DePaul Law Review

Volume 35
Issue 2 *Winter 1986*

Article 2

School Law: A Survey of Educators

Earl J. Ogletree

Nancy Lewis

SCHOOL LAW: A SURVEY OF EDUCATORS

Earl J. Ogletree and
*Nancy Lewis**

INTRODUCTION

Today's schools function in a complex and ever-changing legal environment. Educators and students possess rights that are protected by both federal and state constitutions. State and federal judicial decisions have had far-reaching impact in defining the constitutional rights of students and teachers in the areas of freedom of speech,[1] freedom of religion,[2] due process,[3] and equal protection.[4] The rapidly growing number of state and federal court decisions,[5] combined with legislative enactments, executive orders, and rules implemented by regulatory agencies, leave educators in a complicated morass of legal "do's and don'ts."

Educators need to have an understanding of school law as it affects their duties and responsibilities, careers, students and the institutions in which they work. Without such knowledge, administrators and teachers may find themselves making decisions which result in a lawsuit against them. Educators do not need to become lawyers or experts in school law, but they should be prepared to recognize litigious situations and understand how to protect their rights, as well as the rights of their students. Hence administrators and teachers alike need to maintain a current understanding of legal changes that affect the schools.

There is a need to know the extent of educators' knowledge about pertinent issues in school law. This article presents the results of a survey administered to educators in Illinois which attempted to measure their knowlege of school law. The survey centered on four major areas of school law: 1) constitutional issues; 2) Illinois law; 3) student and parental rights; and 4) teacher rights. This survey will aid in determining the areas where educators' knowledge of school law is lacking, and serve as a basis for the effective formulation of

---

* Earl J. Ogletree, B.A., Chicago Teachers College; M.A., University of Chicago; D.Ed., Wayne State University. Professor Ogletree is on the faculty of the Department of Education at Chicago State University.

Nancy Lewis, B.A., M.Ed., Northern Illinois University. Ms. Lewis is Instructional Coordinator at Manley High School in Chicago.

1. *See infra* notes 114-66, 227-56 and accompanying text.
2. *See infra* notes 6-49 and accompanying text.
3. *See infra* notes 97-108, 167-80 and accompanying text.
4. *See infra* notes 52-65, 201-16, 219-25 and accompanying text.
5. Lawsuits brought against educators have increased to between 1,500 and 3,000 annually.

school administration and teacher education programs to remedy the situation.

II. METHODOLOGY

To determine the extent of educators' knowledge of school law, the researchers surveyed 200 educators, of whom 50 were administrators and 150 were teachers. The sample group was administered a 100-item questionnaire covering Illinois school statutes, and state and federal case law in the areas of student rights, teacher rights, tort liability, church-state relations, and civil rights. The results were analyzed in terms of degrees held, years of experience, position, and school law class enrollment, using cross tabulations and the Chi-Square to determine the statistical significance (.05) of the responses.

III. SURVEY RESULTS

A. Constitutional Issues

1. Church-State Relations

The free exercise and establishment clauses of the first amendment require the separation of church and state.[6] The courts have played a major role in defining and enforcing these constitutional provisions as they apply to educational issues. The cases dealing with the relationship between religion and education divide into two categories: 1) those involving public aid to sectarian education institutions;[7] and 2) those dealing with the imposition of religion within the public schools.[8] The survey of educators covered both of these areas.[9]

Attempts to provide state aid to sectarian institutions take many forms.[10] In determining the permissibility of such measures under the establishment

---

6. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . ." U.S. CONST. amend. I. The Illinois Constitution also prohibits the expenditure of money for sectarian purposes. ILL. CONST. art. 10 § 3.

7. *See, e.g.*, Everson v. Board of Educ., 330 U.S. 1 (1941) (payments for bus transportation); Board of Educ. v. Allen, 392 U.S. 236 (1968) (direct loan of textbooks); Wolman v. Walter, 433 U.S. 229 (1977) (state funds to supply standardized tests and scoring).

8. *See, e.g.*, Stone v. Graham, 449 U.S. 39 (1981) (posting copy of Ten Commandments in classrooms); School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963) (Bible reading in schools); McCollum v. Board of Educ., 333 U.S. 203 (1948) (release time from public education for religious education); Johnson v. Huntington Beach Union High School Dist., 68 Cal. App. 3d 1, 137 Cal. Rptr. 43 (4th Dist.), *cert. denied*, 434 U.S. 877 (1977) (religious clubs on campus).

9. *See* Appendix, Table I, (A)-(H).

10. *See, e.g.*, Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973) (struck down direct money grants from the State to nonpublic schools for maintenance and repair of school facilities, as well as provisions for vouchers and tax credits to parents); Committee for Public Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980) (upheld reimbursement of sectarian institutions from public funds for testing required by state law); Board of Educ. v. Allen, 392 U.S. 236 (1968) (upheld state provision of textbooks to nonpublic schools).

clause, the courts utilize a three-prong test: 1) whether the purpose of the legislation is secular; 2) whether the legislation has a primary secular effect; and 3) whether the act will involve excessive entanglement between church and state.[11] In *Everson v. Board of Education,*[12] the Supreme Court held that the payment of bus fares for parochial school pupils as part of a general transportation program did not violate the first amendment. The payments applied to all school pupils, and thus the legislation had neither a nonsecular purpose nor effect. Further, there was no excessive government entanglement with religion since payments were made to the parents and not to the church.[13] When asked whether public schools may provide free transportation to non-public schools, only forty-seven percent of the total sample responded correctly.[14] Administrators fared less well than teachers; only forty-four percent answered correctly compared to forty-nine percent of the teachers.[15] In this instance a school law class made a significant difference in the educators' awareness of the *Everson* case.[16]

Additionally, the survey sample was asked whether tax-exemptions for non-profit sectarian schools are constitutional. More than half of the educators responded correctly.[17] Such exemptions were found constitutional in *Walz v. Tax Commission,*[18] which upheld a New York statute exempting religious institutions from property taxes. Level of education, years of experience, and taking a school law class all showed a marked influence on the number of correct responses.[19]

---

11. Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 773. *See generally* Choper, *The Establishment Clause and Aid to Parochial Schools,* 56 CALIF. L. REV. 260 (1968); Duffy, *A Review of Supreme Court Decisions on Aid to Nonpublic Elementary and Secondary Education,* 23 HASTINGS L.J. 966 (1972).

12. 330 U.S. 1 (1941).

13. *Id.* The Court further reasoned that the bus fare program was analogous to the provision of other services such as police and fire protection to the schools.

14. *See* Appendix, Table I, (B).

15. *Id.* Ironically, those with bachelors degrees also scored better (fifty-two percent) than those with masters degrees (forty-two percent). Those with little teaching experience had more correct responses than those with more experience. Those with five or less years scored fifty-three percent correct responses; six to ten years, forty-eight percent correct; eleven or more years, forty-five percent correct.

16. Sixty percent of those with a school law class answered correctly compared with thirty-five percent of those without a course.

17. Sixty-five percent of the total surveyed responded correctly.

18. 397 U.S. 664 (1970). It should be noted, however, that the the constitutionality of Section 17C of the Internal Revenue Code, which allows taxpayer deductions for contributions to charitable organizations including religious institutions, has not been decided. *Cf.* Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973) (tuition grant and tax benefit programs for parents of parochial school students unconstitutional and distinguishable from tax exemptions to similar institutions).

19. Sixty-three percent of those with a bachelors degree answered correctly, compared to sixty-seven percent with a masters degree. Eighty-five percent of the administrators answered correctly, compared to only sixty-one percent of the teachers. Seventy percent of those who had taken a school law class responded correctly, compared to sixty-three percent of those who had not taken a course. *See* Appendix, Table I, (A).

The second category of questions regarding church-state relations focuses on religious activities within the schools. The inquiries in this part of the survey test educators' knowledge about the extent to which secular activities in the school may interfere with students' religious beliefs and practices,[20] as well as the extent to which religion may be brought into the schools.[21]

Educators exhibited a keen awareness of the extent to which secular activities may intrude upon the student's religious beliefs.[22] In *West Virginia State Board of Education v. Barnette,*[23] Jehovah's Witnesses brought an action challenging the constitutionality of a Virginia regulation requiring all teachers and students to salute the flag.[24] The Supreme Court held such action unconstitutional.[25] The vast majority of educators in all categories were familiar with the prohibition against forcing a student to salute the flag.[26] Likewise, most educators knew that female students could not be penalized for refusing on religious grounds to wear gym suits for physical education classes.[27] Once again, years of experience influenced the responses,[28] but the most significant factor in eliciting correct responses was

---

20. *See* Appendix, Table I, (C) (mandatory flag salutes) and (E) (wearing gym suits).

21. *See* Appendix, Table I, (D) (posting Ten Commandments in classroom); (F) (religious groups on campus); (G) (transcendental meditation as a course offering).

22. *See* Appendix, Table I, (C) and (E).

23. 319 U.S. 624 (1943).

24. Plaintiffs alleged that compliance with this provision violated their religious beliefs since it was equivalent to worshipping "a graven image." 319 U.S. at 629.

25. *Id.* The Court stressed that to hold otherwise would "invade the sphere of intellect and spirit which it is the purpose of the First Amendment to our constitution to reserve from all official control." 319 U.S. at 629.

26. *See* Appendix, Table I, (C). Ninety percent of all educators responded correctly. The most significant factor in the educators' responses was years of experience, as exhibited by fourteen percent more correct answers for educators with six to ten years experience compared to those with only five or less years experience. A school law class had little effect in this instance, since there is only a five percent difference in the number of correct answers between those with a class and those without.

27. Moody v. Cronin, 484 F. Supp. 270 (N.D. Ill. 1979). Members of the United Pentecostal Church challenged a state requirement for co-educational gym classes on the basis that "immodest apparel" worn during the classes violated their religious beliefs. The district court ruled that a deeply-held religious conviction existed that was in conflict with the state's requirement of compulsory attendance of co-educational physical education classes. The court concluded that although the state had a valid interest in providing school-age children with daily physical education classes, it had not chosen the least restrictive alternative to achieve its goal. *Id.* at 277. *But see* Menora v. Illinois High School Ass'n, 683 F.2d 1030 (7th Cir. 1982) (Orthodox Jewish basketball players had no constitutional right to wear yarmulkes while playing); Hatch v. Goerke, 502 F.2d 1189 (10th Cir. 1974) (American Indian students were not exempt from school's regulation concerning hair length even though their hair style was based on religious beliefs).

28. Years of experience made a significant difference. Educators with five or less years of experience scored seventy-nine percent correct answers, and those with six to ten years scored eighty-nine percent. Surprisingly, the number of correct responses declined nine percent for those with eleven or more years of experience. *See* Appendix, Table I, (E).

having had a school law class, since twenty percent more of those educators answered correctly.[29]

On the whole, educators had mixed responses to questions on the issue of bringing religion into the schools.[30] A school law course significantly improved the number of correct responses.[31] However, all educators displayed consistent knowledge of constitutional limitations governing the display of the Ten Commandments in the classroom. In *Stone v. Graham,*[32] the Supreme Court struck down a Kentucky statute that required the posting of a copy of the Ten Commandments on the wall of every public school classroom. The Court found that the primary purpose of the requirement was religious in nature, and thus the postings violated the establishment clause. Of the educators surveyed, eighty-seven percent were aware that such a display of the Ten Commandments in the classroom was unconstitutional.[33] In this instance taking a school law course did not increase the number of correct responses.[34]

Although the display of religious texts in public school classrooms is prohibited, the right of religious groups to utilize school classrooms is not certain. In *Johnson v. Huntington Beach Union High School District,*[35] the California appellate court upheld the school district's refusal to allow a student religious club to meet in school classrooms during school hours. The court reasoned that recognition of the club would have a primary effect of promoting religion. Further, the appointment of a faculty sponsor would create an impermissible entanglement of state and religion.[36] More recently, however, the Supreme Court, in *Widmar v. Vincent,*[37] held that registered religious student groups were entitled to equal access to facilities at a state university.[38] The majority of educators believed that religious

---

29. Ninety-four percent of those with a school law class answered correctly, compared to only seventy-four percent of those without. Only eighty-two percent of the total sample gave the correct response. *See* Appendix, Table I, (E).

30. *See* Appendix, Table I, (D), (F)-(H). The difference in response level may, in part, be accounted for by the difference between questions concerned with "pure religion" and those concerning areas in which educators must first discern if religious beliefs are involved at all.

31. *See* Appendix, Table I, (F)-(H).

32. 499 U.S. 39 (1981).

33. *See* Appendix, Table I, (D). Eighty-six percent of those with a bachelors degree and eighty-eight percent of those with a masters degree answered correctly. Inexperienced teachers more often answered correctly: five or less years—ninety percent; six to ten years—eighty-seven percent; eleven or more years—eighty-seven percent. There was little difference between the answers given by administrators, eighty-eight percent, and teachers, eighty-seven percent.

34. *See* Appendix, Table I, (D). Eighty-five percent of those with a school law class answered correctly, while ironically, eighty-eight percent of those without a course responded correctly.

35. 68 Cal. App. 3d 1, 137 Cal. Rptr. 43 (4th Dist.), *cert. denied,* 434 U.S. 877 (1977).

36. *Id.* at 14, 137 Cal. Rptr. at 50.

37. 454 U.S. 263 (1981).

