusual punishment had typically been applied to convicted criminals, but in 1977, the Supreme Court was faced with the case of *Ingraham*. Two Florida students who were paddled in compliance with state statutes and district policies claimed their Eighth and Fourth Amendment rights were violated. The Supreme Court held that there was "no need to wrench the Eighth Amendment from its historical context and extend it to public school disciplinary practices" because punishment that exceeded common law would lead to civic and criminal liability. Florida had previously established "significant protection against unjustified corporal punishment of schoolchildren" thus requiring teachers and administrators to exercise prudence. (*Ingraham v Wright*, 1977). Thirty-four years ago, at the time of the *Ingraham* decision, the administration of corporal punishment was more socially acceptable—that is, more reasonable—than it is today (Mitchell, 2010). For example, in *Ingraham*, the Court noted that its analysis was set "[a]gainst [a] background of historical and contemporary approval of reasonable corporal punishment." The Court noted that only two states, Massachusetts and New Jersey, had wholly prohibited the use of corporal punishment in public schools (*Ingraham v. Wright*, 1977). Conversely, according to statistics from the 2006–2007 school year released by the United States Department of Education's Office for Civil Rights, 29 states (plus the District of Columbia) have banned the use of corporal punishment in public schools (Center for Effective Discipline, 2010). Additionally, the number of students corporally punished in the United States has declined from 1,521,896 in 1976 to 223,190 in 2006—an 85% decrease (Center for Effective Discipline, 2010). Notably, only a handful of states were responsible for the bulk of the punishments (Lyman, 2006). Teachers and principals should use caution in administering corporal punishments in public schools (McCarthy et. al, 1998; Smith, Morrow & Gray, 1999). It would be prudent for

teachers and principals to become familiar with relevant state laws and school board policies before attempting to use corporal punishment.

Fourteenth Amendment

The Fourteenth Amendment was enacted to protect privileges and immunities of any citizen of the United States. *Brown* established that *de jure* segregation was a violation of the Equal Protection Clause of the Fourteenth Amendment. Mr. Brown attempted to enroll his daughter into an all-white school in Topeka, Kansas. This school district as well as many others around the country believed that keeping black and white students separate was permissible. Mr. Brown disagreed with the separate but equal mentality. He sued the school system and the case was eventually heard by the Supreme Court. In a 9-0 decision the justices stated that segregating black students violated the Fourteenth Amendment *Brown*.

Due Process is another key component of the Fourteenth Amendment. *Goss v. Lopez* (1975) clearly defined the relationship between education and due process. Nine students were suspended from school for 10 days for destroying school property. Ohio law permitted the 10-day suspension or expulsion of the students but also required the notification of parents within 24 hours. The parents then had the right to appeal to the Board of Education. The law did not address suspensions specifically, and therefore; a three judge panel struck down the law stating that it violated the students' rights to due process. The Supreme Court pointed out that the denial of education for even a short period of time could not be construed as inconsequential. The individual's interest in education fell within the substantive scope of "liberty and property" the Court stated. To take away liberty or property interest requires procedural due process. Teachers and principals should err on the side of providing students an opportunity for full protection of due process, including but not limited to the following; notice of charges, prior notice of hearing,

right to legal counsel, hearing before impartial party, right to compel supportive witnesses to attend, right to confront and cross-examine adverse witnesses, right to testify on one's own behalf, and right to have a transcript of proceedings for use on appeal (Essex, 2012).

Wood v. Strickland (1975) eradicated principals' ability to plead "ignorance of the law" as a valid defense for illegal actions. Although the principal and superintendent were found to have acted in good faith, the Supreme Court stated school board member is not immune from liability for damages if he knew or should have known that his actions within his official responsibility could perhaps violate the students' rights. In addition, if he took the action with grave indifference of the constitutional rights or other injury to the student. This is not a change in the Court's position, as it has always been the case that if one can establish "bad faith" or "malicious intent," then one substantiates a cause for compensatory and perhaps punitive award. Further, if it can be established that an official took action when he knew of his own mind that such action would violate the constitutional rights of a person, then one has met the burden of proof. The Court also indicated, however, that there must be a degree of "immunity" allowed if the work of the schools is to go forward and the "immunity" must be such that public school officials understand that action taken in the good faith fulfillment of their responsibilities and within the bounds of reason will not be punished.

Section 2 Principal's Legal Environment

Principals must possess accurate knowledge of education law and understand that the law permeates every aspect of the principalship. Militello et al., (2009) observed that:

Principals stand on the front line and are assigned responsibility for all these under their care and management. Doing so, principals must establish policies and practices based on

legal standards and, in addition, support staff development so that they demonstrate an acceptable understanding of policy, regulation, and law. (p. 28)

School Law directly impacts all public school administrators (Alexander & Alexander, 2001; Braband, 2003; Caldwell, 1986; Doverspike, 1990; Reglin, 1992; Schlosser, 2006; Valadez, 2005). The role of the school administrator dramatically changed from the 1950's from the position of being considered "The Law" to the position of being accountable under the law after the first landmark case of *Tinker*. The best way for a school administrator to avoid a lawsuit Zahler (2001) suggested is to have a thorough knowledge of school law (p. 3). Wattam (2004) backed Zahler's (2001) claim by stating, "while each and every decision a school administrator makes has a legal implication, it is imperative administrators thoroughly understand the litigious issues and implications surrounding their decisions" (p. 168).

Previous studies have examined principals' knowledge of school law. The studies, primarily doctoral research, have been conducted in the past six decades, scattered across 28 states usually focus on one state in particular. Valadez (2005) argued that in Texas, "Due to the complexity of issues prevalent in the arena of public education, educators must be well-versed in their knowledge of legal issues impacting the operation of schools" (p. 1). Christensen (2009) found in her study of Nebraska principals and teachers that approximately 90% of all respondents had taken two or less law courses as part of their school administrator preparation (p. 95). Yet every respondent reported that understanding the law as at least somewhat important; with approximately two-thirds of the respondents reporting it as very important (Christensen, 2009). Kerrigan (1987) surveyed 300 Massachusetts principals. She utilized a 24-item survey containing 15 statements regarding law and policy, and nine questions related to administrators in the role of school principal. Kerrigan found that:

Principals do not know or are not aware as to whether or not their school system had policy guidelines, or if they are based on Commonwealth of Massachusetts law, or if their school district has some type of policy handbook for administrators, or if administrators have access to the policies. (p. 139)

Reglin (1992) surveyed 290 South Carolina educators including 43 principals and 63 assistant principals. Using a 15 item instrument, Reglin included questions based on school prayer/Bible Readings, student and teacher rights, student tracking, exit exams, corporal punishment, and school finance. After analyzing Brabrand's (2003) study he noted that Reglin reported was that only 65% of participants responded correctly to corporal punishment questions and only 22% responded correctly to issues regarding school finance. Brabrand also noted that 83% of Reglin's study respondents did not participate in any undergraduate courses in school law and only 38% of principals and assistant principals did not participate in any graduate law courses. The National Center for Policy Analysis (2001) reported that "almost one-third of high school principals have been involved in lawsuits in the past two year as compared to nine percent 10 years ago, according to the American Tort Reform Association survey. Schimmel and Militello's (2007) national study demonstrated the contradiction of principals needing to be knowledgeable about school law and lacking the necessary knowledge when they wrote that over 75% of the 1,300 participants "had taken no course in school law and that over 50% of respondents are uninformed or misinformed about teacher and student rights" (p. 6). Another concerning finding was that of all teachers surveyed 52% of teachers surveyed reported that their major source of information about school law came from "other teachers". The last alarming statistic from Schimmel and Militello's (2007) study was that 45% of teachers reported that they relied on their administrators for legal information. Eberwein (2008) conducted a national study

of 493 principals and found that 85% of participants would change their behaviors if they knew more about public school law (p. ix).

Two studies Evaluating Attitudes Towards the threat of Legal Challenges in Public Schools (Harris Interactive, 2004) and Teaching Interrupted: Do Discipline Policies in Today's Public Schools Foster the Common Good? (Public Agenda, 2004) highlight the following statistics listed in Eberwein's study:

- 82% of teachers and 77% of principals say that schools practice “defensive teaching” meaning that decisions are motivated by a desire to avoid legal challenge;
- 77% of principals and 61% of teachers say their colleagues avoid decisions they think are right because they might be challenged legally;
- 63% of principals said fear of legal challenges affects their willingness and ability to fire bad teachers;
- 62% of principals believe concerns about legal challenges have made teachers' relationships with students less personal;
- 85% of teachers and principals think reducing the availability of legal challenges for day-to-day management and disciplinary decisions would help improve education quality. (p. 25)

These two studies present compelling information for educational law reform, Zirkel (2006) challenged the data provided by the Common Good. He argues that these studies present only “partial information, advancing views of a purported problem that are too superficial and simplistic to contribute to any effective resolution of actual dilemmas” (p. 493). Zirkel also questions the lack of scientific rigor with “the selective language, inconsistent data collection procedures, incomplete reporting of both sampling error and response rate, and categorical

conclusions... that are subject to varying interpretations” (p. 479). Perhaps most significantly Zirkel (2006) also notes the lack of a literature review. The situation schools find themselves in can best be summarized with a quote from Vincent Ferrandino, the Director of NAESP as cited in Zirkel (2006) when he said, “school can’t win for losing; if they enact regulations they get sued... if they don’t... they get sued” (p. 7). The explosion of litigation clearly defines why principals must be knowledgeable of all aspects of school law.

Section 3 Explosion of Litigation

Court decisions dealing specifically with education have exploded over the past six decades. More than 50,000 education-related cases have been tried in federal and state courts throughout the United States in the past century (Zahler, 2001).

