

Connecting the Courtroom to the Classroom: How Educators Can Claim Their Agency through Legal Literacy

Christopher D. Thomas, JD; PhD
Assistant Professor
Educational Leadership and Policy
School of Human Development and Organizational Studies in Education
University of Florida
Gainesville, FL

Jamie Kudlats, PhD
Assistant Professor
Educational Leadership
Department of Educational Leadership
University of North Carolina, Charlotte
Charlotte, NC

Abstract

Teachers and administrators must regularly navigate a host of complex issues influenced by ever-changing laws and often ambiguous legal guidance. Recent trends in legislation aimed at restricting curricula and educators' actions have only complicated educators' efforts to do what they feel is in children's best interests. Additionally, recent cases like *Mahanoy Area School District v. B.L.* or *Kennedy v. Bremerton School District* have upended legal precedent and educational practice in ways that could significantly impact the daily actions of teachers and administrators. Recognizing that educators have limited preparation in the law and often view it as a source of anxiety, this article proposes that increasing educators' legal literacy can empower educators to claim their agency and become more confident to pursue their educational goals within *and through* the law.

Key Words

school law, legal literacy, educator agency, curricular bans, the Supreme Court

The law seems distant and intimidating to many educators. It's seen as this far-away, complicated, and disconnected force that weasels its way into schools and classrooms for educators to simply cope with. What often results is teachers feeling powerless to do what they may feel is best for their students. But even small amounts of legal awareness and understanding can lead to more empowered and confident teachers; teachers who can successfully pursue their educational goals within and even through the law. With the ever-growing number of complex laws, policies, regulations, and court decisions that directly impact the work of teachers and school leaders, understanding the forces at play can better prepare educators to advocate for their students and more confidently focus on what they came there to do: teach.

It often feels like educators are caught in an ever-growing and often-changing whirlwind of regulations and legal obligations. Legislative acts restricting or restraining schools from teaching (or sometimes simply mentioning) certain topics or ideas have increased exponentially in recent years.

One of the most widely publicized of these laws is Florida's *Parental Rights in Education* law, commonly called the "Don't Say Gay" law. But similar legislative acts have been proposed by the hundreds over the past few years, and while most have ended up "dead in committee," according to a recent "PEN America" report, as of November 1, 2023, about 40 of these types of laws or policies now exist in more than 20 states. PEN America aptly refers to these regulations as "educational gag orders."

With no signs of slowing down, these acts directly impact educators at practically every level, but most especially teachers and

building administrators. From restrictions on particular types of discussions about race (both in contemporary and historical contexts) to the removal of content that acknowledges certain identities, like those in the LGBTQ+ community, educators are faced with an ever-changing barrage of topics that now may or may not be legally acceptable to cover and language that may or may not be lawful to use in the classroom. Entire courses are being removed from curricula. Anything labeled as a potentially "divisive" topic is being avoided. Pronoun usage comes with caveats. The list goes on.

These legal restrictions, often ideologically driven and championed by non-educators (like politicians and parents' rights groups), have only added to the considerable strain on teachers who feel like they are "under the microscope" like never before.

But these vaguely worded laws and the often limited or ambiguous guidance coming from state education agencies can leave teachers and school administrators to navigate these turbulent and uncharted waters on their own. Moreover, these curricular gag orders are only one of many examples of recent developments in education law and policy that have compounded ambiguity and added further legal concerns for educators.

In addition to other legislative trends at the state level, the United States Supreme Court has issued several recent decisions that profoundly impact schools. These decisions have both introduced new uncertainty, like with its student off-campus speech decision in *Mahanoy Area School District v. B.L.* (Author, 2023b), and unsettled established practices, like with the recent case *Kennedy v. Bremerton Area Schools*, which could substantially alter the relationship of religion and public education (Author, 2024a; 2024b).

