

# Introduction and Overview

*How the Principal Can*

*Be the Chief Law Instructor: 10 Lesson Plans*

**T**he goal of this book is to enable principals to become better-informed and effective school-law teachers. Although teaching law is not in their job description, principals already *are* the chief law teachers in their schools. This is because most principals frequently give legal advice—in staff meetings, in informal conversations, and in the way they develop, interpret, and enforce school rules. While this legal advice is often appropriate, there are many times when it is confusing, misleading, incomplete, and even incorrect. This advice (or lack of advice) often leads to two types of mistakes by teachers: (1) failing to take disciplinary action when they should and (2) unintentionally violating students’ rights when they should not.

## **RESULTS OF LEGAL ILLITERACY**

First, the failure to act is often the result of oversimplified administrative warnings. According to a national survey (Schimmel & Militello, 2007), the most frequent legal advice principals give to teachers is “Don’t touch students.” Because of this and other “thou shall nots,” many teachers view law as a source of anxiety and fear. Thus, an elementary teacher reported that he does not break up fights among his third graders because he’s afraid that if he does, and a student is injured, he could be sued in court, disciplined by his principal, or both. This widespread belief among teachers that *any* touching of students involves inherent legal dangers persists despite the fact that it is always legal and appropriate for teachers to use reasonable force to protect their students and themselves.

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Second, because the vast majority of teachers have taken no course in school law in their pre- or inservice programs, they are not aware that they function as agents of the government and are therefore restrained by the Bill of Rights. As a result, teachers may unintentionally violate students' Constitutional rights when they require them to stand for the Pledge of Allegiance, search their backpacks for possible contraband without reasonable suspicion, or punish them for statements in class or on T-shirts because they might offend someone.

Teachers' lack of awareness of students' rights can cause friction, frustration, and possible litigation. This was illustrated by a high school principal who explained, "Although I haven't had any major lawsuits, it's the legal misunderstandings with students, parents, and teachers that take up much of my time." For example, she told about one of her teachers who sent a student to her office to be suspended for refusing to take off an "offensive" T-shirt that said that President Bush was an "International Terrorist." As the principal knew the student had a First Amendment right to wear the shirt because it caused no disruption, she refused to suspend him. As a result, the teacher felt embarrassed and unsupported by her principal. On the other hand, if the principal had "supported" her teacher and suspended the student, this might have led to a conflict with the parents and a possible lawsuit—which the school would have lost.

In sum, legally illiterate teachers may fail to take appropriate action—ignoring misbehavior, permitting disruptions, or rescinding discipline because of meritless threats by parents or students. In addition, when teachers are unaware of how the Bill of Rights protects students, they may unintentionally violate students' rights regarding free speech, due process, or search and seizure. These negative consequences of legal illiteracy are compounded by the fact that most teachers get much of their legal advice from other teachers who are similarly uninformed or misinformed.

### **BENEFITS OF LEGAL LITERACY**

If principals teach the basic principles of school law as a regular part of their teachers' professional development program, there can be a number of positive results. For example, when teachers understand the laws that govern discipline and the reasonable use of force, they will not be afraid to break up a fight because of unfounded fears that they could be held personally liable if a student is injured, nor will they fear a lawsuit if they put a restraining hand on the shoulder of a second grader who is constantly jumping out of his seat, disrupting the class, and likely to injure himself.

Furthermore, if public school teachers understand that they are agents of the government and are therefore constrained by the Constitution, they are likely to think and consult with their principal before they search a student or demand that a student take off a controversial political T-shirt because they fear it might offend someone.

When principals become effective law teachers, their staffs will get the information about school law from knowledgeable sources—not from the rumors and myths from the Teachers’ Lounge School of Law. As practitioners of preventive law, teachers will know when to consult with informed administrators. By having a legally literate staff, principals will benefit because of fewer legal mistakes and misunderstandings by teachers. This should reduce the time and energy principals now have to devote to teachers’ legal confusions and to preventable parental complaints, threats, and possible litigation—freeing the principal to focus on quality teaching and learning. Thus, there are multiple benefits of having a legally literate staff. We have written this book to help principals make this happen.

With this information, teachers will no longer see themselves as potential victims of the law. Instead, they will be able, in a constructive sense, to “take the law into their own hands.” As a result, they also will be able, in partnership with their principal, to uphold the law with confidence and feel empowered to protect their students, their school, and themselves.