Beginning with the landmark desegregation decision of *Brown* federal courts assumed a significant role in resolving educational controversies. The next major court ruling in 1969, *Tinker* fundamentally changed the role of the principal. The numbers support the claim. Since 1960, courts have addressed nearly every facet of educational enterprise (McCarthy et al., 1998). Cases peaked in the 1970s (5.31 cases per million population 1967-1976) and then declined into the 1980s (4.98 cases per million population between 1977-1986) (Imber & Gayler, 1998). The 1980’s witnessed an explosion of litigation dealing with church/state issues and the rights of children with disabilities. From the later 1990’s through today, courts continued to be inundated with special education issues. Zirkel (1998) confirmed that federal cases continued to decline but that cases involving special education continued to grow. Each of these forms of litigation affects principals’ daily decision-making. Melnick (2009) reported that:

A 2004 survey of public school law devotes over 500 pages to topics such as “church-state relations,” “school attendance and instructions issues,” “student classifications,

“rights of students with disabilities,” student discipline,” “teachers’ substantive constitutional rights,” “discrimination in employment,” and “tort liability”.

In one year (1992-1993) school districts were involved in 27,500 legal disputes (Gullat & Tollett, 1997). From the mid-1980s to the mid-1990s, Valente (1994) reported there was a 20% increase in lawsuits involving teachers. The overarching argument is that litigation during the 1990s was still 50% greater at the state level and 103% greater at the federal level as compared to cases in those same courts in the 1960s.

With the explosion in litigation over the last 60 years being prudent and reasonable isn’t enough. Sinopoli (2010) stated in his study of Pennsylvania Superintendents that:

The emerging concept of preventive law and its promise for avoiding legal conflict along with increased communication among educators and parents, better understanding of education law, stronger implementation of policies and procedures, internal review of school district policy, and an emphasis on preventive law will require a shift in current preparatory programs (p. 117).

Section 4 Preventative Law

It is said, “an ounce of prevention is worth a pound of cure,” and this is nowhere more accurate than in schools. Research warns administrators to anticipate problems and plan so that problems may be avoided. Zirkel (1984) stated the realization and need of educational administrators and attorneys for preventative law. Alexander & Alexander (2005) wrote “Due to the breath of information involved, it is necessary... to be versed in certain fundamental concepts of the American legal system and to be able to apply this knowledge to situations [proactively]...” in the daily operation of schools (p. 1). School solicitors and other legal analysts have criticized administrators for a failure to think and act proactively. Dunklee and Shoop

(2002) argued that “regardless of the root cause of problems that may lead to litigation, such events are too often dealt with ex post facto rather than through a well-planned, active program of risk anticipation and litigation prevention.” In order to reduce liability vulnerability through the assimilation and practice of preventive law, Dunklee and Shoop (2004) outlined six actions to support the preventative practice of administrators:

1. an understanding of how law can and cannot be effectively used to reduce school problems;
2. proper application of procedures, informed decision-making, and foresee ability;
3. working with counsel to reduce litigation costs;
4. flexibility and more effective conflict resolution
5. knowledge or legal precedent, constitutional compliance, and public information need, crisis management and monitoring; and
6. leadership in a preventive law. (p. 8)

Bernard Hoffman, a consultant for the Department of Education (2007) suggests a four question approach in practicing preventive law:

1. Are you aware?
2. Did you investigate?
3. Did you come to a decision, determination or a conclusion?
4. Did you take appropriate action?

Hoffman warns that with poor planning, preparation, and carry-through, an attorney will say to you, “Don’t ask me if we will win or lose the case; ask me how much it will cost us!” (p. 3)

Hoffman’s point is not a new one. In a speech given by Professor Henry H Linn from Columbia

University on May 13, 1958 (as cited in Byrne, 1964) to Association of School Business Officials (ASBO) in Syracuse, New York, he stated:

During the post war years a number of school districts ... have been paying their local attorneys' fees of from 1/2 to 1 percent of the amount of the bond issue for their services in connection with these issues. Fees from \$10,000 to \$35,000 have not been uncommon. Hoffman's point is further amplified by Wong and Nicotera (2004) when they stated that The National Commission on Excellence in Education (NCEE) issued a stated calling for "effective principals to practice preventative law and risk management," noting it is paramount "they seek out current updates on laws that affect education. All too often, unfortunately, the need to know is considered ex post facto" (p. 13).

The best place to learn about preventive law is during teacher preparation programs (Brown, 2009), but much of the research demonstrates that teachers and principals are not receiving the preparation necessary to make well-informed daily decisions (Eberwein, 2008; Harris, 2001; Magone, 2007; Schlosser, 2006; Williams, 2010) and in addition are not always aware of their deficiencies in the area of school law (Grasso, 2008; Magone, 2007; Valadez, 2005, Williams, 2005). With this lack of training principals find themselves making uninformed or misinformed decisions with regards to the students' best interests. The concern of past and current principal preparation programs will be further explored in section five of this literature review.

Top Ten Supreme Court Cases Impacting Education

Another way to practice preventative law is to be familiar with and understand landmark Supreme Court cases. Russo, et al., (2000) generated a top ten list of Supreme Court cases that impacted schooling. The top-ten list included:

10. *Brown v. Board Topeka* (1954)

This case took on segregation within school systems, or the separation of white and black students within public schools. Up until this case, many states had laws establishing separate schools for white students and another for black students. This landmark case made those laws unconstitutional. The decision was handed down on May 17, 1954. It overturned the *Plessy v Ferguson* decision of 1896, which had allowed states legalize segregation within schools. (Meador, 2013, para. 1)

9. *Engel v. Vitale Supreme Court* (1962) decision was a landmark United States Supreme Court case that determined that it is unconstitutional for state officials to compose an official school prayer and require its recitation in public schools, even when it is non-denominational and students may excuse themselves from entanglement between church and state.

8. *Abington vs Schempp* (1963)

In 1963, the U.S. Supreme Court banned the Lord's Prayer and Bible reading in public schools in *Abington School District v. Schempp*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844. The decision came one year after the Court had struck down, in *Engel v. Vitale* a state-authored prayer that was recited by public school students each morning (370 U.S. 421, 82S. Ct. 1261, 8 L. Ed. 2d 601 [1962]). *Engel* had opened the floodgates; *Schempp* ensured that a steady flow of anti-school prayer rulings would continue into the future. *Schempp* was in many ways a repeat of *Engel*: the religious practices with which it was concerned were nominally different, but the logic used to find them unconstitutional was the same. This time, the majority went one step further, issuing the first concrete test for determining violations of the First Amendment's Establishment Clause. (West's Encyclopedia of American Law, 2008, para. 1)

7. *Tinker v Des Moines Independent School District* (1969) To protest the Vietnam War, Mary Beth Tinker and her brother wore black armbands to school. Fearing a disruption, the administration prohibited wearing such armbands. The Tinkers were removed from school when they failed to comply, but the Supreme Court rules that their actions were protected by the First Amendment.

6. *Lemon v Kurtzman* (1971)

In an 8–0 opinion authored by Chief Justice Burger, the Supreme Court declared unconstitutional two separate state acts providing funding for nonpublic schools. Most of the would-be beneficiaries of the acts were students attending Roman Catholic schools; thus, the acts imposed restrictions and monitoring to ensure nonreligious uses of the state funding. The Court invented a three-part test to determine whether a statute withstands Establishment Clause judicial scrutiny: (1) whether an act has a “clear secular legislative purpose”; (2) whether its “principal or primary effect . . . neither advances nor inhibits religion” and; (3) whether it fosters “excessive government entanglement with religion.” The Court found that the state statutes violated prong three of the *Lemon test* because the very restrictions and precautions required by the acts to protect against government becoming involved with religion created an excessive entanglement between religion and the state governments. (Heritage Foundation, “Summary”, para. 1)

5. *Goss v Lopez* (1975) Nine students at an Ohio public school received a 10-Suspension for disruptive behavior without due process protections. The Supreme Court ruled for the students, saying once the state provides an education for all of its citizens; it cannot deprive them of it without ensuring due process protections.

4. *Ingraham V. Wright* (1977) Two Florida students who were paddled in school brought suit in federal court arguing that the paddling was “cruel and unusual punishment” and that students should have a right to be heard before physical punishment is given. In a 5-4 decision, the Supreme Court decided that public school students could be paddled without first receiving a hearing.

3. *Plyler v Doe* (1982)

The Supreme Court rules in *Plyler v. Doe*, 457 U.S. 202 (1982), that public schools were prohibited from denying immigrant students access to a public education. The Court stated that undocumented children have the same right to a free public education as U.S. citizens and permanent residents. Undocumented immigrant students are obligated, as are all other students, to attend school until they reach the age mandated by state law.

(Carrera, 1989, Retrieved from <http://eric.ed.gov>)

2. *Board of Education v. Rowley* (1982)

The Education of the Handicapped was a federal government act that provided money to assist the education of handicapped children. The state had to show that it conducted a policy that gave handicapped children the right to “free appropriate public education” through an “individualized educational program” (IEP). Amy Rowley was a deaf student attending Furnace Woods School in Hendrick Hudson Central School District in NY. Before her school attendance, her parents and the school administrators decided to put her in a regular class to determine what kind of supplemental services she would need. It was decided that Amy should remain in regular class, but would be provided with hearing aid. She completed kindergarten year without any difficulty. Since both district court and court of appeals failed to provide evidence that the school violated the Act, or evidence

that Amy's educational program failed to comply with the requirement of the Act, the Supreme Court reversed and remanded the case. The Supreme Court focused on the definition of a "free appropriate public education". There was no requirement that the state had to maximize the potential of handicapped children. The specialized educational service for handicapped children did not mean that the service had to maximize each child's potential since it was impossible to measure and compare their potential. From the history of the cases the Court decided, the intent of the Act was to give handicapped children access to public education. It did not guarantee any level of education for them. (Nguyen, "Facts of the Case", para. 1, Retrieved from <http://www.departments.bucknell>)

1. *New Jersey v. TLO* (1985)

A teacher accused T.L.O. of smoking in the bathroom. When she denied the allegation, the principal searched her purse and found cigarettes and marijuana paraphernalia. A family court declared T.L.O. a delinquent. The Supreme Court ruled that her rights were not violated since students have reduced expectations of privacy in school.