On many of these issues, along with so many others, schools rely heavily on top-down directives and cookie-cutter guidance to help educators stay within the guardrails of the law. But the law already gives us plenty of valuable guidance, salient examples, and critical advice that can help us navigate the highly nuanced contexts in schools.

Unfortunately, as many educators do not know much about the law and how it shapes education, they can lack the ability to interpret, implement, or affect the law in ways that align with their beliefs about what is best for students. This is likely one reason why so many educators have experienced laws like these “educational gag orders” in such negative ways (Woo et al., 2023). Without the tools to unpack these laws and confidently navigate their gray areas, educators can feel powerless and demoralized in the face of laws that run counter to deeply held educational ideas like equity and culturally responsive teaching.

Increasing educator legal literacy can change that. Legally literate educators could better assess the appropriateness of top-down policies and more confidently advocate for change. They could more easily fill in the gaps created by ambiguous or non-existent guidance. Legally literate educators can be empowered to balance their professional discretion with their legal obligations. Most importantly, they will be better able to adapt policies and practices to their unique contexts even as they claim their agency within larger public policy debates about what the law should be and what it should mean for schools.

What is Legal Literacy?

Legal literacy refers to the ability to “spot legal issues, identify applicable laws or legal standards, and apply the relevant legal rules to solve legal dilemmas” (Decker & Brady, 2016, p. 231). It encompasses the skills and attitudes necessary for educators to take appropriate

action within the law. This includes attitudes such as courage and commitments to fairness, justice, and equality, along with skills like problem-solving, collaboration, legal research, and communication. Legally literate educators are empowered to navigate education law, ensuring legal compliance and allowing them to exercise their discretion to advance their educational aims.

This includes being able to understand and participate in the process of how the law is made, interpreted, and implemented. Understood this way, legal literacy is an important component of educators’ “civic agency,” their ability to be active participants in the creation of educational policy (Author, 2022).

A missing piece of the puzzle

Unfortunately, legal literacy is not prioritized in most teacher and administrator preparation programs. Thus, most educators are not sufficiently knowledgeable about the law or adequately prepared to navigate it successfully. Most school administrators take only a single law course during their licensure program or graduate work, and teacher preparation programs almost universally lack such a course (McCarthy, 2008).

This lack of legal training has significant implications as teachers look to more experienced teachers and administrators for guidance on how to navigate the law, and even then, administrators often do not have sufficient access to legal resources, like a school board attorney, to assist with all of the daily decisions that may have legal dimensions. Further emphasizing the importance of increasing educator legal literacy, Militello, Schimmel, and Eberwein (2009) found that not only did school leaders have insufficient legal knowledge, but 85% of them also said they would change their behavior if they knew more about the law.

More knowledge, more confidence, and better decisions

Fortunately, increasing legal literacy has significant benefits for educators. Decker, Ober, and Schimmel (2019) found that 88% of students who were enrolled in an administrator preparation program and who took a school law course had increased confidence in and about the law. Echoing prior research, they also found that 85% of those students indicated that the legal training changed their behavior. This emerging research suggests that more training in the law can empower educators and improve their practice as they transition away from issue avoidance or poor decisions to more empowered, knowledgeable actions that better meet the needs of their students. Simply put, increased legal literacy can assist educators in making better decisions (Bull & McCarthy, 1995).

There may not be one “right” answer: educators can use their discretion

Legal literacy also recognizes that the law is not black and white but often varying shades of gray. For the legally literate educator, the question is not whether a decision, action, or policy is lawful or unlawful. Rather, the question is whether the decision adequately balances educators’ instructional and pedagogical goals with their legal obligations and the potential for adverse legal consequences. This understanding reinforces the important and often overlooked fact that the law does not always provide clear answers and that educators have significant discretion to both interpret and implement the law.

