

## **Literacy in Education Laws: A Literature Review**

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**Abstract.** Educational practice and law work hand in hand. Teachers and school administrators are obliged to perform their duties within the approved legal frameworks set forth by the state. This literature review was intended to determine the extent of studies done in the area of education law involving administrators and teachers who are expected to make legally sound decisions in the academe. The findings suggest that studies concerning education law are wanting. The limited studies available, however, found a poor overall education law literacy of both teachers and administrators. It is proposed that in order to improve the education law literacy of teachers and administrators, a professional staff development program is required. Likewise, further studies may be conducted based on the identified gaps in the literature.

**Keywords:** education law literacy, teachers, school administrators, literature review

### **1. Introduction**

Along with the primary goal of pursuing excellence and the academic success of students, educational institutions are directed to act within the legal frameworks laid down by the state. As such, schools establish certain mechanisms to ensure that laws and policies are satisfactorily followed. Heading these school initiatives are the administrators who lead from the planning up to the implementation of policies directly affecting the rights of its stakeholders.

Education, as an area of public interest, has to respond to the varying demands of society and as a consequence, new rules are constantly made. It is, nevertheless, presumed that school leaders are cognizant of these laws and policies affecting the educational system and how these are applied in different situations. Some laws, however, advance fast adding to the challenge of administrators to keep abreast with recent issuances and promulgations.

Aside from the duty to be kept updated, Hernandez and McKenzie (2010) and Theoharis (2007) stressed the importance of integrating social justice leadership philosophies on how administrators make their decisions. As aptly discussed by Reglin (1990), “The widely publicized ruling in the United States’ landmark case *Tinker v. Des Moines Independent Community School District* (1969) has alerted society to the fact that schools can and will be held accountable for their actions”. A growing number of litigations involving schools in the United States has been observed caused by increasing awareness of parents on their rights, school negligence, and the “societal shifts towards a more litigious society” (Eberwein, 2008; Russo, 2011; White, 2012). The same scenario holds true in the Philippine setting. More and more administrative, civil, and criminal cases involving schools, school heads, teachers, and students are being filed in courts and other quasi-judicial bodies which should prompt institutions to strive for legal consciousness.

Meanwhile, as agents of the state, classroom teachers are expected to have a baseline knowledge of education law. As a master within the four walls of the classroom, a teacher is expected to protect the interests and rights of the students. Classroom discussions may also touch on sensitive issues with education law application to which teachers are bound to expound.

The core of this literature review was to determine the extent of studies done in the area of education law involving the administrators and teachers who have the moral and professional duty to protect the stakeholders of the educational institution.

## **2. The Literature Review**

Online searches from September 2018 to March 2019 were done to determine the current state of the literature on education law literacy in Google Scholar. General Google searches were carried out owing to the dearth of literature found. Unpublished theses and dissertations in nearby libraries of higher education institutions were also checked to find out if related studies had been conducted. Only the studies concerning the education law literacy of teachers and administrators were chosen in the review.

### **2.1 Education Law**

School law and education law are terms that are used interchangeably in the literature. A comprehensive definition of education law is given by Alexander and Alexander (2001) below:

Education law includes “all those areas of jurisprudence that bear on the operation of both private and public schools. ‘School law’ as a field of study is a generic term covering a wide range of legal subject matter including the basic fields of contracts,

property, torts, constitutional law, and other areas of law that directly affect the educational and administrative processes of the educational system” (Alexander & Alexander, 2001).

Reuter (1982) emphasized that broad concepts of school law cannot be considered detached from other legal issues dealt with in court. Cases that may seem unrelated to education are also being studied to understand the concept of some education laws. The constant updates in the legal system (Banthin & Stelzer, 1980), however, requires continuous research and training of school stakeholders tasked to manage and resolve educational issues.

It was claimed by Alexander and Alexander (2001) that “The combination of constitutions, statutes, and courts (or case) law forms the primary legal foundation on which the public schools are based”. In the Philippines, four pillars of education law stand: constitutional law, statutory law, common law, and the policies and regulations issued by administrative bodies.