Each of these cases boiled down to a violation of either the First, Fourth, Eighth or Fourteenth Amendments. Researchers such as Christensen (2009), Doverspike (1990), Edwards (2011), Nwanne (1986), and Zirkel (1977, 1998) have examined Supreme Court cases and implore administrators to become familiar with the impact that these cases have on daily decision-making.

Section 5 Principal Preparation Programs

The explosion of litigation beginning in the 1950s made it necessary for administrators and teachers to become familiar with school law. In 1977, Perry Zirkel led the Phi Delta Kappa Commission on the Impact of Court Decisions on Education. Zirkel and his team analyzed 144

Supreme Court case decisions from 1859 through 1977 and encouraged readers to study the decisions carefully so they could understand the impact of the decisions on their daily decision making (p. iv). He also stated that he created the digest to “fill a gap in the legal literature and knowledge of educators” (p. ix). Doerfler (1976) stated that “unfortunately, the state, the county, and school districts have done little to prepare educators to deal with problems of a legal nature” in California. Stephens (1983) examined eight research studies from the 1950-1980 that examined pre-service education related to school law. Each study documented a need for pre-service training, continuing education, and an increase in urgency to become more knowledgeable. More recently studies by Bagnato (1990), Singletary (1996), Valadez (2005), and Williams (2010) provided further support for a need of improved principals’ preparation programs and continued professional development.

Erberwein (2008) stated that “school law is the specific domain that many national organizations and state certification boards list as a competency or, in some cases, a required certification standard.” The Interstate School Leaders Licensure Consortium (ISLLC) Standards were developed by the Council of Chief State School Officers in collaboration with the National Policy Board on Educational Administration (NPBEA) to help strengthen preparation programs in school leadership (Van Meter & Murphy, 1997). There are six standards. Each standard is followed by the Knowledge required for the standard, the Dispositions or attitudes manifest by the accomplishment of the standard, and Performances that could be observed by an administrator who is accomplished in the standard. Standard 3 and 5 relate specifically to the administrators’ knowledge of school law:

Standard 3: A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a

safe, efficient, and effective learning environment. Knowledge: The administrator has knowledge and understanding of... legal issues impacting school operations...(ISLLC, 1996, p.14)

Standard 5: A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner.

Dispositions: The administrator believes in, values, and is committed to the ideal of the common good, the principles of the Bill of Rights, the right of every student to a free, quality education.....(ISLLC, 1996, p.18)

Performances: The administrator... protects the rights and confidentiality of students and staff... fulfills legal and contractual obligations... applies laws and procedures fairly, wisely, and considerately. (ISLLC, 1996, p. 19)

Similarly, Pennsylvania adopted there are three core Pennsylvania Leadership Standards and six corollary standards. According to corollary standards four and five, state administrators must “operate in a fair and equitable manner with personnel and professional integrity.” In addition, they must “advocate for all children and public education in the larger political, social, economic, legal, and cultural context (<http://www.portal.state.pa.us/portal>).

The National Policy for Educational Administration (NPB, 1990) published a report, *Principals For Our Changing Schools*. The report stated, “Principals require a knowledge of legal and regulatory applications in order to address a range of complex and sensitive problems that arise in a school setting” (p. 19-3). Five areas of competency were listed in the report:

1. Federal constitutional provisions applicable to a public education system.
2. Federal statutory standards and regulatory applications relevant to public schools.

3. State constitutional provisions, statutory standards, and regulatory applications related to public school operation in a selected state.
4. Standards of care applicable to civil or criminal liability for negligent or intentional acts under a selected state's common law and school code.
5. Principles applicable to the administration of contracts, grants and financial accounts in a public setting. (NPB, 1990, p. 19-7)

Many state and national organizations may provide guidelines or standards; they do not determine eligibility for certification. State departments of education on the other hand do possess the authority to develop certification requirements for candidates.

Harris (2001) found that Florida educators as well as school board attorneys agreed that school law courses in the undergraduate teacher certification program and the implementation of a school law professional library were essential for keeping abreast of current legal issues. In Clark's (1990) study of Mississippi superintendents and secondary educators, a significant difference was found between those educators who completed a course in school law and those educators who did not complete a course on school law. In South Dakota, Osborn (1990) found that secondary principals that completed one school law course were significantly more knowledgeable than those who did not complete any course work. Over 965 of the principals' perceived knowledge of state educational law to be important or extremely important but a majority of the principals had not been exposed to state statutes and administrative rules governing education (Osborn, 1990).

Summary

Historically, principals were considered a professional mentor, instructional leader, site manager, disciplinarian, and chief decision-maker. In day to day operations, the principal's

authority was rarely challenged. The traditional components of the principal's role and the expectations of the stakeholders is the same, but fulfilling job responsibilities has taken on a whole new complexity with due to the explosion of litigation that began in the 1950s. There have been thousands of cases heard within the last ten years. The courts are increasingly holding educators to a higher standard of competence and knowledge as professionals.

CHAPTER THREE

METHODOLOGY

Principals must increasingly use their knowledge of constitutional school law due to the litigious times in which they function. Regin (1992) believes that in light of the fact that the principal's liability remains substantial in today's legal environment, it is vital that they develop a school law knowledge base. This chapter describes the methods and procedures that were used including a description of the problem, research questions, research design, instrument reliability and validity, data collection, and data analysis.

Purpose

Administrators work in a complex litigious environment, and it is pertinent for administrators to be cognizant of the wide range of legal issues that influence the lives of all stakeholders. It is increasingly clear that educators' ignorance of school law will be at their own peril (Fischer, et al., 1987). Principals must be aware of district policies and institute practices based on legal standards. The purpose of this study is to analyze Pennsylvania public school principals' knowledge of constitutional school law by determining if a descriptive difference exists between Pennsylvania principals' perceived level of knowledge and actual knowledge of constitutional school law, determining if a connection exist between principals' awareness of constitutional school law litigation cases and their daily decision-making, and ascertaining where principals feel as though they acquired their foundational knowledge of school law.

Research Questions

This study examined the following research questions:

- 1) Does a descriptive difference exist between Pennsylvania principals' perceived level of knowledge and actual knowledge of constitutional school law?
 - Do principals believe that they are knowledgeable?
 - Are principals in fact knowledgeable?
- 2) Does a connection exist between principals' awareness of constitutional school law litigation cases and their daily decision-making?
 - Are principals aware of precedent setting school law cases?
 - Do principals intend to modify their behavior after learning about constitutional school law?
 - Do principals act in the best interests of the students based on their knowledge of constitutional school law?
- 3) Where do principals feel as though they acquired their foundational knowledge of school law?
 - What level of law training has principals participated in both pre-service and ongoing?
 - How do principals obtain legal knowledge beyond formal training?

Population

In order to generalize the findings of this study to all building level public school principals the target population consisted of all individuals serving in that capacity during the 2013-2014 school year. The list of email addresses and contact information used in this study were compiled from publicly available information on the Pennsylvania Department of

Education website (PDE) and the school districts' websites. To control the population only building administrators bearing the title "principal" were included. Any other administrators with a title of assistant principal, dean of students, director, or supervisor were eliminated from the total population. Currently, there are approximately 3,000 administrators in the state of Pennsylvania with the title of "principal".

Sampling

Consideration was given to using simple random sampling, stratified sampling, or convenience sampling since similar studies conducted in Pennsylvania and other states utilized these methodologies. After closer examination, however; the total number of responses received too often reflected a very small percentage of the overall population. For example, in 2010, Provinzano used convenience sampling of public principals in a four county region in Pennsylvania. Of 144 principals targeted, 62 responded. In Provinzano's study this was the 43% response rate, but when generalized, 62 respondents is the equivalent of 2% of all public principals in the state of Pennsylvania. Similarly, Eberwein (2008) conducted a nationwide study which randomly invited 8,000 of the 24,000 secondary principals to participate yielding 493 responses, or 2% of the total population. On the contrary, Smith's (2010) study targeted all 1,093 public school principals yielded 332 responses or 30.24% of the total population and in Magone's (2007) study targeted 595 administrators, yielded 294 responses which is 49% of the total population. To reduce the potential for coverage and sampling errors and to increase the percentage of responses relative to the entire population, surveys will be submitted to the entire population of the 1,000 identified principals.

Pennsylvania has 501 total school districts which are located in 67 counties. For this study 34 counties were included. A total of 1,000 email addresses were obtained and represents approximately one-third of the total population of principals in Pennsylvania.

Data Collection

After receiving final approval from the IRB and dissertation committee, a letter asking principals to participate in the research and explaining the purpose, benefits, and risks of participation in the research was sent. The survey was delivered electronically via Qualtrics to 1,000 building level principals in Pennsylvania. The list of email addresses and contact information used in this study were compiled from publicly available information on the Pennsylvania Department of Education website (PDE) and the school districts' websites. Principals will be given a time frame of two weeks to complete the survey. A reminder email was sent one week after initiating contact with principals. A third email was sent to non-respondents before closing the survey window. After the close of the survey window the responses were entered into the Statistical Package for Social Sciences (SPSS) for statistical manipulation. The data was coded and sorted for ease of statistical treatment in SPSS. After the data was coded then connections were examined between responses per question, individual, and by legal knowledge.