Like the weather, the law is always changing ... and we can be a part of that change

The law is always in motion, and legal literacy acknowledges the messy, complicated, and ever-changing nature of law. Legal literacy allows us to understand and participate in the formal and informal processes by which the law is created and translated into practice. The

formal mechanisms of the law, like courts, legislatures, and the executive, create legal obligations. Legal literacy can provide a roadmap to access these institutions and affect their outcomes by helping us understand how they work, what interests are at play, and how to influence the relevant policy actors. Equally as important, though, legal literacy also encompasses a concern for the informal mechanisms of law. These include all of the ways in which the law goes from words on a page to practice.

Within these informal mechanisms, legal literacy offers two important lessons to consider. First, the law is ambiguous and subject to an ongoing push and pull to determine its meaning. The law is made of words, and words themselves are subject to interpretation (Chafee, 1941). For example, consider the rule: “No Vehicles in the Park.”

The legally literate individual will recognize that this rule hinges on how we understand the word ‘vehicle.’ Are cars vehicles? What about bicycles? Is a baby stroller a vehicle prohibited by this rule? What about modes of transportation that do not have wheels? Is a hoverboard a vehicle? Is a horse?

To implement this rule, we have to wrestle with the meaning of its words. The same is true for all laws, most of which are more complicated and, therefore, more open to interpretation than this one. While the formal mechanisms of law may be responsible for making the rules, the meaning-making process interprets and puts rules into practice. It is within this powerful space that the legally literate educator has the potential to truly influence the informal mechanisms of law and better attain their educational goals.

The second lesson is rooted in the relational nature of the law. The law, at its core, shapes how we relate to each other and the

state. As legally literate educators, we understand the significance of those relationships and how both the meaning-making process of the law and its implementation occur within relationships.

From this perspective, the law is not something abstract that exists outside of us but rather a process of shared meaning-making that we engage in with others. Revisiting the “No Vehicles in the Park” rule, the relational approach requires us to ask *who* is affected by this rule and *what they want*. Will we involve them in the meaning-making process? How will we communicate with them about the rule and its meaning? How will we enforce the rule and mediate disputes about its meaning or application? While teachers and administrators often ask questions like these with the many issues they face, becoming more legally literate can provide educators with clarity, additional options, and better answers to these questions.

Increasing Educator Legal Literacy Is Both Possible and Necessary

Get curious and question the law

The law has a tendency to take on a life of its own in schools. “We *have* to do it that way,” “we aren’t *allowed* to do that,” or “that’s what *the law* says” are common refrains in faculty break rooms. Often, these statements are assumptions about the law and aren’t always accurate. Statements like these treat the law as something external to us; something outside of our control or influence. But it doesn’t have to be.

We can interrogate the veracity of these claims. *As educators, we can and should acquaint ourselves with the actual statutes, regulations, collective bargaining agreements, and school board policies that guide our work.* Most educators have never read these key documents. Doing so, for example, could point out areas of disconnect between a district mandate and what actually may be required by

law. It could open opportunities for additional discretion in responding to the unique needs of a school community. It might even result in a much-needed change in the mandate itself. More often than not, legally literate educators will discover they have significantly more discretion than they thought.

Embrace AI

Artificial intelligence (AI) may be controversial in schools, but to increase educators’ legal literacy, **recent developments in AI tools** like ChatGPT by OpenAI (<https://chat.openai.com/>) or Bard from Google (<https://bard.google.com/chat>) have the potential to assist educators in identifying, interpreting, and applying the law.

In a recent exploratory study, Author (2023a) found evidence that existing AI large language models (LLMs) like ChatGPT exhibited greater knowledge of the law than practicing teachers and school leaders. While this emerging research demonstrates the potential for these tools to assist educators in navigating the law, it is important to note that existing AI is not infallible and should not be relied upon as an authoritative source. Educators should approach AI with cautious optimism and adopt a “trust but verify” approach.