## WHO CAN USE THIS BOOK

We do not presume the user of this book has an advanced knowledge of school law. Rather, we presume the users wants to provide themselves and their colleagues with a basic knowledge of school law so that the law does not hamper their ability to be an effective educator. Therefore, we see a number of users for this book:

- *Current principals* seeking ways to remove legal issues as barriers to teaching and learning in their schools
- *Aspiring principals* seeking knowledge they will need to lead the schools of tomorrow
- *Current teachers* seeking answers to common concerns about what to do when confronted with legal situations
- *Superintendents* working directly with their principals
- *Instructors in teacher- and principal-preparation programs* seeking a practical guide to preventative school law

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- *District administrators* seeking content for new-teacher orientation and extended-day and summer professional development opportunities
- *School board members* who need to be knowledgeable of school-law issues (e.g., in Massachusetts, board members are required by law to attend an orientation that includes school law)
- *Other school personnel* (e.g., guidance counselors, paraprofessionals, bus drivers, school security and resource officers) who also confront legal issues in schools

### HOW WE ORGANIZED THE BOOK

We selected 10 lesson plans to present in this book. While other topic areas could have certainly been included, we selected these 10 lessons on the basis of our research that has highlighted the most frequent or common questions schoolteachers and principals ask about school law. We also used topics that are timely and relevant. That is, we often included cases that have been highly publicized by the media and the courts. Table 0.1 summarizes the 10 law topics we selected.

**Table 0.1** Summary of Topics

Lesson Plan	Questions Answered
1. Liability for Student Injuries	When can teachers be held liable for student injuries that occur in their classrooms or when they are on duty in the hallways or playgrounds? If they leave their classrooms unattended, would they always be held liable for injuries that occur? Can teachers be held liable if a student is injured when they break up a fight or drive a student in their car? Can they restrain a disruptive student? Are there state or federal laws that protect teachers against being held liable? Does insurance or parental waivers protect them? Does a teacher's duty of care vary with the age of the student?
2. Student Freedom of Expression	What is the scope and limits of student freedom of expression in the public schools? Can teachers prohibit messages on student T-shirts that are controversial, offensive, or vulgar? Can schools prohibit students from distributing unapproved newspapers or flyers on campus? Can students be punished for messages on their Web sites that insult teachers, criticize school policies, or might cause disruption?



Lesson Plan	Description
3. Special Education	When is a student entitled to special rights under IDEA (Individuals with Disabilities Act) and under Section 504 of the Rehabilitation Act of 1973? What constitutes a free appropriate public education under IDEA? What is required in an IEP (individualized education program)? Do all teachers have responsibilities to implement IEPs? What is meant by “the least restrictive environment” and “related services”? What “reasonable accommodations” must be made under Section 504?
4. Student Due Process and Search and Seizure	Are students entitled to due process before a short suspension? If so, what process is due? What procedural rights do they have before being expelled? What is an adequate notice and hearing? When are they entitled to a lawyer, to bring witnesses, to cross-examine their accuser or to appeal? Is due process different for students in special education? When can students be searched?
5. Student Harassment and Bullying	When can schools be held liable for sexual harassment among students? Do students have to tell teachers or principals about the harassment? Does the harassment have to be severe or pervasive? Do schools have a duty to prevent the harassment? Does the harassment have to be sexual? What about harassment based on religion, race, or sexual orientation? When are schools liable for a teacher’s harassment of a student?
6. Teacher Freedom of Expression	Can teachers be punished for publicly criticizing school policy or for complaining about working conditions? Do whistleblower laws protect teachers? Do teachers have a right to use controversial materials or methods in class? Do they have a right to express their personal views about political or social questions in response to student questions?
7. Teacher Lifestyle Choices and Out-of-School Conduct	Can administrators discipline teachers for immoral or unprofessional conduct away from school? What constitutes immoral or unprofessional conduct? Can teachers date students if they are over 18 and not in their classes? What illegal conduct would justify firing a teacher? Could photos on Facebook get teachers in trouble?
8. Religion	Are students allowed to pray before, during, or after school? Must schools recognize student prayer clubs? Are invocations and benedictions permitted at graduation? What about silent prayer or meditation? Are courses that teach

*(Continued)*

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(Continued)

Lesson Plan	Description
	about the Bible or religion permitted? Must schools excuse students from reading books or studying topics that violate their religious beliefs? Are Christmas assemblies OK? Do teachers have a right to exclude evolution or include intelligent design in their science curriculum? Can students be required to stand for the Pledge of Allegiance?
9. Student Records: The Family Educational Rights and Privacy Act	Are parents entitled to see all of their child's records? Can parents prohibit outsiders from having access? Are there circumstances that allow the records to be shared without parental consent? Do noncustodial parents have a right to see their child's records? Are parents entitled to a hearing to challenge the accuracy of their child's records or grades? Do teachers have a right to see the records of their students? Can parents sue teachers for putting negative and critical comments in the student's records?
10. Abuse and Neglect	What constitutes abuse or neglect? Are all school staff required to report child abuse? To whom must educators report? Must teachers be sure of abuse before reporting? If an investigation determines that no abuse occurred, could parents sue the reporting teacher for defamation?