Instrument Development

Numerous instruments were reviewed and overwhelmingly the surveys were found to be structured in a true/false format. Smith's (2010) 76-item, true/false survey was divided into seven categories which adequately encompassed the seven areas of school law identified in her study. Eberwein (2008) utilized the *Principals' Education Law Survey* which was an extension of the *Education Law Survey* (Schimmel, Militello & Eberwein, 2007) developed at The

University of Massachusetts. This 34-item true/false/unsure survey was divided into six sections and included two open-ended responses. Eberwein (2008) included the “unsure” option in his true/false survey to reduce guessing that may adversely impact the reliability of the instrument. The inclusion of the “unsure” option is supported by McMillan and Schumacher (1997) when they suggested that adding “unsure or do not know... gives the subjects an opportunity to state their true feelings or beliefs” (p. 254). More recently, White (2012) and Moncrief-Petty (2012) also used true/false surveys to measure principals’ knowledge of school law. White made note that of the three districts she surveyed, two had a very low rate of completion of the survey. Of the ten examined surveys none included Supreme Court landmark court cases in the question. Court cases were referred to in many of the answer keys located in the appendices of the various dissertations but were not included in the foundation of the question. The rationale behind incorporating the Supreme Court cases is to support the idea that school principals will be able to make better decisions in the best interest of the students if they understand how the First, Fourth, Eighth and Fourteenth Amendments impact education. Originally, seven Supreme Court cases were identified to be included in the survey. Following discussions with three superintendents, four school solicitors, and the dissertation committee the final number of cases agreed upon was six. The table below outlines the Supreme Court cases and corresponding amendments impacting education that was included in the survey.

Table 1

Summary of Supreme Court Cases and Corresponding Amendments

Supreme Court Cases	First Amendment	Fourth Amendment	Fourteenth Amendment
Tinker v Des Moines (1969)	X		
Hazelwood v Kuhlmeier (1988)	X		
Morse v Fredrick (2007)	X		
New Jersey v TLO (1985)		X	
Safford Unified School District v Redding (2009)		X	
Goss V Lopez (1975)			X

Reliability and Validity

There were no surveys even remotely close to the survey used in this study therefore it was necessary to establish the content validity of the survey items. Eight school solicitors concentrating on different areas of law; employment and labor relations, constitutional school law, and taxation were identified in Western Pennsylvania school districts each and emailed the survey. Four solicitors responded. Three of the four solicitors felt that the Supreme Court case of *Ingraham v. Wright* (1997) was not as relevant to principals today based on the fact that “paddling was no longer permitted in Pennsylvania”. Based on this feedback and follow-up emails the question was removed from the survey. Two of the solicitors recommended emphasizing free speech by including *Bethel School District No. 43 v. Fraser*, 478 U.S. 675 (1986) or *Morse v. Frederick*, 551 U.S. 393 (2007). After communicating via email with these two solicitors, *Morse v. Fredrick* was added to the survey and the wording of the content was

validated. Finally, two of the solicitors recommended rephrasing the *Goss v. Lopez* (1975) to include the “facts that are relevant to administrators’ understanding what the issue was resulting in a denial of due process”. Again, after email communications, the wording was adjusted.

In addition to the solicitors’ review of the questions the dissertation committee provided feedback on the structure of the questions. Adaptations were made to the response items based on this feedback. The dissertation committee also provided feedback on the measure of whether the questions asked in the survey adequately addressed the First, Fourth, and Fourteenth Amendments.

Pilot Survey

Ten administrators in Western Pennsylvania were identified and emailed the survey for completion. The administrators were encouraged to make notes under each question to assist in clarification. At the end of the survey the administrators were also asked to include any additional comments. All ten respondents included a comment that an additional response item was needed for the questions involving principals’ acknowledgement of a Supreme Court case and their intent to change their daily decision making. The table below represents the breakdown of years of service for each of the ten respondents. The only section not represented was the 0-5 years of service.

Table 2

Respondents and Years in the Principalship

Respondents	Years in the principalship				
	0-5	6-10	11-15	16-20	20+
1		X			
2		X		X	
3					
4					X
5				X	
6			X		
7			X		
8				X	
9			X		
10				X	
Total		2	3	4	1

Data Analysis

Simple statistical analysis of data from all three sections of the survey was completed. Descriptive statistics collected included percentage and frequency. This information was used to summarize the sample. Simple statistics were calculated to answer research questions requiring disaggregated data, such as level of building principal. This assisted in identifying trends from the findings. A Chi Square crosstabulation test was used for overall knowledge with the variables of years of gender, level of principalship, experience, ongoing professional development and ways of obtaining updates on school law.

Summary

This study was designed to examine the legal literacy of Pennsylvania public school principals in order to determine what they know, if they are aware of litigation that impacts their daily decision-making, and how they obtain professional development in the area of school law.

The sample population included one third of Pennsylvania public school principals in an effort to reduce the potential for coverage and sampling errors and to increase the percentage of responses relative to the entire population, surveys will be submitted to each of the eligible participants.

The online instrument was designed to collect demographic data, information regarding school law training and sources of legal knowledge, behavior related to school law, and the level of law knowledge among respondents. Participants were given two weeks in which to complete and submit the survey. Descriptive statistics and the Chi Square crosstabulation test were applied to establish trends and connections among variables. The survey's results will be added to the existing body of school law-related literature, most specifically literature regarding meeting school law education needs.

CHAPTER FOUR

DATA COLLECTION AND ANALYSIS

As stated in Chapter One, this study was to examine Pennsylvania public school principals' knowledge of constitutional school law. This chapter is organized in terms of the three research questions posed in Chapter One. First this chapter will discuss the instrument design and response rate. Then this chapter will analyze the descriptive statistical results collected from the survey results to answer each of the three research questions.

- 1) Does a descriptive difference exist between Pennsylvania principals' perceived level of knowledge and actual knowledge of constitutional school law?
 - Do principals believe that they are knowledgeable?
 - Are principals in fact knowledgeable?
- 2) Does a connection exist between principals' awareness of constitutional school law litigation cases and their daily decision-making?
 - Are principals aware of precedent setting school law cases?
 - Do principals intend to modify their behavior after learning about constitutional school law?
 - Do principals act in the best interests of the students based on their knowledge of constitutional school law?
- 3) Where do principals feel as though they acquired their foundational knowledge of school law?
 - What level of law training has principals participated in both pre-service and ongoing?
 - How do principals obtain legal knowledge beyond formal training?

Instrument Design

A 19-item, two part survey was developed. Part One of the survey included eight multiple choice and fill in the blank answer items designed to gather demographic information from the participants, and tie the results to the research questions. Part Two of the survey contained six scenarios based on Landmark Supreme Court cases that corresponded to the First, Fourth, and Fourteenth Amendments.

Response Rate

The survey was delivered via email to 920 building level principals in 37 counties of Pennsylvania. One hundred emails were immediately “bounced back” according to Qualtrics. This means that Qualtrics was unable to deliver one hundred emails due to invalid email addresses or a content filter that prohibited mass email distributions. Two weeks after the initial invitation a second notice was sent to participants that had not opened the email. The survey remained open for two additional weeks. Out of the 820 surveys delivered, 60% (n=500) participants opened the email containing the survey. Of the 60% of the participants that opened the email 32% (n=163) opened the survey. Then 91% (n=149) began the survey. The first item of the survey allowed the participant to opt out of the study. Of the 149 participants that opened the survey 9% (n=10) of the participants chose not to fully complete the survey. Of the 500 participants that opened the email 27% (n=139) responded to the entire survey.

Descriptive Statistics Analysis

The following section includes statistical descriptions of the 139 principals who participated in this study based on their responses to the seven demographic questions contained in Part One of the survey. To respond to demographic question one, participants identified themselves as male or female. Of the 139 respondents, 53.7% (n=80) identified themselves as male, and 39.6% (n=59) identified themselves as female.

Demographic question two required the participants to identify the setting in which they worked as an elementary, middle/Jr. high, or secondary school. Of the 139 respondents, 50.3% (n= 75) identified themselves as elementary, 15.4% (n=23) middle/Jr high, and 27.5% (n=41) as secondary. A crosstabulation analysis was completed between gender and level of principalship. This detailed that 20% (n=29) of the males worked at the elementary level, 12% (n=16) at the middle/Jr high, and 25% (n=35) at secondary school level. The female level breakdown was outlined as 33% (n=46) at the elementary level, 5% at the middle/Jr high level, and 4% (n=6) at the secondary level. There were three times as many male participants as female participants at the middle/Jr. high levels. In addition, elementary principals accounted for 49.6% of total participants.

Table 3

Gender and Level of Principalship Crosstabulation

		Level of Principalship			Total
		Elementary	Middle/Jr High	Secondary	
Gender	Male	29	16	35	80
	Female	46	7	6	59
Missing		0	0	0	10
Total		75	23	41	149

In demographic question number three, respondents were asked to identify the college where they obtained their principal certification. The Indiana University of Pennsylvania (IUP) had the highest representation of participants receiving their principal certification in the survey with 13.4% (n=20), followed closely by University of Pittsburgh with 10.7% (n=16) and University of California 9.4% (n=13). In all, 32 colleges/universities were represented in the survey. Fifty percent (n=16) of the colleges/universities were located outside of Pennsylvania and represented 13% (n=20) of the total participants in this study.

Table 4

Question 3: From Which College Did You Obtain Your Principal Certification

College/University	Frequency	Percent
Arizona University	1	.7
Bucknell University	1	.7
California University. PA	14	9.4
Carnegie Mellon University	2	1.3
Cleveland State University	1	.7
Duquesne University	11	7.4
Edinboro University	13	8.7
Frostburg State University	2	1.3
Gannon University	8	5.4
George Mason University	1	.7
Indiana University of Pennsylvania	20	13.4
John Hopkins University	1	.7
North Carolina St University	1	.7
Penn State University	5	3.4
Point Park University	3	2.0
Shippensburg University	5	3.4
Slippery Rock University	4	2.7
Southern Conn St University	1	.7
St. Francis University	4	2.7
St. Bonaventure University	3	2.0
SUNY Brockport University	1	.7
University of Akron (Ohio)	1	.7
University of Phoenix	1	.7
University of Pittsburgh	16	10.7
University of Scranton	2	1.3
University of Southern Carolina	1	.7
University of Virginia	1	.7
West Virginia University	3	2.0
Westminster College	9	6.0
Wilkes University	1	.7
Wilmington University	1	.7
Youngstown State University	1	.7
Total	149	100.0

Demographic question number four required participants to indicate their years of experience in the profession. The responses were categorized as a) 0-5 years; b) 6-10 years; c) 11-15 years; d) 16-20 years; e) 21+ years. The two smallest groups of principals represented came from the 0-5 years of experience with 12.8% (n=19), and the 6-10 years of experience with 17.4% (n=19). The ranges of 11-15 years and 21+ years of experience in the profession were equally represented with 21.5% (n=32), while the 16-20 range rounded out the levels with 20.1% (n=30).