Leverage existing legal resources

While not all teachers and school leaders have adequate access to professional legal advice, some administrators often engage with their schools’ legal counsel (probably more than they would like). However, very few educators or school law attorneys receive explicit training on how to form productive, collaborative relationships with one another. Heubert (1997) suggests that educators and their lawyers ought to collaborate “early and often,” in ways that are “ongoing and in-depth” (p. 543). This recognizes that the unique professional knowledge of both educators and attorneys is

necessary when addressing legal issues within education. From this perspective, the conversation shifts away from “can I take some action” or “whether some action is lawful” towards “how can I accomplish my goals within the law.” Shifting from asking ‘whether’ to ‘how’ centers the educator’s ultimate goals and allows for robust collaboration and problem-solving.

Along these lines, school and district administrators should look for opportunities to allow their teachers to engage these resources as well. Providing teachers with access to professional development opportunities and training around matters of education law cannot only empower them in their classrooms, but the ripple effect of having more knowledgeable teachers making more “legally sound” decisions will likely mean fewer difficult

problems for administrators to resolve (Schimmel, Eckes, & Militello, 2010).

Conclusion

Educators’ legal literacy is not a panacea, and there are always limits to educators’ discretion within the law. However, increasing educator legal literacy allows us to navigate and impact the law in positive ways and gives us the tools to work more effectively within the law. With the recent “educational gag orders,” like Florida’s *Parental Rights in Education* law, educators can leverage their legal literacy to demystify these laws, explore their meaning and enforceability, participate in larger public policy debates surrounding these laws, and they can become more confident navigating their gray areas. Ultimately, embracing our legal literacy empowers educators to claim our agency within education law and policy.

Author Biographies

Christopher Thomas is an assistant professor at the University of Florida. A former K-12 educator, he hosts the education law podcast *Chalk and Gavel*. E-mail: christhomas@coe.ufl.edu

Jamie Kudlats is an assistant professor at the University of North Carolina at Charlotte. He is a former K-12 educator and hosts the education law podcast *Chalk and Gravel* with Thomas. E-mail: jkudlats@charlotte.edu

References

Author (2022)

Author (2023a)

Author (2023b)

Author (2024a)

Author (2024b)

Bull, B. L., & McCarthy, M. M. (1995). Reflections on the knowledge base in law and ethics for educational leaders. *Educational Administration Quarterly*, 31(4), 613-631.

Chafee, Z. (1941). The disorderly conduct of words. *Columbia Law Review*, 41(3), 381-404.

Decker, J. R., & Brady, K. P. (2015). Increasing school employees' special education legal literacy. *Journal of School Public Relations*, 36(3), 231-259.

Decker, J. R., Ober, P. D., & Schimmel, D. M. (2019). The attitudinal and behavioral impact of school law courses. *Journal of Research on Leadership Education*, 14(2), 160–185.

Heubert, J. (1997). The more we get together: Improving collaboration between educators and their lawyers. *Harvard Educational Review*, 67(3), 531-582.

McCarthy, M. M. (2008). One model to infuse the law in teacher education. *Action in Teacher Education*, 30(2), 59-70.

Militello, M., Schimmel, D., & Eberwein, H. J. (2009). If they knew, they would change: How legal knowledge impacts principals' practice. *National Association of Secondary School Principals Bulletin*, 93(1), 27–52.

PEN America. (2023). *America's Censored Classrooms 2023: Lawmakers Shift Strategies as Resistance Rises*. <https://pen.org/report/americas-censored-classrooms-2023/>

Schimmel, D. M., Eckes, S. E., & Militello, M. C. (2010). *Principals teaching the law: 10 legal lessons your teachers must know*. Corwin.

Woo, A., Lee, S., Prado Tuma, A., Kaufman, J. H., Lawrence, R. A., & Reed, N. (2023). *Walking on eggshells: Teachers' responses to classroom limitations on race- and gender-related topics*. RAND Corporation. https://www.rand.org/content/dam/rand/pubs/research_reports/RRA100/RRA134-16/RAND_RRA134-16.pdf.