The first pillar refers to the Philippine Constitution. It is embodied under the 1987 Philippine Constitution (Article XIV, Sections 1) that “The state shall protect and promote the right of all the citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.” Following this constitutional declaration, the legislature came up with statutory laws to fulfill this decree. Consequently, laws such as the Anti-Bullying Act of 2013, the Cybercrime Prevention Act of 2012, and the Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992, largely known as the Child Abuse Law, aiming to address legal issues concerning online interactions in the Philippines, bullying, and abuses in and out of school were created.

Case law or what is referred to as “common law”, at times, serves as the third pillar of school law. Fischer and Sorensen (1996) described this as something which has “evolved from the common thought and experience of the people”. Alexander and Alexander (2001) added that features of common law “include the development of a general precedent that applies throughout the state or the country, enforcement by courts, development of decisions from actual legal controversies, use of the jury systems, and decisions based on the supremacy of law”.

Lastly, the policies and regulations issued by administrative bodies compose the fourth pillar of school law. These organizations in the Philippines include, among others, the Commission on Higher Education, the Department of Education, and the Technical Education and Skills Development Authority. These administrative bodies are mandated to implement the law and to interpret issues on education.

## **2.2 The School Head and Education Law**

The complexity of responsibilities attached to being a school head or administrator makes an understanding of education law to be of paramount importance. School heads have a job that regularly involves issues of school law like imposing student and teacher discipline, answering

complaints coming from other stakeholders, and concerns for resource allocation. Dunklee and Shoop (2002) added though that “effective school administrators do not want to win lawsuits; they want to avoid them altogether”. Taylor (2001) further stressed that:

In today’s litigious age, school officials confront legal liability on a daily basis. Effective principals understand and utilize so-called legalese, as well as basic principles of law, to ensure that their schools run smoothly and that faculty members and students reach their full potential (Taylor, 2001, p.66).

Though principals agree that literacy in education law is highly significant in the performance of their duties (DiPaola & Tschannen-Moran, 2001), Dunklee and Shoop (2002) presented the pressures faced by the school leaders in balancing between these conflicting demands.

We know the job of school principal is vastly different today from what it was 20 years ago, 10 years ago or even yesterday. Today’s principals grapple with a sea of conflicting demands from their school boards, central office administrators, students, teachers, parents, and community pressure groups. Principals’ jobs are further complicated by the seemingly endless and often contradictory statutes, court decisions, and attorney generals’ opinions that directly affect the operation of their schools. As a result of these pressures, principals often feel insecure and, at times powerless, when it comes to balancing the pressure to do something, on the one hand, against legal restraints, on the other. Today’s principals face an additional dilemma as they address the task of balancing the need for order with the need to respect the legal rights of students, teachers, and parents (Dunklee & Shoop, 2002).

A study done by Caldwell (1986) which was replicated by Brabrand (2003) 17 years later yielded the same results indicating that school heads only have an average or fair amount of education law knowledge. Both studies surveyed the school principals’ knowledge of pupils’ rights, teacher/administrator issues, torts, and church/state relations through a 40-item true-false test. Caldwell (1986) also found that the school heads’ knowledge of education law has no significant difference with the type of school law preparation, length of administrative experience, and recency of education law training.

Eberwein (2008) initiated one of the largest studies in education law surveying 8,000 secondary school principals using the Principals’ Education Law Survey developed by Militello, Schimmel, and Eberwein (2009). The results demonstrated an insufficient knowledge of the principals relating to the rights of students and teachers with a correct response rate of 65.27% to the 14 items on students’ rights and 54.12% to the 20 items on teachers’ rights.

Militello, Schimmel, and Eberwein (2009) conducted another study of 493 participants using their Principals’ Educational Law Survey of 34 true-false questions on students’ and teachers’ rights. The results indicated a very high percentage of the principals (90%) believing that they could be liable for educational malpractice; about 45% who were unaware that schools have the right to

impose strict dress codes; and about 50% who did not know about their Family Educational Rights and Privacy Act.

In the Philippine context, limited studies have been conducted to expose the literacy of school administrators.