Table 5

Questions 4: Years of Experience in the Profession

Years in Profession		Frequency	Percent
Valid	0-5 years	19	12.8
	6-10 years	26	17.4
	11-15 years	32	21.5
	16-20 years	30	20.1
	21+ years	32	21.5
	Total	139	93.3
Missing Responses		10	6.7
Total		149	100.0

Demographic question number five required the participants to indicate how often they participated in professional development workshops or courses related to school law. The responses included a) three or more a year; b) twice a year; c) once a year; d) I do not participate in legal workshops and/or courses. The results indicated that 74.5% (n=111) of respondents participated in one or less professional development workshops at least once a year. This suggests that a majority of principals are not receiving updates of school law first hand. Only

18.8% (n= 28) of respondents participated in two or more legal workshops and/or courses each year.

Demographic question five required the participants to indicate how often they participated in legal workshops or courses related to school law. Only 8.7% (n=13) of the participants engaged in legal workshops or courses three or more times a year. Of the 139 participants that answered the question 10.1% (n=15) of them indicated that they participated in legal workshops or courses related to school law twice a year. More concerning is that 20.8% (n=31) of participants do not engage in any legal workshops or courses and 7.2% (n=10) chose not to answer the question.

Table 6

Question 5: For Ongoing Professional Development, I Participate in Legal Workshops and/or Courses

Number of workshops attended		Frequency	Percent
Valid	Three or more times a year	13	8.7
	Twice a year	15	10.1
	Once a year	80	53.7
	I do not participate in legal workshops and/or courses	31	20.8
	Total	139	93.3
Missing Responses		10	6.7
Total		149	100.0

Demographic question six asked participants to select all of the ways they obtained updates on school law. Accessing professional organizations (Tri-State Study Council, Pennsylvania School Board Association, Pennsylvania Association of Elementary and Secondary School Principals, etc.) that provide legal updates through newsletters, professional journals,

and/or workshops was chosen by 95.7% (n=133) of participants. Superintendents or their designee also provided updates as indicated by 80.5 % (n=112) of participants. This suggests that superintendents or their designees must also remain current in the area of school law. Additional responses included solicitors/legal directors 5% (n=7), Bernie Hoffman .7% (n=1), conferences .7% (n=1), and Basic Educational Circulars (BECS) .7% (n=1).

Table 7

Question 6: Other Ways You Obtain Updates on School Law

Categories	Frequency
Superintendent or Designee	112
Professional organizations present workshops, newsletters, professional journals	133
I do not receive updates	1
Other	
Bernie Hoffman	1
Conferences	1
Solicitor/Legal Affairs Director	7
BECS	1
Total	149

Participants were asked to include all the ways in which they obtained legal updates. Of all the options for principals to obtain updates on school law, they relied most frequently on professional organizations to hold workshops and/or to send newsletters, emails, and professional journals. In addition, superintendents or their designees are heavily relied upon to share updates on school law.

Scenarios

Part Two of the survey required respondents to read six scenarios and answer two follow-up questions based on each scenario. The six scenarios were based on Landmark Supreme Court cases relating to the First, Fourth, and Fourteenth Amendments. To determine if and when a principal was familiar with the Supreme Court case, the respondents were asked to select one of the following choices a) during course work and/or a professional development workshop; b) on the job through a mentor or a coaching experience; c) through course work and on the job through a coaching experience; d) during a professional development workshop and on the job; e) I was not familiar with the case. A follow-up question was asked to determine whether a) I have changed my daily decision-making based on my knowledge of this case; b) I will change my daily decision-making based on my knowledge of this case; c) I have not and will not change my daily decision-making based on my knowledge of this case.

Research Question One and Two

Since research questions one and two were so closely related, this section presents the findings for both questions. Does a descriptive difference exist between Pennsylvania public school principals' perceived knowledge, and actual knowledge of constitutional school law exist? Actual knowledge had no relationship to perceived knowledge as measured using the Chi Square crosstabulation for awareness and professional development. In order to run the test, the variables were re-coded to yes, representing principals that were aware of the Supreme Court case and no, representing principals that were not aware of the Supreme Court Case. Does a connection exist between principals' awareness of constitutional school law litigation cases and their daily decision-making? The nonparametric test, Likelihood Ratio revealed that no connection existed between principals' awareness of constitutional school law litigation cases

and their daily decision-making and $v= 2.225$ and $p=.527$ with $df (3)$. The tables that follow demonstrate the breakdown of each of the six Supreme Court cases used in this study.

The participants reported that in *Tinker*, 68.5% (n=102) have changed or will change their daily decision-making based on their knowledge of *Tinker*, while 22.8% (n=34) stated that have not and will not change their daily decision-making. These results indicate that principals recognize the impact of the *Tinker* and have modified their behavior accordingly.

Table 8

Question 8: Have You Changed or Would You Change Your Daily Decision-Making Based on Your Knowledge of the Tinker v Des Moines First Amendment Case?

	Categories	Frequency	Percent
Valid	I have changed	84	56.4
	I will change	18	12.1
	I have not and will not change	34	22.8
	Total	136	91.3
Missing		13	8.7
Total		149	100.0

In the *Hazelwood*, 61.8% (n=92) of the participants reported that they have changed or will change their daily decision-making, while 29.5% (n=44) have not and will not change their daily decision-making. This suggests more than half the participants have changed their decision making based on their knowledge of *Hazelwood*.

Table 9

Question 10: Have You Changed or Would You Change Your Daily Decision-Making Based on Your Knowledge of the Hazelwood v Kuhlmeier?

		Frequency	Percent
Valid	I have changed	70	47.0
	I will change	22	14.8
	I have not and will not	44	29.5
	Total	136	91.3
Missing		13	8.7
Total		149	100.0

Participants reported that in *Morse*, 56.4% (n=84) will change or have changed their daily decision-making based on their knowledge of the *Morse*, while 32.9% (n=49) have not and will not change. In the open-ended response portion of the survey a participant indicated that he/she worked at the elementary level and stated that the option of have not and will not change my decision-making was chosen due to the fact that the *Morse* scenario was unlikely to occur at the elementary level. Since 49.6% (n=75) of the principals indicated that they worked at the elementary level further evaluation would be necessary to ascertain if this line of thinking accounted for the lower indication of modifying principal daily decision-making.

Table 10

Question 12: Have You Changed or Would You Change Your Daily Decision-Making Based on Your Knowledge of Morse v Fredrick?

		Frequency	Percent
Valid	I have changed	56	37.6
	I will change	28	18.8
	I have not and will not change	49	32.9
	Total	133	89.3
Missing		16	10.7
Total		149	100.0

Participants indicated in *TLO*, that 61.1% (n=91) have changed or will change their daily decision-making based on their knowledge of this case, while 27.5% (n=41) have not and will not change their daily decision-making. These results are very similar to the *Tinker* and *Hazelwood* results and suggest that principals are more likely to have changed or will change their behavior based on their knowledge of the case.

Table 11

Question 14: Have You Changed or Would You Change Your Daily Decision-Making Based on Your Knowledge of New Jersey v TLO?

		Frequency	Percent
Valid	I have changed	77	51.7
	I will change my daily decision-making based on my knowledge of this case	14	9.4
	I have not and will not change	41	27.5
	Total	132	88.6
Missing		17	11.4
Total		149	100.0

In *Safford*, 50.3% (n=75) of participants have changed or will change their daily decision-making based on their knowledge of this case, while 37.6% (n=56) stated they have not and will not change their decision-making. *Safford* and *Morse* were the two most recent Supreme Court cases included in the survey. The results in both cases indicate that principals have not and do not plan to change their behavior based on their knowledge of these two cases.

Table 12

Question 16: Have You Changed or Would You Change Your Daily Decision-Making Based on Your Knowledge of Safford Unified School District v Redding?

		Frequency	Percent
Valid	I have changed	44	29.5
	I will change	31	20.8
	I have not and will not	56	37.6
	Total	131	87.9
Missing		18	12.1
Total		149	100.0

Lastly, with regards to *Goss*, 63.1% (n=94) of the participants reported that they have changed or will change their daily decision-making based on their knowledge of *Goss*, while 22.8% (n=34) have not and will not change their daily decision-making. The results of the *Goss* case fall in line with the *Tinker*, *Hazelwood*, and *TLO* cases. Principals have changed or plan to change their daily decision-making based on their knowledge of this case.

Table 13

Question 18: Have You Changed or Would You Change Your Daily Decision-Making Based on Your Knowledge of Goss v Lopez?

		Frequency	Percent
Valid	I have changed	81	54.4
	I will change	13	8.7
	I have not and will not change	34	22.8
Missing		21	14.1
Total		149	100.0

To summarize the findings in all six Supreme Court Cases, over 50% of the participants responded that they have changed or will change their daily decision-making based on their knowledge of the cases, but no connection existed between principals' awareness of constitutional school law litigation cases and their daily decision making based on the nonparametric test, Likelihood ratio.

Research Question Three

The third research question asked where principals felt as though they acquired their foundational knowledge of school law. Scenario questions 7, 9, 11, 13, 15 and 17 asked the participants to select the answer choice that best described where they learned about each Supreme Court Case.