### HOW TO USE THIS BOOK

We have designed each lesson so that it can be completed in one 60-minute professional development session. These are “ready-made” lessons that require a minimum of preparation time for the presenter. We fully realize that this target may not be achievable if the user is seeking a comprehensive understanding of the law for the participants. Therefore, we include a number of alternative ideas and supplemental resources, so users can add to the lessons as they see fit. For example, we provide strategies that ask participants to prepare for the law lesson prior to entry in the professional development session.

We have designed these lessons around principles of good teaching and learning. However, we strongly encourage the presenters to use ideas from other lessons (e.g., using the motivator strategy in the teacher-freedom-of-expression lesson plan with the content of the religion lesson)

or proven strategies from their own professional experience (e.g., group activities that you have found valuable) throughout these lesson plans. Our lessons are divided into the following steps:

### **1. Activator/Motivator**

We agree with John Dewey (1902) and many cognitive psychologists that learning occurs through the heart on the way to the mind. As such, we created an anticipatory set—what we call an Activator/Motivator—for each lesson. Each Activator/Motivator is designed to garner the attention of participants and engage their hearts and minds. Each Activator/Motivator can be modified to meet the specific context in your local school setting.

### **2. Rationale/Objectives**

Learners need to know what they are expected to learn. For each lesson, we have identified the purpose and specific goals. Also in each lesson, we suggest that the goals should be posted and stated. However, each facilitator should integrate the goals into the lesson as they see fit.

### **3. The Law**

We provide current, relevant legal content for each lesson. However, this book is not designed as a comprehensive educational-law text. Instead, it provides a summary of the basic legal principles that are most important for teachers to understand. We do not advise that facilitators read The Law section to participants or simply hand out this section for participant review. In order to promote a learner-centered pedagogical approach, we offer a specific teaching and learning strategy for each lesson. Each is designed to be ready to use; however, as with the Activator/Motivator, we encourage facilitators to modify lessons and to replicate pedagogical strategies from other lessons as they see fit.

### **4. Application of Content to Practice**

Principals will use a variety of activities with teachers to help them apply what they learned in the legal-content section to real school issues.

### **5. Assessment**

The big questions in any teaching setting are, Did they learn? and Can they apply the knowledge? The purpose of this section is to ascertain

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learning. Finally, as with the other lesson plan sections, we highly recommend setting (e.g., elementary or secondary) and personal modifications (e.g., emphasizing certain aspects of a lesson).

We also provide two additional sections for each lesson:

### *Questions and Answers*

We predict that participants will have additional questions as a result of the lessons. While there is no end to the “What if . . .” questions, we provide a list of questions teachers are likely to ask. The questions can also be integrated into many aspects of each lesson, including the Activator/Motivator, The Law, or the Assessment.

### *Resources and Materials*

We have provided a set of resources, materials, and references at the end of each chapter.

**Relevant Quotes** Historical and/or precedent-setting quotes and cases are highlighted. These can be used for multiple purposes in different parts of the lesson plans.

**Materials** All the material needed to conduct each lesson will be listed for each lesson. We also provide details regarding the use of technologies, such as converting YouTube clips to computer files that can be accessed in a meeting without Internet connectivity.

**References** A list of readily available references will be provided. Rather than a comprehensive list, we identify specific chapters of popular school-law texts that can be used to augment each lesson.

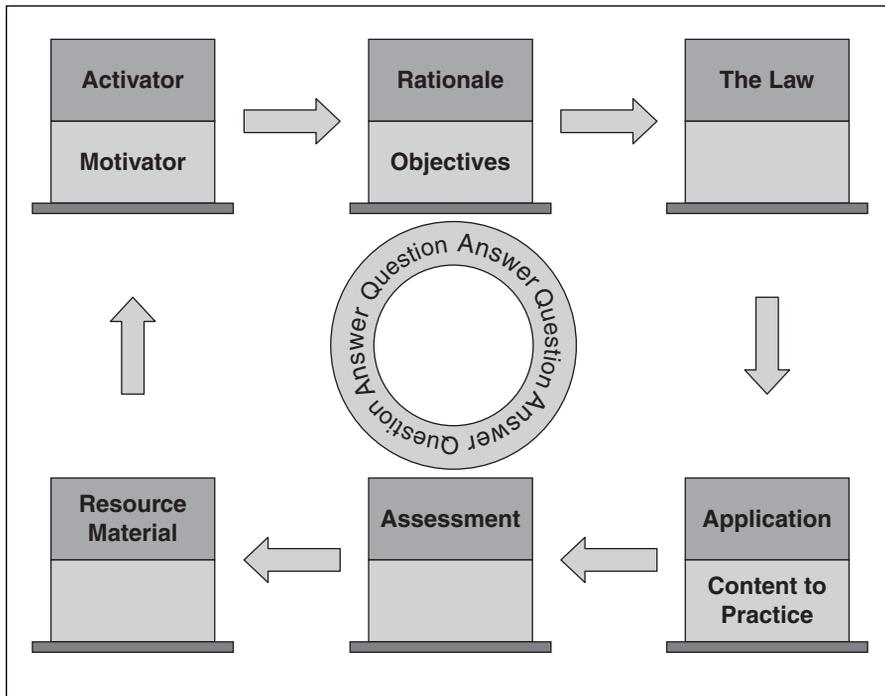
## **Features of the Lesson Plans**

We use seven features throughout the book to guide the facilitators for each portion of the lesson plan. Throughout each chapter, you will see these features as you flow through the various elements of each lesson.

### *Icons*

We provide four icons to assist the facilitator. The first is a *clock* that signifies the amount of time that should be spent on each section in order to *complete the lesson in 60 minutes*. Another icon will signify that the

Figure 0.1

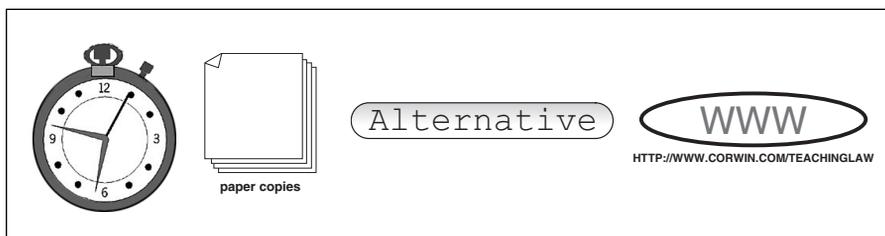


Alternative



following content can be *reproduced* (photocopy, overhead transparency, or content used to develop a presentation slide to be used with a computer and an LCD projector). An icon will also be used to highlight an *alternative activity*. Finally, an icon will signify a web link that can be accessed at [www.corwin.com/teachinglaw](http://www.corwin.com/teachinglaw).

Figure 0.2



## CAUTIONARY NOTE

It is important to acknowledge two issues associated with the delivery of the school-law lesson plans. First, we fully understand the difficulty of teaching, especially teaching adult learners. That is to say, any presentation can easily go astray with “what if . . .” questions. We anticipate that many teachers may want to debate the merits, realities, or “correctness” of the law discussed in these lessons. If facilitators are restricted to 60-minute sessions, they need to stress that these lessons are not designed as debates but rather to present what educators need to know to protect themselves, so they are not inhibited by misinformation. Facilitators should anticipate this and, if possible, build in a small amount of time (preferably before the lesson) for participants to opine about the law itself.

Second, although we believe this book is accurate at the time of publication, it is not intended to be used as legal advice for anyone facing or contemplating litigation. Because the law is constantly changing and varies among the states, educators considering legal action should not rely on this book. Instead, they should consult with a knowledgeable lawyer and/or their professional association. As litigation is often an unhappy, expensive, difficult, and time-consuming experience, going to court should usually be a last resort. Therefore, we hope this book will enable teachers and principals to resolve disputes through discussion, negotiation, and education rather than litigation.

## REQUEST TO USERS

This is a pioneering book. We believe it is the first of its kind, and we want it to work for you and your teachers. By sending us your comments and suggestions, you can help us improve the next edition. What did you find useful? What should be added or eliminated? What was confusing or unclear? Please send your comments and suggestions to David Schimmel, University of Massachusetts ([schimmel@educ.umass.edu](mailto:schimmel@educ.umass.edu)), Suzanne Eckes, Indiana University ([seckes@indiana.edu](mailto:seckes@indiana.edu)), and Matthew Militello, North Carolina State University ([matt\\_militello@ncsu.edu](mailto:matt_militello@ncsu.edu)).

Thanks from each of us.

## References

- Dewey, J. (1902). *The child and curriculum*. Chicago: University of Chicago Press.
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