In a case study involving 93 school principals from Cagayan de Oro City, Brooks and Sutherland (2014) found the need for these leaders to put student needs above all others and approach student support from a holistic perspective, thereby suggesting for professional development opportunities to be given to the teachers. Sindhvad (2009), however, found in his study involving 364 Filipino principals that support of these leaders largely depends on their belief of ensuing changes in instruction, job satisfaction, and their time and level of control.

The review of literature, likewise, revealed an existing descriptive study conducted by Pena (2013) involving 143 administrators from 11 public higher education institutions in the Philippines. The study looked into the ethical leadership behavior and legal knowledge of school heads with the use of a researcher-made Legal Knowledge Test composed of true-false questions on academic freedom, penalty and administrative sanctions, administrative rules, duties and responsibilities, and state policies. The results indicated a 47.9% grand mean score marked as competent but with poor legal knowledge on legal terms, liabilities, extent of supervisory and administrative powers, processes in delivering sanctions, sexual harassment protocols, and rules on retirement.

### **2.3 The Classroom Teacher and Education Law**

Several studies have been conducted regarding the legal literacy of teachers. The teachers are perceived to have the power to change the future of teacher preparatory programs, university policies, and even societal norms.

Though their voice is influential, the classroom teachers are found to be uneasy about their knowledge of school law (Brown, 2004). In a qualitative study involving six teachers, Brown (2004) acknowledged the need for additional staff development when the findings suggested that teachers are unaware of important landmark cases usually taught as a part of their pre-service foundation courses. As to privacy rights, teachers were found to be reasonably knowledgeable attributed to their access to current news events and television crime shows.

In Georgia, Paul (2001) conducted a study of 505 teachers to determine the impact of a school law course and years of experience on their concept of legal issues such as employment rights, ethics and lifestyle, freedom of expression, religious freedom, and tort liability. The teachers were made to answer 45 true-false questions based on applicable laws. Results revealed a positive relationship between knowledge of education law concepts and a previous school law experience and those with at least 21-30 years of teaching experience. Ironically, teachers having more than 30 years of experience scored lower, as well as those with three years of experience or less.

Schimmel and Militello (2007) also conducted a survey on the education law knowledge of 1300 teachers with varied demographics (gender, experience, degree) and school types (elementary, secondary, suburban, rural) from 17 states using a true/false survey questionnaire. The results revealed that 60% of the respondents answered most of the questions about students' rights incorrectly and 50% responded incorrectly on most questions about teachers' rights. Additionally, more than 50% of respondents admitted that fear of litigation affects their decisions.

In the Philippines, studies focusing on the legal literacy of teachers on education laws affecting basic student and teacher rights are wanting. Numerous studies have been centered instead on environmental awareness, inclusive education, and special education issues.

### **3. Conclusion**

The literature review establishes the importance of legal consciousness in the operations of educational institutions. Though the substantial topics to be covered under education law may seem onerous, the fact remains that administrators have to make legally sound decisions for the school. It is, therefore, upsetting to note that only limited studies have been done in this area and the few ones conducted have shown a poor overall education law literacy of administrators and teachers. Claims that school heads have inadequate knowledge of basic education law principles affecting student and teacher rights ought to encourage investigations that will dig deeper into its cause and resolution.

Studies on teachers' education law literacy show that they only have a marginal understanding of its concept though they consider school law to be important, especially in dealing with students and parents and in making classroom decisions. This just shows the need to recalibrate the teacher education curriculum to address the teachers' needs and to keep pace with societal changes.

It was also found in the literature review that most studies mainly consist of foreign studies focused solely on the education law literacy of teachers and principals in elementary and secondary schools. In the Philippines, as far as the researcher is concerned, no study investigating the education law literacy of teachers has been done and only one study (Pena, 2013) exists regarding the education law literacy of academic administrators confined only on the public higher education institutions in Region 3.

Further, the use of a mixed-method research design to depict legal literacy on education laws of teachers and administrators was not reflected in prior studies since the methodology used was primarily quantitative. Survey questionnaires using the true-false format were also commonly used with a marked absence of a multiple-choice type of an Education Law Test.

The studies, likewise, do not suggest inputs for a sample professional staff development program and other intervention schemes to improve the education law knowledge of teachers and administrators. These are the gaps in the literature that future studies may address.

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