In the *Tinker* scenario, the participants indicated overwhelmingly with 64.4% (n=96) that they learned about this First Amendment case through course work and/or a professional development workshop, while 20.9% (n= 34) of the participants indicated that they learned about cases during a combination of on the job and a coaching, mentoring, or a professional development workshop. This suggests that it is critical for principals to be exposed to school law

cases during principal preparation programs and through continuous professional development opportunities. Only 6% (n=9) participants were not familiar with the case which indicated that most principals are aware of the *Tinker* case.

Table 14

Questions 7: Select the Category That Best Describes Where You Learned About the Supreme Court Case of Tinker v Des Moines.

	Categories	Frequency	Percent
Valid	Course work and/or a professional development workshop	96	64.4
	On the job through a mentor or a coaching experience	4	2.7
	Through course work AND on the job through a coaching experience	15	10.1
	During a professional development workshop AND on the job	12	8.1
	I was not familiar with this case	9	6.0
	Total	136	91.3
Missing		13	8.7
Total		149	100.0

In the *Hazelwood* scenario, the participants indicated with 53.7% (n=80) that they learned about this First Amendment case through course work and/or a professional development. 17.4% (n= 26) of the participants indicated that they learned about cases during a combination of on the job and a coaching, mentoring, or a professional development workshop while 20.1% (n=30) participants were not familiar with this case.

Table 15

Question 9: Select the Category That Best Describes Where You Learned About the Supreme Court Case of Hazelwood v Kuhlmeier.

Categories		Frequency	Percent
Valid	Course work and/or a professional development workshop	80	53.7
	On the job through a mentor or a coaching experience	6	4.0
	Through course work AND on the job through a coaching experience	10	6.7
	During a professional development workshop AND on the job	10	6.7
	I was not familiar with this case	30	20.1
Total		136	91.3
Missing		13	8.7
Total		149	100.0

In the *Morse* scenario, the participants indicated with 36.2% (n=54) that they learned about this First Amendment case through course work and/or a professional development. 26.9% (n= 40) of the participants indicated that they learned about cases during a combination of on the job and a coaching, mentoring, or a professional development workshop, while 26.2% (n=39) participants were not familiar with this case. Principals state that it is critical to remain current in school law, but with over a quarter of the participants not being familiar with this court case there is clearly a disconnect that must be addressed.

Table 16

Question 11: Select the Category That Best Describes Where You Learned About the Supreme Court Case of Morse v Fredrick.

	Categories	Frequency	Percent
	Course work and/or a professional development workshop	54	36.2
	On the job through a mentor or a coaching experience	13	8.7
Valid	Through course work AND on the job through a coaching experience	5	3.4
	During a professional development workshop AND on the job	22	14.8
	I was not familiar with this case	39	26.2
	Total	133	89.3
Missing		16	10.7
Total		149	100.0

In the *TLO* scenario, the participants indicated with 51% (n=76) that they learned about this Fourth Amendment case through course work and/or a professional development. 25.6% (n=38) of the participants indicated that they learned about cases during a combination of on the job and a coaching, mentoring, or a professional development workshop, while 12.1% (n=18) participants were not familiar with this case. In a top ten list of Supreme Court cases to know created by Russo et al. (2000) the *TLO* case was ranked number one. Even though more than 75% of the participants were familiar with the case, these results indicate that additional work in the preparing principals in the area of landmark Supreme Court cases remains.

Table 17

Question 13: Select the Category That Best Describes Where You Learned About the Supreme Court Case of New Jersey v TLO.

	Categories	Frequency	Percent
	During course work and/or a professional workshop	76	51.0
	On the job through a mentor or a coaching experience	11	7.4
Valid	Through course work AND on the job through a coaching experience	15	10.1
	During a professional development workshop AND on the job	12	8.1
	I was not familiar with this case	18	12.1
	Total	132	88.6
Missing		17	11.4
Total		149	100.0

In the *Safford* scenario, the participants indicated with 31.5% (n=47) that they learned about this Fourth Amendment case through course work and/or a professional development. 15.5% (n= 23) of the participants indicated that they learned about cases during a combination of on the job and a coaching, mentoring, or a professional development workshop while 40.9% (n=61) participants were not familiar with this case. This case was known the least to principals. It is possible that since it occurred at the secondary level that many elementary principal participants were not aware of it or perhaps because it was the most recent of the six cases. In any event, this indicates that principals are not remaining current on a variety of topics in school law.

Table 18

Question 15: Select the Category That Best Describes Where You Learned About the Supreme Court Case of Safford Unified School District v Redding.

	Categories	Frequency	Percent
	During course work and/or a professional development workshop	47	31.5
	On the job through a mentor or a coaching experience	7	4.7
Valid	Through course work AND on the job through a coaching experience	4	2.7
	During a professional development workshop AND on the job	12	8.1
	I was not familiar with this case	61	40.9
	Total	131	87.9
Missing		18	12.1
Total		149	100.0

In the *Goss* scenario, the participants indicated with 55% (n=82) that they learned about this Fourteenth Amendment case through course work and/or a professional development. 18.1% (n= 27) of the participants indicated that they learned about cases during a combination of on the job and a coaching, mentoring, or a professional development workshop while 12.8% (n=19) participants were not familiar with this case. The *Goss* case was also included in the top ten Supreme Court cases and this suggests that not all principals are as informed as they should be about landmark decisions.

Table 19

Questions 17: Select the Category That Best Describes Where You Learned About the Supreme Court Case of Goss v Lopez.

	Categories	Frequency	Percent
Valid	During course work and/or a professional development workshop	82	55.0
	On the job through a mentor or a coaching experience	14	9.4
	Through course work AND on the job through a coaching experience	10	6.7
	During a professional workshop AND on the job	3	2.0
Missing	I was not familiar with this case	19	12.8
		21	14.1
	Total	149	100.0

In all six scenarios participants, indicated with the highest frequency that they learned about the cases either during course work or a professional development workshop. Further analysis was needed for principals' awareness and how often they participated in professional development. A Chi-Square crosstabulation was performed and Table 20 demonstrated that principals that were aware of the Supreme Court cases participated in professional development workshops more frequently than principals that were unaware of the Supreme Court Cases. In fact 63% (n=86) of principals that were aware of the Supreme Court cases participated in at least one professional development workshop yearly.

Table 20

Crosstabulation Awareness: For Ongoing Professional Development, I Participate in Legal Workshops and/or Courses

		Three or more times a year	Twice a year	Once a year	I do not participate in legal workshops and/or courses	Total
Awareness	No	3	2	15	9	29
	Yes	10	12	64	20	106
Total		13	14	79	29	135

The final survey question of the survey asked principals if they had any other comments to share. In all, 85 participants made a comment for the last question. Well wishes and congratulatory comments were withheld due to the lack of relevancy to this study. The remaining 34 responses were reviewed and grouped according to topic. Seven participants noted the importance of remaining current on school law. These comments included statements like ; “constitutional school law is always changing therefore administrators must have access to current cases”, “it is good to receive continuing education in this area because new cases are always on the horizon”, and “school law is essential in an administrator’s decision-making and on-going updates are a necessary component for professional growth for seasoned administrators”. The second group of comments included clarifying statements about their answer choices. More specifically, 10 participants focused on their reasoning behind selecting the option of “I have not and will not change my decision making based on my knowledge of this case”. One example included; “these issues all dealt with secondary so they would rarely apply in my setting”. “The only choice I was given was have not and will not change my decision

making. That makes is (it) sound like I am unwilling”. “I consult those who are more familiar with recent (l)aw when I have a questionable situation... and I would not change unless I had a similar situation”. The remaining 17 responses varied greatly. Some examples included; “I am continually amazed at the number of school officials who seem oblivious to the laws on which we base our policy and procedures”. “Although I was not familiar with some of the court cases, my knowledge of common school law and procedures makes me understand the proper way to conduct searches and suspensions”. “My course of action throughout the day is supported by these decisions”. As noted throughout this dissertation, principals are vocal about needing additional professional development in the area of school law, but do not take the initiative to follow-up on their own.

CHAPTER FIVE

DISCUSSION, RECOMMENDATIONS, CONCLUSION

Principals are required to act in the best interests of the students with regards to laws, regulations, policies and procedures. Principals' decision-making continues to be challenged and has been compared to a "legal minefield" (Smith, 2008). Studies conducted in South Carolina (White, 2012), Arkansas (Smith, 2010), Texas (Schlosser, 2006; Valadez, 2005), Virginia (Brabrand, 2003; Caldwell, 1986), and Florida (Steele, 1990) established baselines for legal literacy and identified potential gaps in knowledge. Only one study, Provinzano (2010), was conducted in Pennsylvania and was aimed at quantify principals' knowledge of school law. State law requires all principals to complete one law course prior to obtaining principal certification; however, there are no mandates requiring continued education in the area of school law. With the laws consistently changing, it becomes the principals' burden to locate and participate in follow-up courses, professional development workshops and/or remain current through newsletters or *e*-publications. Permuth and Mawdsley (2001) stressed that for principals to avoid the courtroom that they must understand how school law and court decisions impact their day to day operations.

Purpose

The role of the school administrator has gone from the position of being considered "The Law" to the position of being accountable under the law. Zahler (2001) suggested that the best way for a school administrator to avoid a lawsuit was to have a thorough knowledge of school law (p 3). Doverspike (1990) seconded this by stating a principal's "most powerful defense" against liability and litigation is an "extensive and adequate" knowledge of school law. The purpose of this quantitative study was to analyze Pennsylvania public school principals' knowledge of constitutional school law by determining: 1) If a descriptive difference exists

between Pennsylvania principals' perceived level of knowledge and actual knowledge of constitutional school law, 2) If a connection exists between principals' awareness of constitutional school law litigation cases and their daily decision-making, and 3) Where principals feel as though they acquired their foundational knowledge of school law.

Summary of Findings

The three research questions proposed to examine whether principals believed themselves to be knowledgeable of precedent setting law cases, if they would modify their behaviors based on their knowledge of the constitutional school law cases, and act in the best interest of the students based on their knowledge acquired from course work, on the job training and professional development workshops.