38. It should be noted that *Widmar* applied narrowly to students' rights at the university level. A more restrictive holding may apply to lower educational levels. *See also* Note, *Access to Public School Facilities and Students by Outsiders,* 16 SCH. L. BULL. 9 (1985); Sendor, *Congress v. the Courts: Extracurricular Religious Groups,* 16 SCH. L. BULL. 1 (1985).

groups could be denied recognition and excluded from the classroom.[39]

In some instances, it is not as clear whether the state is acting in a manner that will impermissibly introduce religion into the schools. For example, the survey posed the question of whether transcendental meditation was permitted in schools.[40] In *Malnak v. Yogi*,[41] New Jersey schools offered an elective course entitled Science of Creative Intelligence/Transcendental Meditation. The court held that for purposes of the first amendment, the teaching of SCI/TM technique advanced a religious concept and therefore could not be taught in the public schools.[42] The majority of educators, sixty-two percent, responded correctly.[43] A school law class significantly affected these results, with seventy-one percent who had had a school law class responding that transcendental meditation was not allowed in public schools, compared with only forty-six percent who had not had a law class.[44]

While the state may not act with a purpose or effect of introducing religion into the schools, it is also prohibited from establishing a "religion of secularism" by opposing or showing hostility toward religion. In *Abington School District v. Schemp*,[45] the Supreme Court struck down legislation requiring that each day begin with readings from the Bible. However, the Court emphasized the need for neutrality by the state in relations between religious believers and non-believers, and concluded that the study of the Bible or religion would be permissible when presented "objectively as part of a secular program of education."[46] Fifty-seven percent of all educators responded no when asked if religion must be completely excluded from the schools.[47] Administrators fared the best on this question with sixty-three percent responding correctly.[48] Educators without a school law class exhibited the lowest score of forty-one percent.[49]

Survey results on questions concerning church-state relations show that in most instances, a school law class produced better-informed teachers in this

---

39. Sixty-two percent of the total sample responded that student religious groups were not entitled to recognition by a public school. The split among the school law class category was particularly marked; seventy-three percent of those with a class answered no recognition, compared to only forty-four percent of those without a class. *See* Appendix, Table I, (F).

40. *See* Appendix, Table I, (G).

41. 440 F. Supp. 1284 (D.C.N.J. 1977).

42. The court specifically relied on references in the course text to a "supreme being" and use of the "puja chant" in its determination that SCI/TM was a religious concept. *Id.* at 1322-23.

43. *See* Appendix, Table I, (G).

44. *Id.*

45. 374 U.S. 203 (1963).

46. *Id.* at 225.

47. *See* Appendix, Table I, (H).

48. *Id.*

49. *Id.*

area.[50] Additionally, experience was an important factor in the educators' degree of knowledge. Those teachers with six to ten years of experience tended to exhibit the highest degree of understanding, indicating the need for more initial training of newer teachers and refresher courses for teachers with eleven or more years of experience.[51]

2. *Desegregation*

The second category of constitutional questions concerns the role of desegregation in ensuring that all students have an opportunity for an equal education. The notion of "separate but equal" schools was abandoned in *Brown v. Board of Education,*[52] where the Court held that "[s]eparate educational facilities are inherently unequal."[53] The major area of controversy concerning desegregation in the schools today, however, focuses on the nature and extent of a suitable remedy.[54] A number of questions concerning remedies for desegregation were posed to the survey sample. The sample responses exhibited a lack of understanding of this issue.

Neither teachers nor administrators were absolutely certain whether metropolitan desegregation plans are favored over in-city desegregation plans.[55] In *Milliken v. Bradley,*[56] the Court ruled that a remedy mandating cross-district or interdistrict consolidation to rectify a condition of segregation in only one school district was invalid, since the outlying districts were not charged with any significant violations of de jure segregation. Survey responses on this issue exemplify extreme confusion. In only two categories did the educators respond correctly more than half of the time: when the

---

50. Educators without a school law class scored higher than those with a course in only one instance, displaying the Ten Commandments in the classroom. *See supra* notes 32-34 and accompanying text.

51. *See, e.g.,* Appendix, Table I, (C), (E), (G).

52. 347 U.S. 483 (1954).

53. *Id.* at 495.

54. *See, e.g.,* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) (method of remedy); Milliken v. Bradley, 418 U.S. 717 (1974) [hereinafter cited as *Milliken I*] (metropolitan desegregation plan overruled); Milliken v. Bradley, 433 U.S. 267 (1977) [hereinafter cited as *Milliken II*] (remedial reading programs and teacher training programs permissible educational remedies).

55. Responses to this question clearly illustrate educators' confusion concerning the appropriateness of metropolitan desegregation plans. Thirty-five percent replied that such plans were favored over in-city desegregation plans, forty-two percent replied no, and twenty-four percent did not know.

56. 418 U.S. 717 (1974). It should be noted that the *Milliken I* Court left the possibility of an interdistrict remedy open where "the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district or where district lines have been deliberately drawn on the basis of race." *Id.* at 55. *See also* Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406 (1977) (system-wide impact may require system-wide remedy).

educators were administrators, or when they had taken a school law class.[57]

In determining whether a deliberate attempt at school segregation exists on the part of the state, courts not only look to the assignment of students to schools, but also consider factors such as the racial mix of teachers, the quality of the facilities, and extracurricular activities.[58] The majority of educators knew that the non-racial assignment of faculty was an important factor considered in most school desegregation plans.[59]

Educators exhibited less confusion on other questions concerning desegregation. Under the Civil Rights Act of 1964,[60] the Department of Health, Education and Welfare is empowered to withhold federal funds from school districts that continue to practice discrimination. Seventy percent of the educators surveyed recognized that such control of federal money was a source of federal authority in desegregation plans.[61]

More than half of the educators knew that there are limitations on parents' right to send their children to the public school of their choice.[62] In *Green v. County School Board,*[63] the Supreme Court struck down a desegregation plan that allowed pupils to choose their own public school. School administrators scored above other educators on this issue and on the related issue of exempting ethnic groups from desegregation.[64] A school law class had little effect on responses to the ethnic group exemption issue, exhibiting a one percent difference, but increased educator awareness on the freedom of choice issue by eleven percent.[65]

Educators' responses on the desegregation issues varied greatly, from forty-two percent correct on the question of metropolitan desegregation to seventy-

---

57. Fifty percent of the administrators replied correctly, compared with forty-one percent of the teachers. Educators who had taken a school law class showed the greatest difference, with fifty-one percent responding correctly compared with only thirty-four percent of those without a class.

58. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 18-19. *See also supra* note 54 and accompanying text.

59. *See* Appendix, Table I, (L). Sixty-two percent of the total sample responded correctly.

60. 42 U.S.C. § 200(c) & (d) (1970). *See also* Note, *The Courts, HEW and Southern School Desegregation,* 77 YALE L.J. 321 (1976).

61. Administrators (eighty-eight percent) and those with masters degrees (eighty-seven percent) had the largest number of correct responses. Teachers with only five or less years of experience scored the lowest at sixty-eight percent. *See* Appendix, Table I, (I).

62. Sixty-nine percent of the educators noted that parents did not have the right to send their children to the public school of their choice. Administrators scored a high of seventy-eight percent. *See* Appendix, Table I, (K).

63. 391 U.S. 430 (1968). The Court reasoned that the fourteenth amendment requires compulsory desegregation in education, and that the freedom-of-choice system was operating against desegregation in that community.

64. Administrators scored seventy-eight percent correct on the issue of freedom of school choice, and eighty-one percent on exempting ethnic groups from desegregation. *See* Tasky v. Estes, 412 F. Supp. 1192 (N.D. Tex. 1976) (Hispanic students in ethnically separate schools), *remanded on other grounds, aff'd in part,* 572 F.2d 1010 (5th Cir. 1978).

65. *See* Appendix, Table I, (J)-(K).

five percent correct on the question of exempting ethnic groups from desegregation.[66] Administrators exhibited the greatest understanding of the desegregation issue, achieving the highest score on three of the five questions asked.[67] On this part of the survey, school law classes had an obvious effect on educators' knowledge, with those taking a class achieving a higher score on each question.[68]

B. Illinois School Code and Common Law

In Category II, the respondents proved uninformed about the Illinois School Code and tort law. This section of the survey contained twenty-five questions about Illinois statutory and common law. The scope of the questions was comprehensive and dealt with areas including student rights,[69] transportation of students,[70] teachers' procedural rights,[71] and teacher liability for negligence.[72]

1. Student Rights

When asked questions about regulations that apply to students, such as truancy, suspension, and expulsion, educators scored above seventy-five percent only once.[73] When asked whether or not a student was truant if he had been absent five of thirty consecutive days, fifty-two percent of the educators incorrectly responded yes.[74] A school law class did not improve the responses, although years of experience did.[75] Correct responses concerning suspension and expulsion were higher. Most educators recognized that a suspension in Illinois may not exceed ten days.[76] Surprisingly, admin-

---

66. *See* Appendix, Table I, (I)-(M).

67. *See* Appendix, Table I, (I)-(K).

68. *See* Appendix, Table I, (I)-(M).

69. *See* Appendix, Table II, (A)-(F). *See also infra* notes 73-87 and accompanying text.

70. *See* Appendix, Table II, (G)-(H). *See also infra* notes 88-96 and accompanying text.

71. *See* Appendix, Table II, (I)-(O). *See also infra* notes 97-113 and accompanying text.

72. *See* Appendix, Table II, (P)-(Y). *See also infra* notes 114-139 and accompanying text.

73. *See* Appendix, Table II, (A)-(D). Seventy-six percent answered correctly concerning the maximum length of a student's suspension.

74. Illinois law defines a "truant" as "a child subject to compulsory school attendance and who is absent without valid cause from such attendance for a school day or portion thereof." ILL. REV. STAT. ch. 122, § 26-2(a) (1985). A "chronic or habitual truant" is one who is "subject to compulsory school attendance and who is absent without valid cause from such attendance for 10 out of 40 consecutive school days." *Id.*

75. Thirty-three percent of the educators without a school law class responded correctly, compared with thirty-two percent of those with a class. The scores of teachers with eleven or more years of experience were seven percent higher than those with only five or less years experience. *See* Appendix, Table II, (A).

76. ILL. REV. STAT. ch. 122, § 10-22.6(b) (1985). It should be noted that a suspension resulting from gross disobedience or misconduct on a school bus may exceed ten days for safety reasons.

istrators were only marginally more aware than teachers of the time limit placed on suspensions.[77] A school law class made a substantial difference in educator responses, marking a fourteen percent increase in correct answers.[78]

A school law class strongly influenced the outcome of the survey on questions concerning student expulsion. Twenty-two percent more of the school law educators knew that an expulsion lasted from eleven days to the end of the year.[79] Twenty-four percent more school law class educators were aware that a hearing officer may hear the facts of a student expulsion case and then pass the evidence on to the board of education.[80] This factor was more determinative in eliciting correct responses than level of education, experience or classification.[81]

Likewise, a school law class was once again the most significant factor in obtaining correct answers concerning student activities within the schools. Sixty-six percent of all educators knew that fraternities, sororities, or secret societies are prohibited in public schools.[82] Amongst those with a school law class this number increased to seventy-four percent, fourteen percent higher than those without a course.[83]

Illinois schools allow a moment of silence at the beginning of each day.[84] A similar Alabama statute, mandating a period of silence, was upheld in *Wallace v. Jaffree*.[85] It is interesting to note that those with the least experience as educators had the highest number of correct responses when questioned about the permissibility of the moment of silence.[86] Once again a school law class improved the number of correct responses.[87]

---

77. Seventy-eight percent of the administrators knew of the limitation, compared to seventy-five percent of the teachers. *See* Appendix, Table II, (B).

78. *Id.*

79. *See* Appendix, Table II, (C).

80. ILL. REV. STAT. ch. 122, § 10-22.6(a) (1985). *See also* Appendix, Table II, (D).

81. *See* Appendix, Table II, (D).

82. *See* Appendix, Table II, (E). Under Illinois law a student may be suspended or expelled who "is a member of or joins or promises to join, or who becomes pledged to become a member of, or who solicits any other person to join or be pledged to become a member of any public school fraternity, sorority or secret society." ILL. REV. STAT. ch. 122, § 31-3 (1985). *See also* Sutton v. Board of Educ. of the City of Springfield, 306 Ill. 507, 138 N.E. 131 (1923) (secret societies forbidden in public schools). It should be noted, however, that universities are excluded from this prohibition by ILL. REV. STAT. ch. 122, § 31-5 (1985).

83. *See* Appendix, Table II, (E). Years of experience also was a significant factor, since the educators with the most experience scored sixteen percent higher than those with the least.

84. ILL. REV. STAT. ch. 122, § 771.1 (1985). The statute makes it clear that the period of silence may not be used as a religious activity, but rather as "an opportunity for silent reflection on the anticipated activities of the day." *Id.*

85. 459 U.S. 1314 (1985). The Alabama statute consisted of three provisions: 1) a mandatory period of silence; 2) a mandatory period of silence for prayer or meditation; and 3) teacher-led voluntary prayer. The latter two provisions were struck down on the ground that they furthered a religious purpose.

86. *See* Appendix, Table II, (F).

87. Sixty-eight percent of the educators with a school law class responded correctly, com-

On the whole, the survey sample exhibited a lack of knowledge about regulations that are applicable to students. This was particularly true for regulations dealing with time limitations.[88] In all but one category,[89] a school law course increased the number of correct responses.

2. *Transportation of Students*

The survey contained two questions dealing with the provision of free transportation to students. Initially, educators were asked whether school districts are required to provide free transportation for students living more than one and one-half miles from school.[90] Seventy percent correctly responded that such transportation is required.[91] Those with a school law class were more aware of this requirement than educators without a class.[92] Nonpublic school students are covered by a similar statutory provision that provides for transportation to school.[93] There is no statutory provision, however, providing transportation for non-school activities for private school students.[94] Sixty-two percent of all teachers and administrators responded that public schools were not permitted to provide such transportation.[95] A school law class was the only determinative factor, resulting in a marked increase in the number of correct responses.[96]

3. *Teachers' Procedural Rights*

It would seem likely that job security would be uppermost in teachers' minds, but the responses demonstrated that such was not the case. Many teachers and administrators were unaware of their procedural rights during their probationary period and when faced with dismissal. Additionally, many educators did not understand their rights and obligations in relation to union activities.

---

pared to fifty-two percent of those without a class. Administrators also scored higher than teachers, sixty-eight percent compared with fifty-seven percent. Those with masters degrees, however, scored six percent lower than those with bachelors degrees.

88. *See supra* notes 73-78 and accompanying text.

89. *See supra* note 75.

90. ILL. REV. STAT. ch. 122, § 29-3 (1985). Such transportation need not be provided when adequate public transportation is available.

91. *See* Appendix, Table II, (G).

92. *Id.* Seventy-eight percent of the educators with a school law class responded correctly compared with only sixty-three percent of those with no law class. Experience had little effect on the outcome, but administrators did score seven percent higher than teachers.

93. ILL. REV. STAT. ch. 122, § 29-4 (1985).

94. *Cf.* ILL. REV. STAT. ch. 122, § 29-3.4 (1985) (public school transportation for recreational, cultural, educational and public service programs); ILL. REV. STAT. ch. 122, § 29-3.2 (1985) (transportation to and from private school activities).

95. *See* Appendix, Table II, (H).

96. *Id.* Seventy-three percent of the educators with a school law class answered correctly compared to only fifty percent without a class.

Under Illinois law a school board is required to give sixty days notice before the end of the school term to dismiss a first-year probationary teacher.[97] The statute does not require that a reason for such dismissal be stated. Administrators were most cognizant of this rule, with a seventy-five percent rate of correct answers.[98] A school law class increased this number by fourteen percent, as did attaining a masters degree, which showed an increase of twelve percent.[99] School boards are also empowered to extend a second-year teacher's probationary period for an additional year, but must state the reasons for the extension and indicate corrective actions that should be taken.[100] The majority of educators knew of this possible extension.[101]

By statute in Illinois, a teacher may be dismissed for "incompetency, cruelty, negligence, immorality or other sufficient cause."[102] A hearing officer makes the final decision for teacher termination.[103] A significant majority of educators, fifty-four percent, did not know this fact.[104] The lack of awareness applied to teachers (fifty-four percent), administrators (fifty-six percent), those with a school law course (fifty-two percent), and the most experienced educators (sixty-one percent).[105]

A state school board or superintendent for public education may set the standards for teaching departmentalized subjects.[106] The only limitation on the board's action is that it may not act arbitrarily.[107] Seventy-one percent of the total sample realized that a school board did have the authority to raise academic qualifications in departmentalized subjects.[108]

Educators exhibited little more cognizance of regulations governing union matters. The agency shop provision of the Illinois School Code permits the

---

97. ILL. REV. STAT. ch. 122, § 24-11 (1985).

98. *See* Appendix, Table II, (I).

99. *Id.*

100. ILL. REV. STAT. ch. 122, § 24-11 (1985).

101. *See* Appendix, Table II, (J). Educational level and experience had negligible effects on the survey outcome. Teachers scored marginally higher than administrators, seventy-seven percent compared to seventy-three percent. A school law class produced only an eight percent higher response than no class.

102. ILL. REV. STAT. ch. 122, § 10-22.4 (1985). Ninety-two percent of all educators surveyed were cognizant of the grounds for teacher dismissal. *See* Appendix, Table II, (K).

103. ILL. REV. STAT. ch. 122, § 24-12 (1985):

> The hearing officer shall with reasonable dispatch make a decision as to whether or not the teacher shall be dismissed and shall give a copy of the decision to both the teacher and the school board. The decision of the hearing officer is final unless reviewed as provided in Section 24-16 of this act.

104. *See* Appendix, Table II, (L).

105. *Id.*

106. Lenard v. Board of Educ. of Fairfield Dist. No. 112, 57 Ill. App. 3d 853, 373 N.E.2d 477, 15 Ill. Dec. 131 (5th Dist. 1978), *aff'd*, 74 Ill. 2d 260, 384 N.E.2d 1321, 24 Ill. Dec. 163 (1979); ILL. REV. STAT. ch. 122, §§ 2-3.25, 18-8 (1985).

107. *Id.* Administrators scored the highest at eighty-eight percent, followed by those with a school law course at eighty-one percent.

108. *See* Appendix, Table II, (M).

school board to include a provision in the contract requiring employees covered by the agreement who are not members of the representative organization to pay their proportionate share of the cost of the collective bargaining process and contract administration.[109] Only a small majority of administrators (fifty-three percent) were aware of the agency shop provision, as were only fifty-six percent and forty-one percent of those with and without a school law course, respectively.[110]

Strikes by public employees in Illinois have not been permitted in the past.[111] Legislation passed in 1984 now permits educational employees to engage in strikes under certain conditions.[112] Only forty percent of the respondents knew about the new bill, while five percent responded that they did not know.[113]

4. *Teacher Liability for Negligence*

In most instances, the duty of care required to avoid tort liability is that which a reasonable person of ordinary prudence would exercise for the safety of others in the same circumstances.[114] In Illinois, however, the teacher is placed in the same position as a parent and is immune from suits that allege mere negligence.[115] Rather, plaintiffs bringing tort actions against educators

---

109. ILL. REV. STAT. ch. 122, § 10-22.40(a) (1985). *See also* Hudson v. Chicago Teacher's Union, Local No. 1, 573 F. Supp. 1505 (N.D. Ill. 1983) (fair share fee requirements not violative of equal protection clause), *rev'd on other grounds*, 743 F.2d 1187 (7th Cir. 1984).

110. *See* Appendix, Table II, (N).

111. Board of Educ. v. Redding, 32 Ill. 2d 567, 207 N.E.2d 427 (1965) (organized teacher strikes thwarted "a thorough and efficient system of free schools").

112. ILL. REV. STAT. ch. 148, § 1713 (1985). Educational employees can strike only under the following conditions:

> (a) they are represented by an exclusive bargaining representative;
> (b) mediation has been used without success;
> (c) at least 5 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board;
> (d) the collective bargaining agreement between the educational employer and educational employees, if any, has expired; and
> (e) the employer and the exclusive bargaining representative have not mutually submitted the unresolved issues to arbitration.

113. *See* Appendix, Table II, (O). Degree, experience, having a school law class (thirty-three percent) and being an admininstrator (thirty percent) made little difference in terms of correct responses.

114. *See, e.g.*, Hardware State Bank v. Cotner, 55 Ill. 2d 240, 302 N.E.2d 257 (1973); Ortiz v. Warren Chevrolet, Inc., 24 Ill. App. 3d 199, 321 N.E.2d 77 (5th Dist. 1974); Fugate v. Sears Roebuck & Co., 12 Ill. App. 3d 656, 299 N.E.2d 108 (1st Dist. 1973).

115. ILL. REV. STAT. ch. 122, §§ 24-24, 34-84(a) (1985). *See also* Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976) (teachers stand *in loco parentis* to students in activities connected with school activities). *See generally* Gardner, *Changing Patterns in Illinois' School Tort Immunity*, 55 CHI[-]KENT L. REV. 605 (1979); Siegel, *School Tort Immunity; Recent Trends*, 71 ILL. B.J. 240 (1982); Kerwin, *Tort Liability for Schools Under the Illinois Tort Immunity Act*, 25 DE PAUL L. REV. 441 (1976).

must show that the teacher's actions constituted wilful and wanton misconduct.[116] The majority of the respondents were unaware of this requirement. In response to the question on the liability of teachers for ordinary negligence, only thirty-one percent of the total sample responded correctly.[117]

Educators fared no better on questions that applied the immunity doctrine to particular case situations. Educational employees have *in loco parentis* status only in matters relating to discipline or supervision of school activities.[118] Under this doctrine, if a child is sent out of the classroom as punishment, and is injured outside of the room, the teacher is ordinarily not liable.[119] In all groups except administrators (seventy-eight percent), correct responses equaled or exceeded eighty percent.[120] If a child were injured while running an errand for the teacher, most educators recognized that liability would exist if no disciplinary or school activity was involved.[121] The sample group was also questioned about the liability of a child who inflicts an injury.[122] In Illinois, a child under the age of seven is not legally capable of negligent action.[123] Only sixty-three percent of the sample knew this fact.[124] A school law course improved responses to a high of seventy-six percent.[125]

---

116. ILL. REV. STAT. ch. 122, §§ 24-24, 34-84(a) (1985). *See* Kobylanski v. Chicago Bd. of Educ., 63 Ill. 2d 165, 347 N.E.2d 705 (1976). *Cf.* Nielsen v. Community Unit School Dist. No. 3, 90 Ill. App. 3d 243, 412 N.E.2d 1177, 45 Ill. Dec. 595 (4th Dist. 1980).

117. *See* Appendix, Table II, (Q). A masters degree (thirty-three percent), having had a law course (forty-six percent), or being an administrator (thirty percent) appeared to have only minimal influence on the sample's response. However, it should be noted that the majority of educators, particularly administrators (eighty-five percent), did understand that the doctrine of *in loco parentis* gave them a position similar to that of parents to the students in the school. *See* Appendix, Table II, (P).

118. Montague v. School Bd. of Thornton Fractional Township North High School Dist. 215, 57 Ill. App. 3d 828, 373 N.E.2d 719, 15 Ill. Dec. 373 (1st Dist. 1978) (pupil injured while attempting to vault horse during gym class); Mancha v. Field Museum of Natural History, 5 Ill. App. 3d 699, 283 N.E.2d 899 (1st Dist. 1972) (teacher not liable for injury to assaulted student while on school-related museum visit). *Cf.* Lynch v. Board of Educ. of Collinsville Community Unit School Dist. No. 10, 82 Ill. 2d 415, 412 N.E.2d 447, 45 Ill. Dec. 96 (1979) (liability for unauthorized football game, held after school hours on school property, using school equipment and volunteer teachers).

119. *Id.*

120. *See* Appendix, Table II, (V).

121. *See* Appendix, Table II, (T). Seventy-nine percent of the total responses were correct. A school law class raised slightly the number of correct answers from seventy-six percent to eighty-three percent. Surprisingly, those with the least experience scored highest, ninety-four percent.

122. *See* Appendix, Table II, (U).

123. Carroll v. McGrath, 25 Ill. App. 3d 436, 323 N.E.2d 513 (1st Dist. 1974) (five-year-old legally incapable of negligent action); Wegler v. Luebke, 87 Ill. App. 2d 82, 231 N.E.2d 109 (2d Dist. 1967) (minors between ages of seven and fourteen held to standard of care of reasonable person of same age, intelligence, capacity and experience in same or similar situation).

124. *See* Appendix, Table II, (U).

125. *Id.*

Although teachers have immunity from liability in matters of discipline, this immunity is not absolute. In *People v. Ball,*[126] the Illinois Supreme Court held that when teachers administer corporal punishment, they are subject to the same standard of reasonableness that applies to parents in disciplining children. Educators were uncertain when asked if they had unqualified immunity when administering corporal punishment.[127] Administrators fared the best at seventy-five percent.[128] A school law course raised scores by seventeen percent.[129] The majority of educators did know, however, that they were not absolutely immune from defamation suits by students.[130] Surprisingly, an overwhelming majority of educators were cognizant of the fact that they should not administer medication or first aid to students.[131] The Illinois courts have held that when medical treatment is undertaken by a school or its agent, public policy considerations dictate a duty of competent performance, holding school districts and teachers to an ordinary standard of care.[132]

The Local Governmental and Governmental Employees Tort Immunity Act[133] provides that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is liable." Such immunity may be waived when the entity has liability insurance.[134] When asked whether a school board would pay for financial losses resulting from an educator's conduct, fifty-one percent of the educators correctly responded no.[135] The largest difference in responses across all categories was seventeen percent.[136]

Does a student have the right to reach a predetermined level of achievement in return for state-mandated school attendance? In educational malpractice cases,[137] the courts have reasoned that to hold a school district liable for a

---

126. 58 Ill. 2d 36, 317 N.E.2d 54 (1974) (sixth-grade student struck with wooden paddle).

127. Of the total sample only sixty-two percent responded correctly. *See* Appendix, Table II, (W).

128. *Id.*

129. *Id.*

130. Eighty percent of the sample responded correctly.

131. *See* Appendix, Table II, (S). Ninety-three percent of the sample answered correctly. Once again, the least experienced had the highest score (ninety-seven percent).

132. O'Brien v. Township High School Dist. 214, 73 Ill. App. 3d 618, 392 N.E.2d 615, 29 Ill. Dec. 918, *aff'd in part, rev'd in part on other grounds,* 83 Ill. 2d 462, 415 N.E.2d 1015, 47 Ill. Dec. 702 (1979).

133. ILL. REV. STAT. ch. 85, § 2-109 (1985).

134. ILL. REV. STAT. ch. 85, § 9-103(b) (1985). *See also* Sullivan v. Midlothian Park Dist., 51 Ill. 2d 274, 281 N.E.2d 659 (1972); Beckus v. Chicago Bd. of Educ., 78 Ill. App. 3d 558, 397 N.E.2d 175, 33 Ill. Dec. 842 (1st Dist. 1979).

135. *See* Appendix, Table II, (R).

136. *Id.*

137. Peter W. v. San Francisco Unified School Dist., 60 Cal. App. 3d 814, 131 Cal. Rptr. 854 (5th Dist. 1976). See also Donohue v. Copiague Union Free School Dist., 47 N.Y.2d 440, 391 N.E.2d 352, 418 N.Y.S. 2d 375 (1979) (no liability for educational malpractice); Elson, *A Common Law Remedy for the Educational Harms Caused by Incompetent or Careless Teaching,* 73 NW. U.L. REV. 641 (1978) (advocating a cause of action for educational malpractice).

student's failure to learn exposes all educational agencies to countless "real or imagined" tort claims by disaffected students and parents.[138] Only thirty-nine percent of the respondents answered correctly.[139] Those who had had a school law class did much better than those without: fifty-six percent and twenty-four percent respectively.[140] This was one instance when teachers had a higher percentage of correct responses (forty percent) than administrators (thirty-eight percent).[141]

Educators' responses to questions about teacher liability exhibited confusion on their part. Administrators, however, had the highest scores on four of the questions, each dealing with the application of the immunity doctrine to particular situations.[142] A school law course improved responses on all but one question.[143]

C. *Student and Parent Rights*

1. *Student Free Speech Rights*

Educators were asked twenty-seven questions dealing with student and parental rights and school policies. Students' rights to freedom of expression arise in a number of contexts: school newspapers, personal appearance, demonstrations and academic freedom in curriculum. The sample was surprisingly uncertain on a number of crucial topics.

Control over school newspapers and the students' right to freedom of speech in them is one of the more highly litigated areas in school law. In most jurisdictions, student newspapers are viewed as "independent student publications."[144] Attempts by school authorities to impose restraints on content are seen as governmental censorship. Unless specific areas have previously been banned for publication, school authorities usually may not

---

138. The court noted conflicting theories of how children should be taught and the numerous factors influencing literacy, and concluded that there were "no readily accessible standards of care, or cause, or injury." Peter W. v. San Francisco Unified School Dist., 60 Cal. App. 3d at 825, 131 Cal. Rptr. at 861.

139. *See* Appendix, Table II, (Y).

140. *Id.* Those with a bachelors degree scored better than those with a masters, forty-one percent and thirty-six percent respectively, and those with the least experience scored better than those with greater experience—forty-two percent, thirty-seven percent, and thirty-nine percent, respectively.

141. *Id.*

142. *See* Appendix, Table II, (V)-(Y).

143. *See* Appendix, Table II, (V).

144. *See* Quaterman v. Byrd, 453 F.2d 54 (4th Cir. 1971); Joyner v. Whiting, 477 F.2d 456 (4th Cir. 1973); Scoville v. Board of Educ., 425 F.2d 10 (7th Cir. 1970), *cert. denied*, 400 U.S. 826 (1970). *See also* Letwin, *Administrative Censorship of the Independent Student Press—Demise of the Double Standard?* 28 S.C.L. REV. 565 (1977) (merging of standards for independent adult newspapers and school papers); Note, *Administrative Regulation of the High School Press*, 83 MICH. L. REV. 625 (1984).

censor publication of a student newspaper.[145] One potentially litigious area includes prior censorship.[146] When asked whether school officials could require prior approval of a student newspaper before publication, sixty-six percent of the total sample incorrectly replied yes.[147] Additionally, educators were asked if administrators could regulate the time, location and method of student distribution of newspapers. Eighty-six percent of those surveyed answered correctly, yes.[148] Administrators and educators with only five or less years of experience scored the highest, eighty-eight percent and ninety percent respectively.[149]

A significant majority of the sample across all categories did not understand the legal meaning of obscenity as applied to student publications. Obscenity receives less constitutional protection for both adults and students.[150] The Supreme Court ruled that vulgarity—"four letter slang words" for sexual intercourse, dirty cartoons, or offensive language—is not obscene.

---

145. *Id.* A publication may be stopped if it poses a substantial danger to the educational process. Eisner v. Stamford Bd. of Educ., 440 F.2d 803 (2d Cir. 1971). School officials may also limit distribution of material they deem libelous. Shanely v. Northeast Indep. School Dist., 462 F.2d 960, 971 (5th Cir. 1972); Fujishima v. Board of Educ., 460 F.2d 1355, 1359 (7th Cir. 1972). *See also* Connick v. Meyers, 461 U.S. 138, 103 S. Ct. 1684 (1983). Although not a school case, *Connick* will have an impact on the freedom of speech of public employees. In *Connick,* an assistant district attorney was terminated for distributing an office questionnaire dealing with the plaintiff's transfer, office politics and political patronage. The Supreme Court held that the theme of the questionnaire was a personal grievance and was not entitled to first amendment protection. According to the Court, the questions posed by the district attorney did not fall under the rubric of matters of public concern. In Day v. South Park Indep. School Dist., 768 F.2d 696 (5th Cir. 1985), a teacher was fired because she followed the grievance procedure established by the school district. Day found no remedy in the federal courts, which held that her grievance was not violative of the first amendment because it was a purely private matter and not of public concern.

146. One court has observed:

> As an exercise of freedom of the press, student literature enjoys constitutional protection regardless of its sponsorship, authorship, or place of publication. School authorities may reasonably control the time, place, and manner of literature distribution of noncensorial purpose, but they may not use such regulations as a guide to suppress or censor the content of student writings.

Jacobs v. Board of School Comm'rs, 490 F.2d 601, 604 (7th Cir. 1973), *vacated as moot,* 420 U.S. 128 (1975). *See also* Gambina v. Fairfax County School Bd., 564 F.2d 157 (C.A. Va. 1977) (school board cannot ban publication of portions of school papers it deems objectionable); Nicholson v. Board of Educ., Torrance Unified School Dist., 682 F.2d 858 (C.A. Cal. 1982) (high school principal could review small number of sensitive articles for accuracy rather than censorship).

147. *See* Appendix, Table III, (A). Level of education, experience, school law class, and classification had little effect on the answers.

148. *See* Appendix, Table III, (B). A school law class had no effect on survey responses; both categories scored eighty percent.

149. *Id.*

150. Miller v. California, 413 U.S. 15 (1973) (adults); Ginsberg v. New York, 390 U.S. 629 (1969) (students).

Vulgarity is not erotic, nor does it appeal to prurient or morbid interests.[151] In *Ginsberg v. New York*,[152] the Court ruled obscenity in the schools is defined by whether the adult community as a whole finds the material patently offensive for distribution to minors. As with adult material, student publications typically have not been held legally obscene, even when they contain references to sexual intercourse or use four-letter words.[153] Educators across the board had no understanding of the meaning of obscenity. Fifty-eight percent of the sample incorrectly responded that a student publication was obscene if it contained "vulgar or dirty language."[154] A school law class had little effect on the number of correct responses.[155] From these results, educators obviously need greater information on students' rights to freedom of expression through school papers.

One particularly cloudy area of the law concerns the constitutionality of school regulation of student hair and dress style. Although the circuits have split on this issue,[156] the Seventh Circuit has held such regulation unconstitutional.[157] Educators generally exhibited a keen awareness of the Seventh Circuit's position. All surveyed categories responded correctly, by a large margin, that the courts look upon differences in dress and grooming as matters of personal freedom.[158]

The right of students to demonstrate on campus is closely related to the issue of students' personal appearance. The Supreme Court upheld the right of students to peacefully demonstrate on campus in *Tinker v. Des Moines*

---

151. Miller v. California, 413 U.S. 15, 18 (1973).

152. 390 U.S. 629 (1969). "[S]tudent publications distributed in schools may be obscene where they would not ordinarily be in public distribution to adults." *Id.* at 639.

153. Jacobs v. Board of School Comm'rs, 490 F.2d 601, 604 (7th Cir. 1973); Scoville v. Board of Educ. of Joliet Township, 425 F.2d 10 (7th Cir. 1973). School officials may forbid the distribution of obscene or pornographic materials. *See* Eisner v. Stamford Bd. of Educ., 440 F.2d 803 (2d Cir. 1971); Fujishima v. Board of Educ., 460 F.2d 1355 (7th Cir. 1972).

154. *See* Appendix, Table III, (C). None of the groups of educators in this survey scored above thirty percent correct.

155. *Id.* Those with a school law class scored twenty-nine percent correct; those without, twenty percent.

156. The First, Second, Fourth, Seventh and Eighth Circuits held hair and dress codes unconstitutional. *See, e.g.*, Richards v. Thurston, 424 F.2d 1281 (1st Cir. 1970); Massie v. Henry, 455 F.2d 779 (4th Cir. 1972); Holsapple v. Woods, 500 F.2d 49 (7th Cir.) (per curiam), *cert. denied*, 419 U.S. 901 (1974); Bishop v. Colaw, 450 F.2d 1069 (8th Cir. 1971).

The Third, Fifth, Sixth, Ninth and Tenth Circuits have upheld such regulations. *See, e.g.*, Zeller v. Donegal School Dist., 517 F.2d 600 (3d Cir. 1975); Karn v. Schmidt, 460 F.2d 609 (5th Cir. 1972) (en banc), *cert. denied*, 409 U.S. 989 (1972); Gfell v. Rickelman, 441 F.2d 444 (6th Cir. 1981); King v. Saddleback Junior College Dist., 445 F.2d 932 (9th Cir.), *cert. denied*, 404 U.S. 979 (1971); Hatch v. Goerke, 502 F.2d 1189 (10th Cir. 1974).

157. Holsapple v. Woods, 500 F.2d 49 (7th Cir. 1974) (per curiam), *cert. denied*, 419 U.S. 901 (1974).

158. *See* Appendix, Table III, (D). Educators with a school law class scored eighty-nine percent, those without a class, eighty-three percent. Administrators scored the highest at ninety-three percent.

Independent Community School District.[159] The Court held that students were permitted to wear black armbands in school to protest the Vietnam War. Student demonstrations could not be prohibited when school authorities could not reasonably foresee "substantial disruption," or "material interference" with school activities.[160] A small majority of educators recognized that students have a right to demonstrate.[161] Administrators scored surprisingly low on this question, with only fifty percent correct. A school law class had no effect on the outcome.[162]

Finally, in the area of first amendment protections, students retain some interest in academic freedom.[163] The major area of conflict concerning academic freedom centers on the choice of, or removal of, books as textbooks or as part of a school library. The courts have rarely interfered with local school board decisions on courses and curriculum.[164] School boards, however, may not be guided in such choices by the desire to impose religious or scientific orthodoxy, or to exclude a particular type of idea.[165] Responses to this question reflect a wide range of confusion. Fifty-three percent of all educators answered that students did not have a right to determine curricula and courses; thirty-five percent believed students had such a right; and eleven percent did not know.[166]

2. *Students' Due Process Rights*

Students also possess due process rights relative to searches of their person and property, and disciplinary procedures. Educators were somewhat better informed about these rights. On the issue of the sufficiency of evidence necessary to justify search and seizure, the majority of Illinois educators wrongly believed that both "reasonable suspicion" and "probable cause"

---

159. 393 U.S. 503 (1969).

160. *Id.* at 509. For further discussion of the substantial disruption standard, see Barker v. Hardway, 394 U.S. 905 (1969) (Fortas, J., concurring); Tate v. Board of Educ. of Jonesboro, 453 F.2d 975 (8th Cir. 1972).

161. *See* Appendix, Table III, (E). Sixty-four percent answered correctly.

162. *Id.* Level of experience and education also had little effect on the results.

163. Zykan v. Warsaw Community School Corp., 631 F.2d 1300 (7th Cir. 1980) (student brought action against school board challenging removal of books from certain courses and school library); Cary v. Board of Educ., 598 F.2d 535 (10th Cir. 1979) (exclusion of texts from curriculum); Loewen v. Turnipseed, 488 F. Supp. 1138 (N.D. Miss. 1980) (text selection motivated by racial discrimination).

School boards should establish procedural guidelines for book selection and removal. Board of Educ., Island Trees Union Free School Dist., No. 18 v. Pico, 457 U.S. 853 (1982) (removal of books from library).

164. *Id.*

165. *Id.* at 1306.

166. *See* Appendix, Table III, (F). Confusion was particularly apparent among teachers, whose responses were forty percent yes, forty-eight percent no, and twelve percent did not know, and teachers with five or less years of experience, who responded twenty-one percent yes, forty-two percent no, and thirty-two percent did not know.

are needed for school officials to search student lockers and desks.[167] One court has held that students do not have an expectation of privacy in their lockers or desks, and that because of the authority and responsibility of school officials, a warrant is not required to conduct such searches.[168] Fifty percent of administrators were unsure.[169] Although *in loco parentis* authority makes school officials "the parents" of all children in the school, school searches cannot be upheld on this basis.[170] School officials, however, do not need a warrant for student searches as do police officials.[171] Educators are held to the lower standard of reasonable suspicion, not probable cause, as is required of police officials. There are two requirements for a search by school authorities: 1) the search must be conducted within the scope of the educational function of the school, and 2) the search must be reasonable under the particular facts of the case.[172] Body and strip searches require far more precise suspicions, based on stronger evidence of guilt, serious danger, or evidence of criminal acts.[173]

On the related issue of whether police authorities need a search warrant when school administrators call in the police to make the search or for assistance, the sample was equally uninformed.[174] Illinois courts have distinguished between education-related searches by school authorities, with or without the collaboration of police authorities, and searches resulting from pre-planned determination by administrators to aid police officers. In *Picha v. Wieglos,*[175] it was ruled that police who are normally in quest of illegal contraband that can be used as evidence in a criminal prosecution cannot dwell "under the banner of *loco parentis.*" Less than one-half (forty-six percent) of the sample understood the role of police in school-related searches.[176]

As the survey reflects, educators were also uncertain about issues involving the punishment of students. One such issue involves the reduction of student

---

167. *See* Appendix, Table III, (J). Fifty-seven percent of the sample believed school officials need reasonable suspicion to search school lockers. A school law class did not correct this misapprehension.

168. People v. Scott D., 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974); People v. Overton, 24 N.Y.2d 522, 249 N.E.2d 366, 301 N.Y.S.2d 479 (1969) (no expectation of privacy in school locker).

169. *Id.*

170. Tanter v. Taybuck, 742 F.2d 977 (6th Cir. 1984), *cert. denied,* 105 S. Ct. 1749 (1985).

171. New Jersey v. T.L.O., 464 U.S. 991 (1985).

172. *Id.* at 998.

173. *See* Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), *aff'd in part,* 431 F.2d 91 (7th Cir. 1980), *cert. denied,* 101 U.S. 3015 (1981); Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977).

174. *See* Appendix, Table III, (L).

175. 410 F. Supp. (N.D. Ill. 1976). *See also* State v. Mora, 307 So. 2d 317 (La. 1975) (police need probable cause), *vacated,* 423 U.S. 809 (1975).

176. *See* Appendix, Table III, (K), (L). Only fifty percent of administrators, forty-five percent of teachers and fifty-six percent of those with a school law course responded correctly.

grades for unexcused absences. Although the issue has not been conclusively settled by the courts, educators should be cognizant that a school policy or decision must be reasonable and protect the property interests of the students. In *Hamer v. Board of Education, Township High School District #133,*[177] a student challenged the right of the administration to reduce grades as a punishment for unauthorized absence from class. The court held that the student was entitled to a hearing and procedural remedies before such a serious sanction could be applied.[178] Only fifty-six percent of the total sample responded correctly.[179]

In regard to due process for in-school suspension of students, the majority (sixty-five percent), across all categories, incorrectly thought the same level of due process was owed students for in-school suspension or detention as for out-of-school suspension.[180] The courts have considered brief in-school sanctions too insubstantial to require prepunishment hearings.

3. *Access to Student Records*

The Family Education Rights and Privacy Act (FERPA),[181] known as the Buckley amendment, was passed by Congress in 1974 as a result of dissatisfaction with school officials' attempts to ameliorate abuses associated with student record-keeping practices.[182] The Act gives students over eighteen and parents a right of access to school records.[183] Under the Act, parents must be informed of their right to review and inspect their children's school records.[184] Further, parents may challenge inaccurate or misleading data in educational records through specified procedures.[185] The vast majority of the survey sample evidenced familiarity with these sections of the Buckley

---

177. 66 Ill. App. 3d 7, 383 N.E.2d 231, 22 Ill. Dec. 755 (2d Dist. 1978).

178. 66 Ill. App. 3d at 9, 383 N.E.2d at 233, 22 Ill. Dec. at 757. The court further stated that teachers should make grade determinations on the basis of class performance. *But see* Knight v. Board of Educ. of Tri-Point Community Unit School Dist., 38 Ill. App. 3d 603, 348 N.E.2d 299 (4th Dist. 1976) (grade reduction for truancy valid).

179. *See* Appendix, Table III, (M). Only fifty-three percent of administrators, forty-nine percent of teachers, and fifty-seven percent of those who had a school law course, as opposed to forty-four percent with no law course, answered correctly.

180. *See* Appendix, Table III, (N).

181. 20 U.S.C. §§ 1232(g)-1232(i) (1976).

182. *See, e.g.,* Note, *The Buckley Amendment: Opening School Files for Student and Parental Review,* 24 CATH. U.L. REV. 588 (1975) (discussion of the Act).

183. 20 U.S.C. § 1232g(a)(1)(A) (1976). *See also* Illinois School Student Records Act, ILL. REV. STAT. ch. 122, §§ 50-1 to 50-10 (1985).

184. 20 U.S.C. § 1232g(d) (1976). *See also* ILL. REV. STAT. ch. 122, §§ 50-5, 50-6 (1985).

185. 20 U.S.C. § 1232g(a)(2) (1976). The school must hold a hearing when the accuracy of a student record is challenged. There must be an opportunity to correct the record, and parents must be afforded an opportunity to insert a written explanation of the record. *See also* ILL. REV. STAT. ch. 122, § 50-7 (1985).

Amendment.[186] Not surprisingly, administrators scored the highest on these questions.[187]

However, not all records pertaining to a student are accessible to parents under FERPA. FERPA bars the viewing of letters of recommendation written prior to January 1, 1975.[188] The majority of the sample, however, were not aware that school officials could deny parents access to such records.[189] Further, FERPA excludes review of certain records that are not classified as "educational records."[190] One such exclusion is the medical or psychiatric records of students over eighteen, or attending a post-secondary educational institution.[191] When asked whether parents had the right to see the records of physicians or psychologists, seventy-eight percent of the educators answered yes.[192] Only a two percent difference existed between those with or without a school law course.[193] Further, in Illinois, student records may be destroyed, or information deleted, so long as the parent is given reasonable notice prior to such action.[194] The majority of teachers were unaware of this provision in the Illinois School Code.[195]

On the whole, educator response to the issue of student records was mixed. The sample evidenced familiarity with the major provisions and purpose of FERPA,[196] but showed less awareness of exclusions under the Act.[197] Administrators tended to have the highest number of correct answers on this issue,[198] although a school law course also significantly increased correct responses.[199]

4. *Students with Special Needs*

Today, educators face a number of legal questions concerning access to educational facilities and programs by different groups of children with special needs or problems. These groups include illegal immigrant children,

---

186. Eighty-two percent of the sample responded that parents must be given notice of their rights under FERPA. The number of correct responses increased to ninety-one percent on the question of parents' rights to challenge student records. *See* Appendix, Table III, (O), (P).

187. *Id.* Administrators scored ninety-four percent correct on both questions.

188. 20 U.S.C. § 1232g(a)(1)(B)(ii) (1976).

189. *See* Appendix, Table III, (Q). Only those who had a school law course (fifty-two percent) gave a majority of correct responses, while only thirty-five percent of administrators, forty-four percent of teachers, and forty-two percent of the total sample understood this issue.

190. 20 U.S.C. § 1232g(a)(4)(B)(i)-(iv) (1976).

191. *Id.*

192. *See* Appendix, Table III, (S).

193. Seventy-seven percent with a school law class responded that parents had access to medical and psychiatric reports, compared to seventy-nine percent without a course.

194. ILL. REV. STAT. ch. 122, § 50-5 (1985).

195. *See* Appendix, Table III, (T).

196. *See supra* notes 186-90 and accompanying text.

197. *See* supra notes 191-95 and accompanying text.

198. *See* Appendix, Table III, (O), (Q).

199. Sixty-four percent of all responses were incorrect. *See* Appendix, Table III, (T).

pregnant or married students, and handicapped students. The survey administered questions dealing with each of these categories of students.

The right to an education is not a fundamental right under the Constitution.[200] On this basis the Supreme Court upheld a state statute permitting a school district to deny a free education to a child who was not living with his parents and was present in the school district only for the purpose of attending school there.[201] However, in *Plyler v. Doe,*[202] the Court invalidated a state statute that denied a public education to the children of resident illegal aliens. The court employed an equal protection analysis and concluded that the state failed to prove a substantial state interest in excluding illegal aliens from public education.[203] A majority of educators, fifty-two percent, correctly responded that illegal immigrant children could not be prohibited from attending public schools.[204] Administrators had the highest percentage of correct responses.[205] A school law course improved responses by eight percent.[206]

Until the early 1970's, many school districts routinely excluded pregnant students from regular classes.[207] A number of lower courts, however, overturned these policies.[208] Educators noted that school districts could provide alternative separate schools or courses for pregnant students.[209] Likewise, the

---

200. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 33-34 (1973) (upheld statute permitting funding of public schools through property taxes, even though result could be lower educational opportunities in less wealthy areas).

201. Martinez v. Bynum, 461 U.S. 321 (1983). The child, Roberto Morales, was a U.S. citizen living with his sister in Texas for the purpose of attending school there. His parents were Mexican citizens residing in Mexico. Morales' sister was not his guardian. Under Texas law, a tuition-free education was denied to a minor who was not living with a parent or guardian.

202. 457 U.S. 202 (1982).

203. The Court stated that the law in question:

> imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.

457 U.S. at 223.

204. *See* Appendix, Table III, (U).

205. *Id.*

206. *Id.*

207. *See generally,* Knowles, *High School, Marriage and the Fourteenth Amendment,* 11 J. FAM. L. 711, 732 (1972); Comment, *Marriage, Pregnancy and the Right to Go to School,* 50 TEX. L. REV. 1196 (1972).

208. *See, e.g.,* Shull v. Columbus Municipal Separate School Dist., 338 F. Supp. 1376 (N.D. Miss. 1976) (exclusion based solely on pregnancy denies equal protection); Ordway v. Hargraves, 323 F. Supp. 1155 (D. Mass. 1971) (importance of education as personal right as well as discriminatory impact of exclusion).

209. *See* Appendix, Table III, (Y). Sixty-eight percent of all educators responded correctly, but administrators scored highest with seventy-five percent. *See also* Stine & Kelley, *Evaluation of a School for Young Mothers,* 46 PEDIATRICS 581 (197) (special education programs).

courts have held that school districts cannot exclude married students from regular schools or extracurricular activities.[210] The majority of educators correctly responded to questions concerning the rights of married and pregnant students to attend regular schools.[211]

States must assure all handicapped students the right to an appropriate free public education.[212] Parents are not required to pay for the cost of educating handicapped children even if the child is placed in a private institution or if the child's attendance is for a longer duration than the district's normal school year.[213] A school law course significantly improved educator responses on this question.[214]

The courts generally allow school personnel wide latitude in setting requirements for participation in school-related activities. Whatever the criteria established—academic standards, skill, age, residency and training rules—they must be applied without discrimination to non-handicapped and handicapped students alike.[215] Handicapped students may be excluded for medical reasons when there is possible danger to their health. However, they cannot be denied the opportunity simply because of a physical impairment. Only those respondents with a masters degree (fifty-six percent), teachers (fifty-three percent), and those who did not have a school law course (fifty-two percent) gave a majority of correct answers.[216]

The survey sample exhibited uncertainty about issues concerning "special" students. The most accurate answers centered on the rights of married and pregnant students.[217] A school law course improved the response level by twenty percent or more in several instances.[218]

---

210. Courts have rejected the argument that the married students needed to be excluded from regular schools and school activities to discourage teenage marriages or encourage marital responsibility. Such decisions were premised on denials of equal protection, or on a right of privacy or "the fundamental right of marriage." *See, e.g.*, Anderson v. Canyon Independent School Dist., 412 S.W.2d 387 (Tex. Civ. App. 1967) (exclusion from school); Moran v. School Dist. No. 7, Yellowstone County, 350 F. Supp. 1180 (D. Mont. 1972) (right to participate in extracurricular activities); Indiana High School Athletic Assoc. v. Raike, 164 Ind. App. 169, 329 N.E.2d 66 (1975) (married students cannot be barred from interscholastic competition).

211. *See* Appendix, Table III, (X). The total correct responses were sixty-eight percent. Administrators again scored highest at eighty-eight percent.

212. 20 U.S.C. § 1412(1) (1976). *See also* 20 U.S.C. § 1414(a); Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972); Krass, *The Right to Public Education for Handicapped Children: A Primer for the New Advocate,* 1972 ILL. L. FORUM 1016.

213. Kruelle v. Biggs, 489 F. Supp. 169 (D.C. Del. 1980), *aff'd,* 642 F. 2d 687 (3d Cir. 1981); Mahoney v. Administrative School Dist. No. 1, 42 Or. App. 665, 601 P.2d 826 (1979).

214. Seventy-two percent of the total sample answered correctly. Eighty-one percent of those with a school law course responded correctly, compared with only sixty-one percent without a course. *See* Appendix, Table III, (V).

215. Mahan v. Agee, 652 P.2d 765 (Okla. 1982). The Oklahoma Supreme Court ruled that Peter Mohan was barred from participation in interscholastic sports because of his age (19 years old), not his dyslexia. Handicapped students must be given the same opportunity to meet the same eligibility criteria as their non-handicapped peers.

216. *See* Appendix, Table III, (W).

217. *See supra* notes 207-11 and accompanying text.

218. *See* Appendix, Table III, (V), (X).

D. Teachers' Rights

1. Teachers' Rights Against Discrimination

The survey sample administered questions on teachers' rights and school board relations. The respondents were uncertain on a number of legal issues, such as dress code, gender as a criterion for employment, tenure, residential requirements, and loyalty oaths.

Educators exhibited confusion on issues dealing with discrimination in teacher employment. The majority, sixty-one percent, of the sample, regardless of position, experience and school law courses, were unaware that a teacher can be hired on the basis of gender where gender is a bona fide job requirement.[219] In *McClain v. Board of Education,*[220] the Illinois appellate court ruled a tenured male teacher was not entitled to priority in employment where the physical education position he sought required supervision of a girls' locker room and shower.

The courts are divided on the issue of whether homosexual teachers may be dismissed based on sexual preference. In *Gaylord v. Tacoma School Dist.,*[221] the Washington Supreme Court held that a practicing homosexual could be dismissed. The California Supreme Court, however, concluded that homosexual employees could not be dismissed because of a private lifestyle.[222] When asked if someone could be dismissed for private sexual conduct if it did not affect teaching ability, sixty percent of all educators correctly answered no.[223]

In Illinois, teachers are required to retire at age 70.[224] The survey sample was asked if they could be forced to retire at age 65. Only fifty-seven percent of the respondents answered correctly.[225] Years of experience and a school law course produced the most correct answers.[226]

---

219. *See* Appendix, Table IV, (A). Those with five or less years experience scored highest at forty-two percent correct.

220. 66 Ill. App. 3d 1024, 384 N.E.2d 540, 23 Ill. Dec. 746 (4th Dist. 1978).

221. 85 Wash. 2d 348, 535 P.2d 804 (1975), *cert. denied,* 434 U.S. 879 (1977), *aff'd,* 88 Wash. 2d 286, 559 P.2d 1340 (1977) (public knowledge of homosexuality impaired teaching ability).

222. Morrison v. State Bd. of Educ., 1 Cal. 3d 214, 461 P.2d 375, 82 Cal. Rptr. 175 (1969).

223. *See* Appendix, Table IV, (B). This question also considered cohabitating teachers. Again, the courts are split on whether teachers may be dismissed for cohabitation. *See, e.g.,* Reinhardt v. Board of Educ. of Alton Community School Dist., 19 Ill. App. 3d 481, 311 N.E.2d 710 (5th Dist. 1974), *vacated,* 61 Ill. 2d 101 (dismissal not permissible); Sullivan v. Meade County Indep. School Dist., 387 F. Supp. 1237 (D.S.D. 1975), *aff'd on other grounds,* 530 F.2d 799 (8th Cir. 1976) (dismissal for cohabitating with boyfriend upheld as related to proper functioning of educational system).

224. ILL. REV. STAT. ch. 122, § 34-84 (1985).

225. *See* Appendix, Table IV, (D).

226. *Id.*

2. Freedom of Expression

Teachers' rights under the first amendment take many forms: freedom to participate in curriculum choices, freedom to state opinions, and freedom of association. On the whole, teachers had little awareness of their rights in this area.

One issue presented to the survey involved the right of school boards to impose regulations on teacher appearance. In *East Hartford Education Association v. Board of Education,*[227] the school board required male classroom teachers to wear a jacket, shirt, and tie, and female teachers to wear a dress, skirt, blouse or pantsuit, except where their duties required other apparel, such as shop and gym teachers.[228] The United States appellate court upheld this regulation on the basis that the school board's interest in having teachers comply with the dress code was greater than the teacher's alleged freedom of expression interest.[229] Only those with a school law course (fifty percent) and five or less years of experience (sixty-five percent) were aware that a school board could impose reasonable regulations governing the appearance of teachers or could consider individual appearance as one of the factors affecting suitability for a particular position.[230]

The academic freedom guaranteed by the first amendment constitutes part of a teacher's interest in teaching. Teacher's rights to academic freedom entail both the decision to introduce outside materials into the curriculum and the right to refuse to teach portions of the curriculum. Classroom discussions are constitutionally protected speech.[231] However, a teacher's

---

227. 562 F.2d 838 (2d Cir. 1977) (en banc).

228. 562 F.2d at 839-40 n.1.

229. *Id.* at 857-58. The school board's interest in maintaining the teacher dress code was to instill respect, discipline and traditional values upon the student body. This rationale also defeated plaintiff's claim of infringement of a liberty interest. *Id.* at 861. *See also* Miller v. School Dist. No. 167, 495 F.2d 658 (7th Cir. 1974) (rejected teachers' constitutional challenge to dismissal for wearing beard and sideburns). *But see* Ramsey v. Hopkins, 320 F. Supp. 477 (N.D. Ala. 1970) (rule of principal in one school prohibiting teachers from wearing mustaches violated both due process and equal protection when there was no indication that mustaches would disrupt education process or pose health hazards); Braxton v. Board of Public Instruction of Duval City, 303 F. Supp. 958 (M.D. Fla. 1969) (right of black teacher to wear goatee as expression of his black heritage protected by due process and equal protection clauses).

230. *See* Appendix, Table IV, (F).

231. Kingsville Indep. School Dist. v. Cooper, 611 F.2d 1109, 1113 (5th Cir. 1980). *See also* Minarcini v. Strongsville City School Dist., 541 F.2d 577 (6th Cir. 1976); Keefe v. Geanakos, 418 F.2d 359 (1st Dist. 1969). The right to academic freedom is strongly supported:

> Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom . . . [T]he classroom is peculiarly the "market place of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative

right to academic freedom is limited. Due to the deference accorded school board decisions concerning curriculum,[232] teachers may not institute changes that constitute abandonment of the curriculum.[233] Generally, teachers are permitted to discuss controversial topics in the classroom when the topics are related to the assigned subject.[234] However, teachers may neither disregard the prescribed text or syllabus,[235] nor advocate their religious or personal beliefs in the classroom.[236] The right to teach controversial subjects that are related to the course content was known only by fifty-six percent of administrators and fifty percent of those with a school law course.[237]

Additionally, teachers enjoy no constitutional protection for refusing to follow the school curriculum, even when the refusal is based on religious grounds.[238] Sixty-eight percent of the sample responded that teachers could not refuse to teach the prescribed curriculum.[239] Surprisingly, eighty-one percent of the sample with five or less years of experience had the right answer.[240]

In addition to the right of speech in the classroom, teachers have the right to openly criticize their superiors on issues of public concern.[241] The fact that the criticism is private does not remove it from constitutional protection.

---

selection.

Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967) (citing United States v. Associated Press, 52 F. Supp. 362, 372 (S.D.N.Y. 1943)).

232. Cary v. Board of Educ., 598 F.2d 535 (10th Cir. 1979).

233. *Id. See also* Clark v. Holmes, 474 F.2d 928 (7th Cir. 1972), *cert. denied,* 411 U.S. 972 (1973).

234. Kingsville Indep. School Dist. v. Cooper, 611 F.2d 1109 (5th Cir. 1980).

235. Cary v. Board of Educ., 598 F.2d 535, 602 (10th Cir. 1979).

236. Epperson v. Arkansas, 393 U.S. 97 (1963) (struck down statute prohibiting teaching evolutionary theory in public schools). However, school authorities may not arbitrarily censor a teacher's speech simply because they do not agree with the political philosophy of the speech. James v. Board of Educ. of Central Dist. No. 1, 461 F.2d 566, 573 (2d Cir.), *cert. denied,* 409 U.S. 1042 (1972) (overturned teacher dismissal for wearing black armband to protest Vietnam War).

Seventy-nine percent of all educators knew that they could not promote political candidates in the classroom. Administrators scored highest in this area with eighty-eight percent correct answers. *See* Appendix, Table IV, (I). Only a slight majority, fifty-one percent, knew they could wear political buttons or armbands to class. Teachers with eleven or more years of experience scored the highest on this question. *See* Appendix, Table IV, (J).

237. *See* Appendix, Table IV, (G). Only forty-five percent of the total sample answered correctly.

238. Palmer v. Board of Educ. of City of Chicago, 466 F. Supp. 600, 604 (N.D. Ill. 1979) (refusal to participate in pledge of allegiance was protected speech, but refusal to teach patriotic songs or conduct holiday activities was not). A number of other courts have also held that failure to teach a prescribed curriculum is not protected. *See, e.g.,* Adams v. Campbell County School Dist., 511 F.2d 1242 (10th Cir. 1975); Clark v. Holmes, 474 F.2d 928 (7th Cir. 1972), *cert. denied,* 411 U.S. 972 (1973); Ahern v. Board of Educ., 456 F.2d 399 (8th Cir. 1972).

239. *See* Appendix, Table IV, (E).

240. *Id.*

241. Pickering v. Board of Educ., 391 U.S. 563 (1968).

In *Givhan v. Western Line Consolidated School District,*[242] a teacher complained to her principal about employment practices that she thought were racially discriminatory. The court held that her speech was protected, but noted that in cases of private expression, additional factors may be considered to determine if the speech is protected.[243] Only fifty-six percent of the sample knew that such speech is protected.[244] A school law class resulted in the highest scores.[245]

The first amendment also protects teachers' rights to freedom of association.[246] The Supreme Court, in *Keyishian v. Board of Regents,*[247] ruled that guilt by association is unconstitutional. States may neither compel teachers to disclose all ties with organizations,[248] nor may teachers be dismissed because of affiliations with a particular group, party, or political candidate.[249] The sample, however, did not know whether teachers could be terminated for belonging to communist, Nazi or revolutionary organizations. Forty-four percent of the sample answered correctly, "no".[250] Administrators (sixty-nine percent) had the greatest majority of correct responses, followed by those with a law course (fifty percent).[251]

A teacher may not be forced to take a negative loyalty oath.[252] However, affirmative oaths to support the government are permissible.[253] Only those

---

242. 439 U.S. 410 (1979).

243. When a government employee personally confronts his immediate superior, the employing agency's institutional efficiency may be threatened not only by the content of the employee's message, but also the the manner, time, and place in which it is delivered. 439 U.S. at 415 n.4. *See also* McGill V. Board of Educ. of Pekin Elementary School, 602 F.2d 774 (7th Cir. 1979) (questionnaire circulated to teachers); Columbus Educ. Assoc. v. Columbus City School Dist., 623 F.2d 1155 (6th Cir. 1980) (teacher union spokesperson's statements in support of fellow teacher's complaint protected).

244. *See* Appendix, Table IV, (H).

245. *Id.* A school law course increased correct responses by thirty-one percent.

246. Shelton v. Tucker, 364 U.S. 479 (1960) (struck down statute requiring teachers to submit list of all organizations to which they belonged).

247. 385 U.S. 589 (1967).

248. Shelton v. Tucker, 364 U.S. 479, 485-86 (1960).

249. Branti v. Finkel, 445 U.S. 507 (1980) (employment of public defender cannot be conditioned on party affiliation); Elrod v. Burns, 427 U.S. 347 (1976) (invalidated discharge of non-civil service employees of Cook County Sheriff's Office because they were not Democrats); Guerra v. Roma Indep. School Dist., 447 F. Supp. 812 (S.D. Tex. 1977) (first amendment rights violated by discharge in retaliation for relationship with opponents of newly elected board members).

250. *See* Appendix, Table IV, (M).

251. *Id.*

252. Most of the negative loyalty oaths prohibited supporting the Communist party or other subversive groups and were struck down on the basis of vagueness or overbreadth. *See, e.g.,* Cramp v. Board of Public Instruction, 368 U.S. 278 (1961); Baggett v. Bullitt, 377 U.S. 360 (1964); Elfbrandt v. Russell, 384 U.S. 11 (1966); Keyishian v. Board of Regents, 385 U.S. 589 (1967).

253. Connell v. Higgenbotham, 403 U.S. 207 (1971) (upheld affirmative oath to support Constitution); Cole v. Richardson, 405 U.S. 676 (1976) (upheld statute requiring public employee to take oath to uphold Constitution and oppose overthrow of the government).

groups with a school law course (fifty-eight percent) and six to ten years of experience (fifty-six percent) knew that "negative" oaths that prohibit "subversive activities" are unconstitutional.[254] Sixty-two percent of the sample knew that affirmative oaths are constitutional.[255] Although a school law course raised correct responses by twenty-three percent, a masters degree produced the highest number of correct responses.[256]

3. *Teachers' Procedural Rights and Tenure*

Educators exhibited a surprising lack of knowledge concerning the entire tenure system: how tenure is achieved, to whom it applies, and how it is terminated. The questions in the first part of this section related to teachers during their probationary period. The sample was unaware that probationary teachers could be terminated for a reason other than the deficiencies they were initially asked to remedy.[257] In *Jackson v. Board of Education of Chicago,*[258] a teacher was notified, during her second year of probation, that her probation would be extended for a third year. She was given a list of particular problems to remedy. At the end of the third probation year she was terminated for reasons different from the conditions she had received the prior year.

Surprisingly, the sample was unsure about the procedure by which tenure is achieved.[259] Only a majority of those with a master degree (fifty-one percent), eleven plus years of experience (fifty-two percent), or a school law class (fifty-six percent)[260] knew that state law grants a teacher, employed in a district for two consecutive years outside of Chicago and three years in Chicago, "contractual continued service" (tenure) unless the board notifies the teacher of failure to achieve re-employment.[261]

Additionally, the sample was uncertain about precise rights under tenure. In *Smith v. Board of Education of Urbana,*[262] the court held that physical education teachers who served as high school coaches and enjoyed tenure as teachers at the time they were replaced as coaches were not entitled to a hearing before being replaced. Seventy-four percent of the sample were aware that tenure rights would not extend to extracurricular positions such as that

---

254. 385 U.S. 589 (1967).

255. *See* Appendix, Table IV, (L).

256. *Id.*

257. *See* Appendix, Table IV, (N). Only thirty-five percent of all respondents, and thirty-eight percent, thirty-three percent and forty-two percent of administrators, teachers and those who had a law course, respectively, gave correct answers.

258. 109 Ill. App. 3d 716, 441 N.E.2d 120, 65 Ill. Dec. 328 (1st Dist. 1982).

259. It should be noted that Illinois does not have a "tenure" law. Instead it has a "continued service law" that applies to teachers. Such a law is considered to be a type of tenure law. *See* ILL. REV. STAT. ch. 122, §§ 24-11, 34-54 (1985).

260. *See* Appendix, Table IV, (O).

261. ILL. REV. STAT. ch. 122, §§ 24-11, 34-54 (1985).

262. 798 F.2d 258 (7th Cir. 1983).

of coach.[263] Eighty-eight percent of the educators were aware that a tenured teacher in a Reduction in Force situation could bump a nontenured teacher occupying a position for which the tenured teacher was qualified.[264] Tenured teachers do not, however, have the right to bump non-tenured teachers when the non-tenured teacher is qualified for the job, but the tenured teacher is not.[265] The number of correct responses to this question was low.[266]

Educators also exhibited little awareness of constitutional and statutory rights concerning unions. An individual's right to form and join a union is protected by the first amendment.[267] However, the first amendment does not require recognition of a bargaining unit.[268] In Illinois, collective bargaining rights for employees are established by state statute.[269] When asked whether collective bargaining was a constitutional right, fifty-two percent of the sample correctly responded yes.[270] Those with a school law course evidenced equal perplexity on this issue; forty-two percent answered yes, compared to fifty percent no.[271]

The Illinois Educational Labor Relations Act contains an agency shop provision requiring fair share payments by non-members for the bargaining process.[272] While mandatory contribution for collective bargaining is permissible, contribution mandated for other union activities, specifically political activities, is not.[273] The Illinois statute also specifically excludes political contributions.[274] Eighty-five percent of the administrators were cognizant that non-members did not have to support such activities, compared with seventy-one percent of the total sample.[275]

Finally, the sample was asked two questions dealing with union activities and termination of school employees. The Illinois Act specifically prohibits educational employers from "[i]nterfering, restraining, or coercing" em-

---

263. *See* Appendix, Table IV, (R). Administrators scored the highest in this area at eighty-eight percent. A school law class had a marked effect on the number of correct responses, those with scoring eighty-seven percent, those without, sixty-three percent.

264. *See* Appendix, Table IV, (S). A school law class significantly increased the number of correct answers to ninety-nine percent. *See also* ILL. REV. STAT. ch. 122, § 24-12(a) (1985).

265. Higgins v. Board of Educ. of Community Unit School Dist. No. 303, 101 Ill. App. 3d 1003, 428 N.E.2d 1126, 57 Ill. Dec. 446 (3d Dist. 1981); ILL. REV. STAT. ch. 122, § 24-12(a) (1985).

266. *See* Appendix, Table IV, (T). Administrators scored the highest with sixty-five percent.

267. McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

268. Smith v. Arkansas State Highway Employees Local 1315, 441 U.S. 463, 465 (1979).

269. *See* Educational Labor Relations Act, ILL. REV. STAT. ch. 48, §§ 1701-1721 (1985).

270. *See* Appendix, Table IV, (U).

271. *Id.*

272. ILL. REV. STAT. ch. 48, § 1711 (1985).

273. Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977).

274. "The amount certified by the exclusive representative shall not include any fees for contributions related to the election or support of any candidate for public office. Nothing in this section shall preclude the nonmember employee from making voluntary political contributions in conjunction with his or her fair share payment." ILL. REV. STAT. ch. 48, § 1711.

275. *See* Appendix, Table IV, (V).

ployees who are exercising their rights under the Act.[276] Under such a provision, teachers may not be terminated for carrying out valid union activities, a fact which the majority of the sample knew.[277] Termination of employment, however, is allowed for participation in an illegal strike.[278] Educators were less certain about this issue, with only sixty-two percent of the total sample answering correctly.[279] Seventy-three percent of those with a school law course had the correct response, compared to only fifty percent of those without a school law class.[280]

The sample also appeared to be uninformed about the contents of their contracts for employment. A teacher's contract must be ratified by the school board to be legally binding.[281] Seventy-eight percent of the sample correctly responded on this point.[282] Sixty-four percent of the sample stated incorrectly that a school board, under certain circumstances, could break a teacher's contract.[283] The courts assume that contracts are entered into in accordance with state statutes. To waive a certain section or sections of the law is illegal—a breach of contract. For example, a board may not rescind its contract in order to remove a teacher from his position without first following the statutes governing the contract, which include presentation of charges, a hearing, and dismissal for certain enumerated causes only.[284]

Fifty percent of administrators and fifty-four percent of those who had a school law class had the highest frequency of correct responses regarding liquidated damages for teachers who break their contracts and quit their jobs.[285] Until 1984, a school board could bring a breach of contract action against a teacher who resigned during the school year for four percent of his salary as liquidated damages.[286] A recent amendment now permits teachers to resign "at any time by obtaining concurrence of the board or by serving a 30 day notice upon the secretary of the board."[287] However, the teacher

---

276. *See* ILL. REV. STAT. ch. 48, § 1714(a)(1) (1985). *See also* Columbus Educ. Assoc. v. Columbus City School Dist., 623 F.2d 1155 (6th Cir. 1980); Nigosian v. Weiss, 343 F. Supp. 757 (E.D. Mich. 1971).

277. A number of categories scored eighty percent or higher on this question: masters degree—eighty-nine percent; six to ten years experience—eighty-nine percent; eleven or more years—eighty-two percent; school law course—ninety-two percent; teachers—eighty percent; administrators—eighty-eight percent. *See* Appendix, Table IV, (W).

278. Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Assoc., 426 U.S. 482 (1976) (due process clause did not guarantee hearing by body other than school board).

279. *See* Appendix, Table IV, (X).

280. *Id.*

281. ILL. REV. STAT. ch. 122, § 10-20.7 (board appoints teachers and fixes their salaries). *See also* Muehle v. School Dist. No. 38, 344 Ill. App. 365, 100 N.E.2d 805 (1951).

282. *See* Appendix, Table IV, (Y).

283. *See* Appendix, Table IV, (AA).

284. *See* ILL. REV. STAT. ch. 122, § 24-12 (1985).

285. *See* Appendix, Table IV, (BB).

286. Arduini v. Board of Educ. of Pontiac Township High School, Dist. 90, 92 Ill. 2d 72, 440 N.E.2d 848, 64 Ill. Dec. 936 (1982).

287. ILL. REV. STAT. ch. 122, § 24-14 (1985).

may not resign during the school year without the concurrence of the board.[288]

School districts with populations under 500,000 may not implement residency requirements for teacher employment.[289] The majority of the sample (fifty-five percent) was aware of this statute.[290] However, this probably reflects the fact that the respondents were Chicago and suburban Chicago employees.

4. *Teachers' Supervision of Students*

The sample seemed to be unaware of their responsibilities regarding the supervision of students. Only twenty-five percent of the administrators, twenty-six percent of the teachers, and twenty-nine percent of those who had had a school law course were aware that school officials can exercise authority over students for their out-of-school conduct, where that conduct had a direct effect on the general welfare of the school.[291] The misbehavior included fighting after school, insulting teachers, or harassing students on the way home from school.[292] Teachers, however, are not required to provide constant supervision over their students. In a Chicago case, *Mancha v. Field Museum of Natural History,*[293] the court ruled it would be practically impossible to require a teacher to watch each student at all times.

CONCLUSION

An analysis of the survey findings reveals that the educators surveyed had a moderate to poor understanding of school law. Educators scored above seventy percent on only twenty of the one hundred survey questions. A school law course, however, improved the level of responses on almost every question. Administrators also faired better on most questions.

Generally, educators responded correctly to questions on constitutional issues involving church/state relations and civil rights. Within this category, administrators had the highest scores on five of the questions. A school law course improved responses on all but one question, and improved responses by twenty percent or more on two questions. Surprisingly, educators with the lowest level of experience had higher scores in this area.

Educators were less sure, however, about Illinois law. They exhibited little awareness of provisions in the Illinois School Code governing strikes, procedures for teacher termination, and student truancy and disciplinary meas-

---

288. *Id.*

289. ILL. REV. STAT. ch. 122, § 24-4.1 (1984). Chicago's population exceeds 500,000, so the city does have a residency requirement.

290. *See* Appendix, Table IV, (DD).

291. *See* Appendix, Table IV, (FF).

292. Fenton v. Stear, 423 F. Supp. 767 (W.D. Pa. 1976).

293. 5 Ill. App. 3d 699, 283 N.E.2d 899 (1st Dist. 1972). *See also supra* notes 114-43 and accompanying text.

ures. Administrators and those with a school law course faired the best on issues governing teacher employment. A school law course produced the highest score on four of the five questions concerning student disciplinary procedures. The survey sample had the most problems with issues involving Illinois tort law, specifically liability for negligence and malpractice. Again administrators had the highest score on most of the questions, but a school law course also improved response levels.

Educators were fairly knowledgeable regarding students' rights, parental rights and school policy. Administrators and respondents with a school law course each had the highest scores on eight questions. Those surveyed with a masters degree faired best on three questions. The sample was particularly unsure about censorship of student publications and access to student records.

Surprisingly, the sample was unsure about a number of issues concerning teachers' rights directly affecting themselves. These issues included teacher dress codes, rights to collective bargaining, teaching controversial issues, procedural rights in employment, and supervision of students. Educators with a school law course answered correctly with the highest score on twelve of the questions. On eight of these questions, a school law course improved responses by twenty percent or more. Administrators scored highest on eight questions.

The results of this study indicate that there is a definite need for more in-service training in school law. It also shows that educators profit from a legal education. The dispensing of information on school law should begin in teacher preparation programs, continue in programs preparing school administrators, and become a regular part of in-service programs for school personnel at all levels. Educators should be concerned with preventive school law. It will apprise them of the parameters of their responsibilities and the limitations on their actions.

APPENDIX

TABLE I

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
A. Tax exemption of non-profit religious schools is constitutional.	63	25	11	67	29	4	55	32	10	60	23	17	71	26	3	70	24	5	63	26	9	61	29	9	85	13	3	65	27	8
B. May the public schools provide free transportation to non-public schools?	52	30	14	42	49	7	53	26	16	48	37	11	45	43	10	60	27	8	35	48	15	49	37	12	44	44	6	47	40	11
C. Students are required to salute the flag even though it is contrary to their religious beliefs.	6	89	4	6	91	2	10	77	13	2	94	2	6	92	9	5	93	2	6	88	5	6	89	3	5	93	3	6	90	3
D. It is legal for a school district to require the display of the "Ten Commandments" in the classrooms to promote moral education.	7	86	7	5	88	7	3	90	7	8	87	6	6	87	8	7	85	7	5	88	6	5	87	8	8	88	5	6	87	7

E.	Can you penalize female students for refusing, on religious grounds, to wear gym suits in physical education classes?	5	80	11	9	84	7	5	79	11	4	89	4	8	80	12	2	94	2	9	74	15	7	82	11	6	88	0	7	82	9
F.	Are student religious groups entitled to recognition by a public school?	16	57	20	16	67	16	5	58	26	15	59	19	22	61	16	15	73	6	20	44	33	16	61	21	13	75	0	16	62	18
G.	Is Transcendental Meditation allowed in schools?	14	57	23	2	67	29	16	58	21	4	74	15	10	53	35	10	71	13	9	46	44	9	63	26	13	56	25	8	62	26
H.	Must religion be completely excluded from school?	35	50	13	38	53	9	26	53	16	30	52	11	37	53	10	38	56	2	35	41	22	37	49	12	31	63	0	35	57	11
I.	A source of federal authority in the desegregation process is the exercise and control of the expenditures of federal monies.	71	9	18	87	5	8	68	7	26	76	2	19	86	7	7	85	6	9	73	7	17	77	7	16	88	10	3	70	7	13
J.	May an ethnic group be exempt from desegregation?	9	70	16	11	80	9	11	53	32	11	78	4	10	78	12	15	75	6	4	74	20	11	75	12	6	81	6	10	75	13

TABLE I (Continued)

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
K.	Parents have the right to sent their children to the public school of their choice.	28	67	5	25	71	4	32	65	3	32	59	9	23	75	3	22	76	2	29	65	6	29	67	4	15	78	8	26	69	5
L.	The assignment of faculty on a non-racial basis is an important factor that is considered in most public school desegregation plans.	57	35	8	66	30	4	65	26	10	59	36	6	64	31	6	67	27	6	58	36	6	61	33	6	60	33	8	62	33	6
M.	Metropolitan desegregation plans have been favored over in-city desegregation plans by the courts.	33	36	31	36	47	17	29	39	32	40	32	28	33	47	20	35	51	13	33	34	33	33	41	26	33	50	18	35	42	24

TABLE II

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
A.	A student is truant in Illinois if he has been absent five of thirty consecutive days.	59	24	14	45	40	14	61	29	10	55	26.	15	48	36	16	57	32	11	48	33	17	55	30	14	38	43	20	52	32	14
B.	A suspension in Illinois public schools is not to exceed ten days.	75	7	16	77	10	12	74	0	23	77	11	11	77	8	14	84	7	9	70	9	19	75	9	15	78	8	13	76	9	14
C.	An expulsion in Illinois is from 11 days to the end of the year.	59	17	24	73	9	18	48	19	32	72	15	13	68	10	22	78	10	12	56	16	28	65	14	21	65	13	23	66	13	21
D.	In Illinois, the hearing officer hears the facts of the case on student expulsion and passes the findings on to the board for its decision.	43	20	32	58	20	22	37	21	32	44	11	41	59	22	20	63	19	17	39	17	39	48	20	31	56	25	13	51	20	27

TABLE II (Continued)

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
E. A public school fraternity, sorority, or secret society in Illinois is allowed by the Illinois School Code.	17	60	22	19	72	9	19	55	26	21	60	17	16	71	14	15	74	10	19	60	21	19	64	17	18	68	15	18	66	16
F. In Illinois schools a moment of silence is permitted at the beginning of each day.	63	24	11	57	30	12	74	16	10	62	26	9	55	30	14	68	23	6	52	30	14	57	27	14	68	25	8	60	27	12
G. Illinois school districts must provide free transportation for students living a distance of 1½ or more miles from school.	73	10	7	66	26	7	68	26	7	70	21	9	70	22	7	78	18	4	63	24	11	68	22	9	75	23	3	70	23	7
H. May public schools provide private schools transportation for field trips?	14	59	23	18	64	18	11	58	26	15	59	22	16	65	20	15	73	10	15	50	33	16	62	22	13	63	19	16	62	21

I.	In Illinois a first year probationary contract teacher may be dismissed without reason (when given 60 days notice).	62	22	15	69	21	10	68	19	13	60	25	13	66	20	14	74	17	7	61	23	17	64	23	13	75	15	10	66	22	13
J.	In Illinois, a board of education may extend a second year teacher's probationary period for one additional year.	75	4	21	76	9	13	77	10	13	74	9	17	77	4	20	81	6	13	73	6	21	77	5	18	73	13	15	76	7	12
K.	The Illinois School Code states a teacher may be dismissed for incompetency, cruelty, negligence, immorality or other sufficient cause.	91	5	4	93	3	4	90	3	7	87	9	4	95	2	4	94	2	4	92	4	5	93	4	3	95	3	3	92	4	4
L.	In Illinois, a hearing officer makes the final decision regarding the termination of a teacher, not the school board.	13	52	29	27	56	18	11	37	37	22	48	26	20	61	20	25	52	21	9	57	28	19	54	26	25	56	6	20	54	24

TABLE II (Continued)

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
M.	In Illinois, may a school board raise the academic qualifications to teach Math or Science?	68	13	14	73	18	9	68	11	11	70	19	7	69	16	16	81	13	4	61	13	22	70	16	12	88	0	6	71	16	12
N.	Illinois has an agency shop statute that may require non-union members to pay their proportionate share of its cost.	47	21	32	46	35	19	45	13	42	51	25	25	46	34	21	56	31	13	41	25	34	45	28	27	53	28	20	47	28	26
O.	Strikes by teachers are legal in Illinois.	47	47	6	33	63	4	36	58	7	59	36	6	34	62	5	33	65	2	46	48	6	43	52	5	30	65	5	40	55	5
P.	*In loco parentis* gives school administrators the privilege and responsibility of being considered the "parent of all students in the school."	72	15	13	83	11	6	77	10	13	72	21	8	79	11	10	87	10	4	70	16	15	75	13	13	85	13	3	78	13	10

Q.	In Illinois may a teacher be liable for ordinary negligence?	46	25	25	49	36	16	53	26	16	37	37	22	47	29	24	40	46	13	52	17	28	48	32	20	45	25	25	48	31	21
R.	Will the school board pay for financial losses resulting from your alleged negligent conduct, even if your conduct was willful and wanton?	27	49	21	31	53	17	29	58	13	34	43	19	26	53	21	29	56	13	28	46	24	31	47	21	25	60	15	29	51	29
S.	A teacher should administer medication and first aid to students.	5	94	1	6	91	3	3	97	0	9	87	4	3	95	3	4	96	0	6	90	4	5	93	3	8	90	3	6	93	2
T.	A teacher may be held liable if a child is injured while "running an errand for the teacher."	80	10	10	78	11	10	94	3	3	68	21	11	81	6	13	83	11	6	76	10	14	78	10	12	80	13	8	79	11	10
U.	A six-year-old child who blinds another child with a paper clip and rubber band is legally responsible for that action.	24	59	17	16	67	18	19	74	7	28	57	15	16	62	23	18	76	6	19	54	27	19	61	20	23	68	10	20	63	18

TABLE II (Continued)

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
V.	If you send a student out of your classroom for misbehavior and he or she is injured outside your room, can you be found negligent?	87	6	4	80	13	6	97	3	0	81	11	4	81	10	8	87	10	2	82	8	8	85	9	5	78	15	8	84	10	5
W.	In states and school districts where corporal punishment is not prohibited, do you have an unqualified immunity (protection) to administer such discipline?	21	61	14	18	62	20	16	63	16	22	59	15	20	61	20	23	71	4	15	54	28	21	59	20	19	75	0	20	62	17
X.	Are you absolutely immune from defamation (slander or libel) suits filed by students because of statements you made about them to others?	4	89	5	7	71	22	5	84	11	4	78	15	6	80	14	6	85	6	4	78	17	5	80	15	6	94	0	6	80	14

Y.	Have any of the so called "educational malpractice suits" been successful, showing that you can be held liable for such things as failing to teach normal pupils to read or misplacing them in classes for the mentally retarded?	36	41	21	40	36	24	26	42	32	44	37	15	35	39	26	31	56	10	41	24	35	36	40	25	56	38	6	38	39	23
Z.	An Illinois public school teacher who is suspended as a disciplinary action has the right to a due process hearing.	91	6	2	94	5	1	87	10	3	87	9	10	98	1	1	95	2	2	93	6	1	93	5	1	93	8	0	93	6	2

TABLE III

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
A.	School authorities have the right to require prior approval of publication of a student newspaper.	67	27	6	65	30	5	68	32	0	70	23	6	64	29	7	62	34	4	69	23	8	67	27	6	63	33	5	66	29	6

TABLE III (Continued)

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
B. School administrators may regulate the time, location and the method of student distribution of the newspaper.	83	7	10	87	7	6	90	7	3	85	8	8	84	6	11	80	6	5	80	8	12	83	7	10	88	10	3	86	7	8
C. Is a student publication obscene if it contains offensive, vulgar and "dirty" language?	54	18	25	62	29	7	58	26	11	67	11	19	53	26	20	56	29	10	57	20	22	58	24	17	56	25	13	58	24	16
D. Courts have generally held that individual differences in dress and grooming preference are matters of personal freedom.	83	15	1	88	8	4	87	10	3	85	13	0	85	11	5	89	10	0	83	13	5	84	13	3	93	5	3	86	12	3
E. Do students have the right to demonstrate on campus?	64	18	14	64	29	4	63	16	16	63	26	7	69	20	10	65	27	4	65	15	17	68	21	10	50	38	6	64	24	9

F.	Do students have a right to academic freedom, i.e., to determine courses and curricula?	34	45	18	36	60	4	21	42	32	33	52	11	39	55	6	29	67	2	41	35	22	40	48	12	13	75	6	35	53	11
G.	The school lockers belong to the school, not to the student for the purposes of search and seizure of illegal materials.	80	13	6	79	16	5	74	23	3	79	15	6	81	12	7	85	11	4	73	17	8	79	13	8	78	23	0	80	15	6
H.	Student desks are the property of the student and may not be searched by school officials without a search warrant.	11	83	5	14	78	7	3	84	13	13	81	4	41	80	6	12	84	4	13	77	9	12	81	7	15	80	5	13	81	6
I.	School officials may conduct locker inspections on a regular basis.	71	20	8	87	11	2	61	32	7	85	9	4	83	11	6	90	10	0	71	18	10	79	16	5	80	15	5	79	16	5
J.	School officials need both "reasonable suspicion" and "probable cause" to search student lockers and desks.	60	30	10	53	42	4	55	39	7	55	40	6	56	36	9	55	43	2	56	32	12	57	33	10	50	50	0	57	37	7

TABLE III (Continued)

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
K.	The police must have a search warrant to make a search if they initiate the search.	81	12	7	84	10	6	87	7	7	85	11	4	77	19	9	87	7	5	76	15	9	77	15	9	95	3	3	83	11	7
L.	If the school administrators initiate a search of student lockers/desks, and call in the police, the police must have a search warrant.	41	54	14	39	47	13	48	36	16	47	45	6	33	50	17	32	56	12	43	40	17	39	45	16	40	50	10	40	46	14
M.	A student may be denied a diploma or the right to participate in graduation ceremonies due to unpaid school fees or as a disciplinary measure.	44	50	5	36	61	3	42	52	7	53	42	4	34	62	5	29	68	1	48	46	6	41	53	6	35	65	0	40	56	4

N.	Do you have to give a student due process procedures, such as providing oral notice and hearing his or her side of the story, for detention or in-school suspension?	70	14	13	60	33	7	53	26	16	59	36	7	73	18	10	65	29	4	67	17	13	67	21	12	56	38	0	65	24	10
O.	Must parents be informed of their rights to their children's records under the Buckley Amendment?	80	5	9	84	7	9	74	5	16	82	7	4	84	6	10	90	2	4	76	9	13	83	7	9	94	0	0	82	6	9
P.	Do parents have the right to challenge their child's student records?	88	2	5	93	4	2	90	0	5	89	0	4	90	6	4	92	2	2	89	4	4	90	4	5	94	0	0	91	3	4
Q.	School officials may deny parental/pupil access to parts of student records dated prior to 1974.	42	44	13	42	44	13	48	36	16	47	42	9	38	47	15	52	41	5	35	46	19	44	42	14	35	55	10	42	44	13
R.	Courts generally favor students in deciding the academic grade students are given.	18	52	29	10	66	24	13	61	26	21	53	26	11	60	28	11	71	18	17	49	34	15	55	29	10	73	18	14	59	27

TABLE III (Continued)

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
S.	Do parents have the right to see records of a physician, psychologist or other professionals used only in the treatment of the student?	71	11	13	84	16	0	68	21	5	74	7	11	82	12	6	77	13	6	79	13	7	79	12	7	81	6	6	78	14	7
T.	May schools destroy student records?	21	72	2	33	56	9	16	74	5	22	63	7	33	61	4	27	67	0	26	63	9	25	68	5	38	56	0	27	64	6
U.	May a school district prohibit undocumented (illegal immigrant) children from attending its schools?	29	43	25	22	60	16	21	58	16	33	44	19	22	53	24	25	58	13	20	46	33	27	51	21	13	63	19	26	52	21
V.	May schools require parents to pay for the cost of educating handicapped children?	9	68	18	11	76	13	16	58	21	11	70	11	8	75	18	10	81	4	7	61	30	9	74	16	6	75	13	10	72	16

W.	May handicapped children be excluded from a school activity?	46	41	5	40	56	4	42	37	11	41	52	0	47	47	6	46	48	2	35	52	9	40	53	6	56	31	0	43	49	5
X.	May married students be required to attend adult school instead of regular day school?	16	57	21	13	78	9	21	53	21	15	63	15	14	71	16	15	79	2	17	50	30	17	64	17	0	88	6	29	68	15
Y.	May school districts provide alternative separate schools for pregnant students?	66	20	9	69	20	9	63	16	16	59	26	7	73	18	8	69	23	2	63	17	17	68	21	9	75	13	6	68	20	9
Z.	May married students be excluded from extracurricular activities?	9	70	16	13	78	9	21	63	11	7	70	15	10	77	14	13	77	6	9	67	22	10	77	12	19	63	13	11	74	13
AA.	School officials may reduce grades for unexcused absences.	42	47	11	40	53	7	52	42	7	53	42	6	31	57	12	39	57	4	42	44	14	40	49	11	48	53	0	41	50	9

TABLE IV

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
A. Sex may be a bona fide occupational qualification in the employment of a teacher.	32	58	9	32	54	4	42	48	10	38	49	11	27	69	4	43	54	2	23	68	9	33	60	7	30	63	8	32	61	7
B. Can you be dismissed for homosexual activity, living with someone out of wedlock, or other such private conduct if it does not affect your ability to teach?	32	52	11	29	67	4	42	37	11	30	63	4	24	67	10	35	60	2	26	57	13	32	58	9	25	69	0	31	60	8
C. If you're a female teacher, can the school board make you take a maternity leave several months before you're due to give birth and not allow you to return until several months afterward, regardless of your health?	4	79	13	11	84	4	5	74	11	7	82	7	6	84	10	6	88	4	4	78	13	7	82	10	6	81	6	8	82	9

D.	Can you be forced to retire at age 65?	25	54	16	29	60	11	21	47	21	30	56	11	24	63	14	23	63	13	26	54	15	26	58	15	31	56	6	27	57	14
E.	Based upon a teacher's personal and religious beliefs, a public school teacher can refuse to teach the prescribed curriculum concerning patriotic matters.	22	69	8	22	67	9	10	81	10	36	51	8	17	74	9	20	73	6	23	66	10	22	67	9	18	78	5	22	68	9
F.	Teachers may be legally made to conform to a particular dress code.	46	42	11	44	47	8	65	26	10	38	45	15	42	50	8	50	40	6	41	48	11	47	43	11	43	50	8	42	45	10
G.	Can you teach sex education, race relations, or other controversial issues in your history or civics classes despite heated parental protest?	38	48	11	51	44	4	32	47	16	44	48	4	45	47	8	50	46	2	37	48	13	42	49	9	56	38	0	45	46	8

TABLE IV (Continued)

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
H. In Pickering v. Board of Education (1968), the U.S. Supreme Court protected the right of a teacher to openly criticize his superiors on issues of public importance. Are you also protected from privately directing such criticism to your principal or supervisor?	59	13	20	53	16	29	37	21	26	52	15	30	67	10	22	75	15	8	44	11	37	56	14	26	69	19	6	56	15	25
I. Can teachers be prohibited from promoting political candidates in the classroom?	79	13	5	78	9	11	74	11	11	71	15	7	80	10	8	79	13	4	78	9	11	78	14	7	88	0	6	79	11	8
J. May teachers wear political buttons, badges, or armbands to class?	45	34	14	56	38	17	37	37	21	44	33	11	57	35	8	52	35	8	46	37	13	52	36	11	44	44	6	51	36	16

K.	Can teachers be required to swear that they are not subversives and do not teach others to overthrow the government by force or revolution?	32	45	20	40	47	13	32	42	21	26	56	15	43	41	16	25	58	13	20	46	33	38	44	17	31	44	19	36	46	17
L.	Is an oath that a teacher will "faithfully perform" his/her duties constitutional?	50	23	23	73	16	9	53	11	32	67	7	22	63	28	8	71	17	8	48	24	26	64	17	17	50	31	13	62	20	16
M.	Can a teacher be fired for belonging to a communist, nazi, or revolutionary organization?	32	39	23	40	47	13	42	21	32	33	44	15	37	46	18	36	50	10	39	30	28	41	38	20	19	69	6	36	44	18
N.	May a probationary teacher who was asked to remediate certain deficiencies be terminated later for different deficiencies?	32	48	19	37	43	19	39	45	16	32	49	17	34	44	22	42	46	11	28	46	26	33	45	21	38	50	13	35	46	19

TABLE IV (Continued)

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
O. If you complete the probationary period prescribed by state statute for tenure, can you automatically obtain tenure without specific action by the board of education?	43	38	19	51	34	16	36	48	16	40	34	26	52	34	15	56	38	6	39	34	27	46	33	21	45	45	10	47	36	18
P. As a nontenured teacher, can you be summarily (without formal procedures, such as a hearing) terminated at any point during your contract?	34	52	14	29	60	11	36	52	13	32	53	15	28	59	13	27	68	5	35	46	19	31	53	17	33	68	0	32	56	13
Q. Is tenure the right to be employed until your retirement?	34	50	16	30	62	8	45	52	3	30	45	25	29	62	9	32	65	4	33	49	18	34	51	15	23	73	5	32	56	12

R.	Do your tenure rights extend to extracurricular positions, such as coaches and paid activity advisors?	11	70	19	9	78	12	19	74	7	13	64	22	6	79	16	9	87	5	12	63	25	10	69	21	10	88	3	10	74	16
S.	If you're a tenured teacher in a RIF (Reduction in Force) situation, do you have the right to "bump" a nontenured teacher occupying a position for which you are qualified?	89	3	8	87	5	8	90	3	7	93	4	4	85	4	12	99	0	1	80	6	15	87	3	9	88	5	8	88	4	8
T.	If you're a nontenured teacher in a RIF situation, do you have the right to "bump" a tenured teacher occupying a position for which you are qualified, but the tenured teacher is not?	50	33	15	52	34	14	58	32	10	45	40	11	49	32	19	61	33	5	42	33	24	47	35	17	65	23	13	51	34	15
U.	Do you have a constitutional right to collective bargaining?	52	32	13	52	41	7	58	36	7	62	23	11	46	47	12	42	50	7	59	26	14	55	32	11	33	58	10	52	37	10

TABLE IV (Continued)

	DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
	N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
V. Can you be required to financially support union political activities?	21	66	10	17	75	8	16	71	13	23	62	11	17	74	8	18	76	5	19	66	13	21	67	11	13	85	3	19	71	9
W. Can you be nonrenewed or terminated for undertaking valid activities on behalf of your teachers union?	9	75	11	7	89	4	11	68	11	4	89	4	8	82	10	4	92	2	7	74	15	9	80	10	6	88	0	8	57	8
X. If after bitter and protracted negotiations, you participate in an illegal strike, can the board fire you?	57	11	27	67	22	11	58	11	21	44	26	26	71	12	18	73	15	10	50	15	30	63	14	22	63	25	6	62	17	19
Y. For a teacher's contract to be legally binding, must it be ratified by the school board?	73	11	11	82	11	4	68	5	16	78	11	4	80	12	8	81	10	6	78	7	11	77	11	10	88	6	0	78	11	8

Z.	A contract contains all the relevant information regarding terms and conditions of employment.	66	21	7	71	24	4	68	21	0	63	30	4	69	22	10	65	31	2	70	15	11	70	21	7	63	31	0	69	23	6
AA.	Are there circumstances under which a school board can break a teacher's contract?	63	18	14	62	18	20	53	21	16	63	22	11	67	12	22	63	17	19	65	13	17	63	19	17	63	13	19	64	18	17
BB.	If a teacher breaks a contract and quits, can the school board recover money damages?	41	21	32	44	24	31	37	16	37	33	30	33	49	20	31	54	21	23	28	24	44	43	22	33	50	19	25	43	23	32
CC.	Under the "impossibility of performance" doctrine, a party can be legally excused from meeting the obligations under the contract.	54	4	38	53	7	38	47	5	37	56	4	37	53	6	39	65	4	27	44	7	46	53	6	38	56	0	38	54	6	38
DD.	Can the school board constitutionally require you to live within the school district?	34	50	11	36	60	4	21	47	21	41	52	41	37	57	6	38	56	1	30	52	13	37	52	10	31	63	0	35	55	8

TABLE IV (Continued)

		DEGREES						EXPERIENCE									SCHOOL LAW CLASS						CLASSIFICATION						Total Responses N = 200		
		N = 103 Bachelors			N = 97 Masters			N = 37 0-5			N = 53 6-10			N = 110 11 +			N = 91 Had			N = 109 Had not			N = 150 Teacher			N = 50 Admin.					
		Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D	Y	N	D
EE.	If, in an effort to provide a safe and orderly atmosphere for learning, you conduct a strip search of students, can you be held liable?	68	20	9	84	4	11	74	11	11	70	22	4	77	10	14	85	8	4	65	15	17	73	15	12	94	0	0	76	12	10
FF.	Can you exercise disciplinary authority over students for their out-of-school conduct?	25	61	11	24	69	7	32	47	16	11	78	7	28	65	8	29	67	2	15	65	17	26	64	10	25	69	0	25	65	14
GG.	Are teachers required to constantly supervise their students?	79	18	0	71	24	4	53	42	0	74	19	4	84	14	2	71	27	0	80	13	4	77	21	3	75	19	0	75	21	2
HH.	A school board may limit the amount and type of outside employment of school administrators and teachers.	52	37	10	49	42	9	58	29	13	59	30	9	44	46	10	60	34	5	43	42	15	50	39	11	58	38	5	51	40	10