The descriptive statistical results for research question one did not demonstrate a descriptive difference between principals' perceived level of knowledge and actual knowledge of constitutional school law. In research question two, no connection existed between principals' awareness of constitutional school law litigation cases and their daily decision-making. The sub-questions did reveal noteworthy descriptive results. For example, sub-question one asked whether principals were aware of precedent setting school law cases. More than 70% of the participants were aware of five out of six Supreme Court cases. *Safford (2009)* was the only case in which 40.9% of participants were unaware of the case prior to this survey. Sub-question two asked if principals intend to modify their behavior after learning about constitutional school law. In *Safford*, over 50% of participants reported that they have changed or will change their daily decision making based on their knowledge of the case. The five other Supreme Court cases also demonstrated that over 55% of participants have changed or will change their daily decision-making based on their knowledge of the case. Sub-question three asked if principals are acting in

the best interest of the students based on their knowledge of constitutional school law. As described in the theoretical framework, students' best interests are at the center of the ethic of the profession, which encompasses the ethics of justice, care and critique. Also entwined in the ethic of the profession are rights, responsibilities, and respect. Principals have an ethical responsibility to be aware of the fundamental Supreme Court cases. In this study more than 50% of the participants were familiar with five of the six cases. In addition, participants indicated that they relied heavily on the superintendent or designee and professional organizations to provide updates on changes in school law. Only 18% of the participants indicated that they participated in professional development more than once a year. The two most recent Supreme Court cases, *Morse* and *Safford* (2009) had the lowest level of awareness. This suggests that participating in professional development once a year and relying on receiving updates from the superintendent/designee and professional organizations is not enough. As stated earlier in this study, the excessive cost of education litigation is due in part to the decision-making of school personnel who are not only unaware of the laws, but often are given misinformation about the protected rights of students and teachers. Ongoing, consistent professional development has been documented in other research studies as the most beneficial manner for acquiring updated knowledge (Zahler, 2001; Valadez, 2005; Copenhaver, 2005; Smith, 2010; Williams, 2010; Moncrief-Petty, 2012).

Research question three asked where principals felt as though they acquired their foundational knowledge of school law. Sub-question one asked what level of training principals have participated in both pre-service and ongoing. The state of Pennsylvania requires aspiring principals to complete one course in the area of school law. In this study participants were asked where they obtained their principal certification. Fifty percent (n=16) of the schools were outside

of Pennsylvania and had various requirements with regards to obtaining principal's certification. Pennsylvania does not require principals to participate in legal workshops after obtaining their certification. It is left to principals to determine if and how they obtain legal updates. The two most recent Supreme Court cases *Morse* and *Safford* had the lowest scores for awareness among participants. This raises the question as to whether or not requiring one school law case during principal preparation classes is sufficient to provide principals with the knowledge necessary to act in the best interests of the students. Previous research completed in this area indicates that it is not. During the review of literature it was documented that principals' knowledge of constitutional school law was being measured by utilizing varying multiple choice tests. Even though this dissertation did not utilize a multiple choice test, the findings were similar to Troy, (2009), Smith (2010), Moncrief-Petty (2012) and White (2012). Each of the before mentioned researchers found that principals stressed the importance of understanding school law, but failed to remain current or knowledgeable of landmark cases.

Discussion

Previous researchers (Steeler, 1990; Kalafatis, 1999; Brabrand, 2003; Eberwein, 2008; Provinazo, 2010; White, 2012) all reported low or fair levels of legal knowledge among educators working in public schools. In this study, three out of the six precedent setting Supreme Court cases were unknown to 20% or more of the principals surveyed. In addition, 74.5% (n=111) of principals participated in one or less school law workshops. The most recent of the First Amendment cases was *Morse* (2009), also known as the "Bong Hits for Jesus". Even though 94% (n=127) of the participants were familiar with the First Amendment case *Tinker* (1969), only 74% (n=94) of the principals were familiar with *Morse* (2009). Similarly in the Fourth Amendment cases, 80% (n=106) were familiar with *Hazelwood* (1998) while only 47%

(n=70) were familiar with *Safford* (2009). Even though principals claimed to be knowledgeable about school law, these statistics are cause for alarm. School law changes frequently, and in order for principals to be knowledgeable of the changes, they must participate in consistent and ongoing professional development workshops. If the superintendent or designee does not remain current then a large portion of principals will not receive the most recent updates. Schossler (2006) made the argument that in order for administrators to act in the best interest of the students, they must develop working knowledge of relevant law. It was noted in this study that 20.8% of principals surveyed do not attend legal updates. Ignorance and a lack of awareness of the laws are not legal defenses. Provinzano's (2010) study documented that individual factors such as type of preparation received, recency of preparation, years of administrative experience, and building level assignment do not predict legal knowledge. Instead she states that principals must develop their own personal philosophy that guides their decision making process and uphold the rights of students. Administrators who are focused on promoting the ethic of care and the ethic of justice must take the first step to educate themselves in the area of student rights. In addition, when principals practice preventative law they can also build legal literacy in their staff.

Limitations

Factors exist which potentially limit the generalizations to the entire sample of principals. First, the study conducted in 2014 was designed specifically for Pennsylvania public school principals the findings cannot be extended to assistant principals, deans, and private school principals serving in Pennsylvania. Also, other studies were referenced but the results of this study can neither confirm nor refute those studies.

Secondly, due to the overwhelming number of Supreme Court cases decisions over the past fifty years not all cases were could be included in this survey. Five school district solicitors supported the inclusion of the six chosen Supreme Court cases. Every attempt was made to include well written summaries. The school district solicitors were asked to verify accuracy and explanation of each Supreme Court case. The findings demonstrated a wide range of knowledge among the 139 participants in this survey therefore the principals' knowledge cannot be generalized to all of the other Supreme Court Cases.

Finally, this study was limited to building-level principals working in Pennsylvania public schools during 2013-2014 school year. Originally, consideration was given to surveying the entire population of public school principals. Due to the overwhelming number of principals and lack of a pre-existing email data base, this study was limited to one third of the approximate 3,000 Pennsylvania principals. Thirty-four of the 67 counties stretching from Western Pennsylvania to Central Pennsylvania will be included in this study. Pittsburgh Public School District was excluded. Private school principals, including charter schools, were excluded from the study due to the absence of consistent licensure requirements for individuals serving in administrative capacities in those organizations. There is no control over whether or not the respondents completed the online survey on their own without assistance from websites, books, or colleagues. Although there are numerous areas of school law the focus of this study was on constitutional law with regards to free speech, search and seizure, cruel and unusual punishment, equal protect and due process as defined in the First, Fourth, Eighth, Tenth, and Fourteenth Amendments. The survey instrument was limited to questions involving the First, Fourth, and Fourteenth Amendments.

Recommendations

Knowledge or a lack of knowledge in the area of public school law influences the daily decision-making of public school principals. The uniformed or misinformed daily decision-making in turn, impacts the best interests of the students. The following recommendations are meant to provide a platform for further study on how to increase legal literacy among public school principals.

It is recommended that a committee comprised of the PDE representatives, colleges/universities, school solicitors and administrators to determine the “best approach” for meeting administrators’ school law needs. Pennsylvania requires that prospective principals complete one school law course. Principals that complete their principal certification in other states and then transfer to Pennsylvania to work as principals will also require legal updates. Numerous studies have proven that “hit and miss” training is insufficient to prepare principals for the legal decisions they must make. A multi-prong approach is recommended. Principals should receive their foundational knowledge during the preparation program, and then would receive follow-up mandatory legal update sessions at least once a year. Principals are overwhelmed with the number of daily responsibilities and the laws are constantly changing. With all parties working together, a universal method can be established that provide administrators with the updates necessary to make literate legal decisions in the best interest of the students. If an administrator moves from one district to another, or if a principal transfers to Pennsylvania from another state, the system remains in place for obtaining legal updates. The final step is to further the research in the area of legal literacy among Pennsylvania public school principals.

Recommendations for further research include:

- A larger sample size that would include all public school principals in Pennsylvania.
- Additional questions added to the survey to obtain more information about principals' level of knowledge compared to their perceived knowledge.
- Analyze principals' perception of the law compared to their ability to apply the law.
- Conduct a qualitative study that interviews a cross section of school solicitors, graduate professors, and principals to identify the key information necessary for principals to know.

Conclusion

Pennsylvania Public school principals must maneuver legal minefields on a daily basis. Being ignorant of the law is no longer a permissible defense. In order to act in the best interest of the students; principals must be literate in the areas of constitutional school law. Improvements in the way principals access ongoing consistent professional development are necessary to maintain principals' legal literacy. Principals must be knowledgeable about constitutional school law to act in the best interest of students. Shapiro and Stefkovich (2005) propose a three Rs model; rights, responsibilities, and respect. The authors state that students' best interest are at the center of the ethic of profession, which encompasses the ethics of justice, care, and critique and is strongly influenced by the community. Often principals must make decisions based on their own personally developed philosophy this directly impacts their daily decision-making. When principals are knowledgeable of Supreme Court cases and apply this knowledge to daily decision-making the court historically will support the schools. It is when principals and school districts act negligently or claim ignorance that they find themselves in legal hot water.

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Appendix A: Letter from the IRB Board



Indiana University of Pennsylvania

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December 20, 2013

Amy M. Burch
3004 Kestner Avenue
Pittsburgh, PA 15227

Dear Ms. Burch:

Now that your research project has been approved by the Institutional Review Board for the Protection of Human Subjects, I have reviewed your Research Topic Approval and have approved it. However, in order to graduate in May 2014, doctoral students' Research Topic Approval Forms had to be received in my office by August 15, 2013. Unfortunately, I did not receive your form until December 16, 2013. Since you did not meet the deadline, the earliest date that you will be able to graduate is August 2014.

The Thesis/Dissertation Manual, additional resources, and information to help you start writing can be found at <http://www.iup.edu/graduatestudies/thesis/default.aspx>.

This means that if your program requires a defense, you must defend **no later than July 1, 2014** and all **necessary documents** are due by this date. A description of the required documents can be accessed at <http://www.iup.edu/page.aspx?id=116439>. Your dissertation must be submitted to the School of Graduate Studies & Research by July 15, 2014 if you desire to graduate by your anticipated date. You must apply for graduation by August 1, 2014. For deadlines for subsequent graduation dates, please access <http://www.iup.edu/page.aspx?id=16683>.

You are now eligible to receive a FREE copy of Adobe Professional! This software will help you to create an electronic thesis or dissertation. Attached is a copy of the Adobe Agreement form that you need to print, fill out, and sign. Once you have completed the form, you can take it to the IT Support Center in G35 Delaney Hall to obtain a copy of the software. If you are not able to come to campus, you will need to scan the completed form and send it as an attachment from your IUP e-mail account to it-support-center@iup.edu. You can also fax the completed form to 724-357-4983. Please indicate in your email or fax that you are a graduate student requesting the Adobe Professional software and include your Banner ID and mailing address so the software can be mailed to you.

Finally, if you change your topic, the scope or methodology of your project, or your committee, a new Research Topic Approval Form must be completed.

I wish you well and hope you find this experience to be rewarding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hilliary E. Creely'.

Hilliary E. Creely, J.D., Ph.D.
Assistant Dean for Research

xc: Dr. Lara Luetkehans, Dean
Dr. Robert Millward, Graduate Coordinator
Dr. Joseph Marcoline, Dissertation Chair
Ms. Julie Bassaro, Secretary

HEC/bb

Appendix B: Cover Letter to Public School Principals and Principal Survey

Date

Dear Pennsylvania Public School Principal,

I am a doctoral student in the Administration and Leadership Studies program at Indiana University of Pennsylvania. In fulfillment of the research requirement, I am conducting a study to evaluate the legal literacy of Pennsylvania Public school Principals relative to constitutional law and the First, Fourth, Eighth, and Fourteenth Amendments and the impact on daily decision making.

“It is increasingly clear that educators ignore the law at their own peril!” (Fischer, Schimmel, & Kelley, 1987). Thirty four out of sixty seven counties in Pennsylvania are included in this study. You have been identified as a public school principal in one of the counties included and are being asked to participate in an online survey. The survey can be accessed at the link provided. There are 19 items, and it is anticipated to take 5-10 minutes to complete. Your participation in the survey is completely voluntary and confidential. You may refuse to participate by asking that your name be removed from the list.

If you choose to participate, you may quit at any time or skip any question. All survey responses are anonymous. The survey and responses will be encrypted. The storage of the data will be electronic and no personally identifying information will be collected. The Indiana University of Pennsylvania Instructional Review Board (IRB) has approved this study. This study will be of value, as results can be used to inform principal preparation programs and provide direction for staff development in the state of Pennsylvania. Each survey, including yours, impacts the study as a whole. The overall response rate is very important to the findings of this study. Thank you in advance for taking your valuable time to participate. Please complete the survey before (DATE).

If you have any questions, please contact me at (412) 600-4102 or dqnm@iup.edu, my Doctoral Chair, Dr. Joseph Marcoline at (724) 357- 2419 or j.f.marcoline@iup.edu.

Sincerely,

Amy M Burch
dqnm@iup.edu
Doctoral Candidate
Administration and Leadership Studies

Principal Survey

Please select the best answer for numbers 1-3.

- | | | | | | |
|--|------------|-----------------|-----------|-------|-----|
| 1) Gender | Male | Female | | | |
| 2) Level of Principalship | Elementary | Middle/ Jr High | Secondary | | |
| 3) Years of Experience in the Profession | 0-5 | 6-10 | 11-15 | 16-20 | 20+ |

4) From which college did you obtain your principal certification?

5) For ongoing professional development, I participate in legal workshops and/ or courses.

Please check one only.

_____ Three or more times a year

_____ Twice a year

_____ Once a year

_____ I do not participate in legal workshops and/or courses

6) What other ways do you obtain updates on school law? **Check all that apply.**

_____ Superintendent or designee provides legal updates

_____ I access professional organizations (Tri-State, PSBA, PAESSP, etc.)

_____ that provide legal updates through newsletters, professional journals and/or workshops

_____ I do not receive updates on school law

_____ Other (please be specific) _____

Please read the following six scenarios and select the best answer to each question.

7) In *Tinker v Des Moines* (1969) the Supreme Court stated that the administrators were not justified in the suspension of two students that violated the school dress code by wearing black arm bands. The administrators' actions violated the students' free speech rights as outlined in the First Amendment because the fear of a substantial disruption is not enough to discipline the students.

Please select the letter that best describes where you learned about this Supreme Court case:

- A. During course work **and/or** a professional workshop
- B. On the job through a mentor or a coaching experience
- C. Through course work **and** on the job through a coaching experience
- D. During a professional development workshop **and** the on the job
- E. I was not familiar with this case

8) Have you changed or would you change daily decision-making based on your knowledge of the *Tinker v Des Moines* First Amendment case?

_____ I have changed my daily decision making based on my knowledge of this case

_____ I will change my daily decision making based on my knowledge of this case

_____ I have not and will not change my daily decision making based on my
knowledge of this case.

9) In *Hazelwood v. Kuhlmeier* (1988) is another First Amendment case in which the Supreme Court held that school officials can exercise editorial control over the style and content of school sponsored student speech because students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment.

Please select the letter that best describes where you learned about this Supreme Court case:

- A. During course work **and/or** a professional workshop
- B. On the job through a mentor or a coaching experience
- C. Through course work **and** on the job through a coaching experience
- D. During a professional development workshop **and** the on the job
- E. I was not familiar with this case

10) Have you changed or would you change daily decision-making based on your knowledge of the *Hazelwood v. Kuhlmeier* First Amendment case?

_____ I have changed my daily decision making based on my knowledge of this case

_____ I will change my daily decision making based on my knowledge of this case

_____ I have not and will not change my daily decision making based on my
knowledge of this case

11) In *Morse v. Fredrick* (2007), a student was suspended ten days for refusing to take down a banner displayed at an off campus, school sponsored event. The banner read “Bong Hits 4 Jesus”. The Supreme Court acknowledged that no substantial disruption occurred, however; the banner’s message promoted illegal drug use and therefore was not protected by the First Amendment.

Please select the letter that best describes where you learned about this Supreme Court case:

- A. During course work **and/or** a professional workshop
- B. On the job through a mentor or a coaching experience
- C. Through course work **and** on the job through a coaching experience
- D. During a professional development workshop **and** the on the job
- E. I was not familiar with this case

12) Have you changed or would you change daily decision-making based on your knowledge of the *Morse v Fredrick* (2007) First Amendment case?

_____ I have changed my daily decision making based on my knowledge of this case

_____ I will change my daily decision making based on my knowledge of this case

_____ I have not and will not change my daily decision making based on my
knowledge of this case

13) In *New Jersey v. TLO* (1985) the Supreme Court ruled that the administrator's search of a female student was reasonable and did not violate her Fourth Amendment rights because the standard for schools is reasonable suspicion and not probable cause.

Please select the letter that best describes where you learned about this Supreme Court case:

- A. During course work **and/or** a professional workshop
- B. On the job through a mentor or a coaching experience
- C. Through course work **and** on the job through a coaching experience
- D. During a professional development workshop **and** the on the job
- E. I was not familiar with this case

14) Have you changed or would you change daily decision-making based on your knowledge of the *New Jersey v. TLO* Fourth Amendment case?

_____ I have changed my daily decision making based on my knowledge of this case

_____ I will change my daily decision making based on my knowledge of this case

_____ I have not and will not change my daily decision making based on my
knowledge of this case.

15) The Supreme Court ruled in another Fourth Amendment case, *Safford Unified School District v Redding* (2009) that the school officials violated the student's rights when she was subjected to a search of her bra and underpants for forbidden prescription drugs. Justice Souter delivered the decision for the court saying: Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution, but because there is reason to question the clarity with which the right was established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

Please select the letter that best describes where you learned about this Supreme Court case:

- A. During course work **and/or** a professional workshop
- B. On the job through a mentor or a coaching experience
- C. Through course work **and** on the job through a coaching experience
- D. During a professional development workshop **and** the on the job
- E. I was not familiar with this case

16) Have you changed or would you change daily decision-making based on your knowledge of the *Safford v. Redding* Fourth Amendment case?

_____ I have changed my daily decision making based on my knowledge of this case

_____ I will change my daily decision making based on my knowledge of this case

_____ I have not and will not change my daily decision making based on my knowledge of this case.

17) In *Goss v. Lopez* (1975) nine students were suspended without a hearing from high school for up to 10 days for destroying school property and disrupting the learning environment. The Supreme Court affirmed that the students were denied due process of law because they were suspended without a hearing prior to suspension or within a reasonable time after suspension and thus that the statute and regulation under which they were suspended was unconstitutional. The court further stated that students must be given oral or written notice of the charges against him and if the student denies then an explanation of the evidence the authorities have, and the student must be given an opportunity to present his side of the story.

Please select the letter that best describes where you learned about this Supreme Court case:

- A. During course work **and/or** a professional workshop
- B. On the job through a mentor or a coaching experience
- C. Through course work **and** on the job through a coaching experience
- D. During a professional development workshop **and** the on the job
- E. I was not familiar with this case

18) Have you changed or would you change daily decision-making based on your knowledge of the *Goss v. Lopez* Fourteenth Amendment case?

_____ I have changed my daily decision making based on my knowledge of this case

_____ I will change my daily decision making based on my knowledge of this case

_____ I have not and will not change my daily decision making based on my
knowledge of this case.

19) Please include any other feedback or comments about this survey here: