

A Study of Virginia's Public Secondary School Counselors and School Law

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## Abstract

The purpose of this study was to assess the knowledge base of Virginia's public secondary school counselors in specific areas of school law that are directly related to the issues they encounter within their job responsibilities. A sample size of 416 was selected from a list of 1,892 Virginia public secondary school counselors. These 416 school counselors were sent a secure, online assessment that focused on specific school law areas related to their job responsibilities. To obtain the 66.8% response rate, four sets of emails were sent out once a week for a total of four weeks reminding school counselors to respond. Phone calls also were made attempting to gather responses.

Descriptive statistics were used to summarize the data from the assessment. Then one-way analysis of variances, independent t-tests, and Pearson correlations were used, when appropriate, to determine the relationship between the independent variables and the counselors' knowledge of school law. The mean score correct on the assessment was 29.42/40 (74%). A significantly positive statistical relationship was found at the .05 level with school law knowledge and years of experience. It was discovered that there was a statistically significant difference between counselors' knowledge of school law and having been issued a subpoena, appearing as a witness or defendant in a court of law, and having earned a teaching certificate.

The study also surveyed the 16 university/college school counseling preparation programs in Virginia in order to assess if and how students were being taught school law. Of the 11 programs that responded, the survey revealed that only one school, Norfolk State University,

offers a class specifically on school law. Seven of the 11 programs (64%) did report covering school law as part of other courses such as legal and ethical issues in counseling.

The goal for this study was to identify gaps in school counselors' understanding of school law. This identification could assist principals, school systems, and graduate school counseling programs in developing additional training opportunities for counselors. By doing this, the very real threat and fear of being held liable in court could be reduced.

## Dedication

With much love and gratitude to my family...

To my wife, Eileen, for her love, support, and patience. Thank you for being there for me, every step of the way.

To my parents, for teaching me about work ethic, dedication, persistence, and my faith in the Lord, all things I relied upon heavily through this incredible journey.

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## CHAPTER I

### Introduction

Public secondary school counselors have a plethora of responsibilities, many of which involve some aspect of school law, such as providing academic and personal/social counseling, dealing with bullying incidents, reporting child abuse, working with suicidal students, collaborating with assistant principals regarding discipline issues, and dealing with issues related to privileged communication. While research (Fischer & Sorenson, 1996; Scharffs & Welch, 2005) has shown that school counselors continue to be exposed to more law related issues, most of the 16 graduate school counselor preparation programs in the Commonwealth of Virginia appear to lack a focused school law class for future school counselors. Of the 11 programs that participated in this study, only one school, Norfolk State University, stated that they offer a class specifically on school law. School counselors who have a better understanding of school law related issues will not only be able to better respond to legal challenges, but also be more proactive in avoiding legal problems altogether (Fischer & Sorenson, 1996).

### Background of the Problem

In 1997, Richard Rawls surveyed 400 high school counselors to assess their level of knowledge of school law specifically in the areas of tort liability, counselors and their employment, and student rights. After obtaining 250 responses, Rawls found that the counselors who took the assessment had a less than adequate knowledge of school law related issues. Rawls also stated that his literature review “produced little research dealing with the assessment of school law knowledge of guidance counselors in public schools in Virginia or throughout the nation” (p. 52). He also suggested that “further studies should be conducted to determine if a

higher knowledge of school law significantly affects high school counselors' effectiveness in performing their duties" (p. 156-157).

In addition to assessing school counselors' knowledge of school law, Rawls surveyed 13 colleges and universities in Virginia that offered graduate counseling programs. Specifically, Rawls sought to find the type and extent of school law preparation offered in their graduate school counseling preparation programs. Out of the eight that responded, Rawls found that "some institutions offered elective school law courses through the colleges of education, but few institutions surveyed offered a course in school law as part of their guidance and counseling curriculum" (p. 2).

Based on his findings, Rawls (1997) recommended that school law instruction be offered at the school division level and that graduate school counselor preparation programs provide a mandatory school law related class. He also recommended that school law instruction be established as a requirement for school counselor recertification in the Commonwealth. Further, Rawls (1997) recommended that school systems should provide in-service training for their counselors on school law related issues.

Since Rawls' study, several individuals (e.g., Capuzzi, 2002; Glossoff and Pate, 2002; Hermann, 2002; Isaacs & Stone, 1999; Kirby, 2008; Lambie, 2005; Sealander, 1999; Simpson, 1999; Stone, 2002) have written on the legal and ethical issues school counselors deal with on a daily basis. These issues include confidentiality, student suicide, abortion notification to parents, and reporting child abuse. Counseling students with disabilities, dealing with issues of bullying, and handling claims of sexual harassment have also opened school counselors and officials to increased levels of liability (Hermann, 2002). School counselors should follow the ethical standards set forth by the profession when dealing with these difficult issues, but understanding

the legal requirements is also critical, since the consequences of not following them can be much more severe (Erford, 2007).

Isaacs and Stone (1999), Glossoff and Pate (2002), and Sealander (1999) have written articles pertaining to confidentiality. Confidentiality is an ethical term, while privileged communication is a legal concept that is established by federal and state constitutions, statutes, regulations, and common law (Remley, Sikes, Ganderson, & Hermann, 2007). Not all states have given legal protection to school counselors; Fischer and Sorenson (1996), Herlihy and Sheeley (1987), and Stone (2005) report that between 16 to 20 states' legislatures grant some level of privileged communication to their school counselors. Isaacs and Stone (1999) surveyed 627 Florida school counselors to identify how they dealt with issues relating to confidentiality and to determine the issues for which counselors felt they would break confidentiality. Glossoff and Pate (2002) noted that counselors need to be aware of the legal issues as they relate to legal status of minors, privileged communication, and informed consent. Additionally, counselors need to understand that "the protective privilege ends where the public peril begins" as set forth in *Tarasoff v. Regents of University of California* (1976). Stone (2002) recommends that counselors consider the rights of parents, since students are sent to school to receive an education and not for personal counseling.

Student suicide continues to be a major legal issue that counselors need to clearly understand. Student suicide among adolescents has "more than tripled since the 1950s" (King, 2001, p. 55). Typically, school counselors play an integral role when assisting students who have been identified as suicidal. Capuzzi (2002) writes that this particular job responsibility can create legal challenges that school counselors need to be prepared to deal with. In cases such as *Eisel v. Board of Education of Montgomery County* (1991), *Wyke v. Polk County School Board*

(1997), *Armijo v. Wagon Mound Public Schools* (1998), and more recently, *Sanford v. Stiles* (2006), parents have brought suits against school officials and school counselors alleging that a student's suicide was due to negligence on the school's part.

Lawsuits alleging negligence in not providing accurate academic counseling have also been brought against school counselors and school officials, as seen in *Brown v. Compton Unified School District* (1998) and *Sain v. Cedar Rapids Community School District* (2001). In these cases, inaccurate academic counseling resulted in loss of athletic scholarships, causing significant financial loss. While both cases share a similar fact pattern, state law in California provided immunity to the counselor for providing inaccurate information; however, in Iowa immunity was not granted. These two cases underline the importance of school counselors understanding the laws of the states in which they work; counselors may not be protected from liability, especially when significant loss, such as a university athletic scholarship, can be proven.

Counselors often work with students regarding sexual harassment, another issue with legal ramifications. Counselors are often required to teach students about sexual harassment and must understand the procedures used when sexual harassment is reported. As seen in the U. S. Supreme Court case *Davis v. Monroe County Board of Education* (1999), schools and individuals can be liable for damages when appropriate action is not taken to address one student's harassment of another. Some courts (e.g., *Rost v. Steamboat Springs Re-2 School District* [2008]) have ruled in favor of school counselors and schools when efforts have been made to stop sexual harassment. Regardless of the outcome, these cases demonstrate that the threat of litigation is real and injured parties can be awarded monetary compensation for damages.

Litigation against school districts, principals, and school counselors continues to increase, specifically in the area of bullying. As Kirby (2008) notes, because of the impact bullying has on students, schools and counselors are dealing with bullying prevention and student accountability more frequently. While bullying is not a legal term, harassment is. Cases such as *Smith v. Lincoln Park Public Schools* (2004), *Albers v. Breen* (2004), *Theno v. Tonganoxie Unified School District* (2005), and more recently *Rost v. Steamboat Springs Re-2 School District* (2008), have shown that counselors and schools may be held liable for bullying incidents if procedures are not handled appropriately.

Hermann (2002) studied legal issues encountered by school counselors, as well as their perceptions of how prepared they are to respond to legal challenges, and found that they frequently deal with legal issues related to reporting child abuse, revealing confidential information, completing threat assessments, and appearing as a witness in a legal proceeding. It was noted that many issues related to child abuse and suicide can result in civil and criminal liability for school counselors (Hermann, 2002). In addition, Lambie (2005) remarks that although most school counselors understand the requirement to report suspected child abuse, they must also understand that they can be held liable if they do not follow proper reporting procedures.

#### Need for the Study

A review of the literature shows that several individuals (Capuzzi, 2002; Glossoff & Pate, Jr, 2002; Hermann, 2002; Isaacs & Stone, 1999; Sealander, 1999; Stone, 2005) recommend that school counselors should have a strong knowledge base and stay abreast of the changes in school law. In addition, Dunklee and Shoop (2006) state that “the majority of legal actions brought against school districts and school administrators are not based on their education leadership or

knowledge of curriculum, but rather on their failure to know the relevant law and to practice sound management based on an understanding of existing decisions” (p. 2). This can be applied to school counselors as well. While there is general agreement that school counselors need to be knowledgeable about school law related issues, there continues to be lack of research showing that counselors are staying current with these issues. In contrast, numerous court cases have shown that school counselors and other school officials can have suits brought against them for a variety of issues (Scharffs and Welch, 2005). While the Code of Virginia, 8.01-220.1:2, “grants immunity to teachers” (and other school employees) in civil suits, school employees can be held liable if they are found acting with “gross negligence or willful misconduct.” Lawsuits against educators and school systems can be brought in either state or federal court depending on the circumstances of each case. In addition to the state/federal distinction, a case can involve either civil or criminal liability. Civil lawsuits are brought against educators and school systems much more frequently than criminal lawsuits (Alexander & Alexander, 2009).

Additionally, the American School Counselor Association (ASCA), through its Ethical Standards for School Counselors (2004), has set national standards for its professionals in the field. Specifically relating to a school counselor’s professional obligation to his or her students, the Standards state, “the professional school counselor is knowledgeable of laws, regulations and policies relating to students and strives to protect and inform students regarding their rights” (p. 1). Therefore, if public school counselors lack knowledge of these laws, regulations, and policies, will they be as effective in fulfilling their professional obligations to the students they counsel?

## Statement of the Problem and Purpose

Effective public school counselors have a myriad of responsibilities and should be totally integrated into the school's culture. Some of these responsibilities include working with students on their case load; running parent/teacher conferences; registering new students to the school; creating student education plans under Section 504 of the Rehabilitation Act of 1973; sitting in on individual education plan meetings as directed by IDEA requirements; teaching sexual harassment lessons to students; coordinating standardized state testing; mediating difficult situations; responding to students', teachers', administrators', and/or parents' requests; administering medications when the school nurse is not present; completing attendance referrals; identifying students for special academic programs; monitoring graduation requirements for students; collaborating with assistant principals regarding discipline issues; and writing letters of recommendation. These professional responsibilities can open a school counselor to possible legal and ethical challenges (Stone, 2005). While this study has shown that seven out of 11 university/college school counselor preparation programs in the Virginia include a course on ethics, principles, and foundations, only one, Norfolk State, offers a class specifically on school law. School counselors can act ethically in the workplace, but if they do not understand the law, they can be held liable for their actions under Virginia and federal law if they do not act with due diligence (Hermann, 2002).

This study focused on public secondary school counselors in Virginia, their understanding of school law and the relationship between school level, highest degree earned, years of experience, type of school law preparation, membership in professional school counseling associations, and extent of legal involvement. The purpose of the study was to determine Virginia public secondary school counselors' level of school law knowledge, which

could then assist school systems in deciding whether continuing education in school law is needed. Additionally, the data from this study could assist Virginia's university/college school counselor preparation programs in determining the need for additional preparation for future school counselors in school law related issues.

### Research Questions

1. To what extent are public secondary school counselors in the Commonwealth of Virginia knowledgeable about relevant school law related issues?
2. What is the relationship between school counselors' knowledge of school law and
  - a. school level?
  - b. highest degree of education earned?
  - c. years of experience as a public school counselor?
  - d. school law training type?
  - e. timeliness of school law training?
  - f. membership in professional associations?
  - g. extent of involvement with legal actions related to their position as a secondary public school counselor over the past 10 years?

### Collection of the Data

A secure, online assessment was developed based on the literature review and interviews with professionals in the school counseling field. The assessment evaluated the understanding of school law related issues pertaining to the job of Virginia's school counselors. When appropriate, questions, topics, and categories were similar to the ones found in the following studies: Brabrand (2003), *Virginia Principals and School Law*, Caldwell (1986), *Virginia Principals and School Law*, Ivey (2008), *A Study of Virginia Administrators with Responsibility*

*for Division Special Education Services and Knowledge of Special Education School Law*, Power (2007), *A Study of Selected Virginia School Principals' Knowledge of Special Education Law*, and Rawls (1997) *Virginia High School Counselors and School Law*. In order to make certain that the assessment was accurate and valid, a panel of experts was asked to review the assessment. The panel of experts consisted of members of the Dissertation Committee and a school law professor at Virginia Tech. Once the assessment was approved by the committee, it was then piloted during the first two weeks of September 2009 on a Virginia Tech Educational Leadership and Policy Studies Doctoral Cohort and a group of middle school directors of student services to ensure that questions could be understood. Questions were modified as necessary before being sent to the larger population of public secondary school counselors in Virginia.

From a list of 1,892 Virginia public secondary school counselors, an email was sent to 416 randomly selected middle and high school counselors, describing the assessment and providing directions. A link to a secure online assessment via Survey Monkey was provided in the email. When requested, a PDF of the assessment and a mailing address was emailed, providing individuals the opportunity to complete the assessment via paper and pencil. The assessment was sent a total of four times between September 28, 2009 and October 28, 2009. The first set of emails was sent during the week of September 28, 2009 and yielded 100 responses (24.0% response rate). Ninety-two responses were received after the second set of emails was sent during the week of October 5, 2009 (46.2% response rate). Another 67 responses were sent in after a third request via email and phone (62.3% response rate). A final 19 responses came in after a last set of emails was sent (66.8% response rate).

As an incentive for school counselors to participate, a donation was made for each completed assessment to St. Jude Children's Hospital ([www.stjude.org](http://www.stjude.org)), which treats children

who have cancer and other diseases. Donation updates were included in the reminder emails. In addition, those individuals who completed the assessment were automatically entered to win one of 10 copies of *The Law of Schools, Students, and Teachers in a Nutshell* written by Alexander and Alexander. Survey Monkey and Microsoft Excel were utilized to collect and track the assessments completed.

#### Treatment of the Data

Data analyses were completed using the Statistical Package for Social Sciences (SPSS). Descriptive statistics were used to summarize the data from the assessment. An analysis of variance (ANOVA), independent t-tests, and Pearson correlations were used when appropriate to determine the relationship between the independent variables and the knowledge base of public secondary school counselors. Mean scores were computed to find a score for each of the four school law subscales (student rights, counselor/employee issues, liability, and special education) and a total score. To determine if the relationship is significant, a .05 level of confidence was utilized.

#### Limitations of the Study

1. There was no control over whether or not the individuals who responded received assistance from outside resources while participating in the assessment.
2. Only school counselors whose emails could be identified were eligible to participate in the assessment.
3. Some school counselors are also directors of student services and could be exposed to school law related experiences because of that position.

### Delimitations of the Study

1. The assessment focused only on student rights, counselor/employee issues, liability and special education.
2. The assessment was only sent to school counselors in Virginia.

### Organization of the Study

- Chapter 1      Introduces the problem; explains the background, need, and purpose; and provides definitions needed for the study.
- Chapter 2      Describes the history of law and the related literature since 1997.
- Chapter 3      Outlines the research design of the study, the methodology followed in the collection of the data, and the data analyses utilized.
- Chapter 4      Presents the findings of the research.
- Chapter 5      Presents summary, discussions, conclusions, and recommendations for the study.

### Definitions

1. Common Law: Law which is developed by the court system, also called case law (Fischer & Zehnle, 1997).
2. Confidentiality: A situation in which one has been entrusted with the secrets or private affairs of another (Baker & Gerler, 2008, p. 96). Confidentiality is an ethical term set forth by those in the profession.
3. Liability: The word is a broad legal term and has been referred to as of the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent, or likely (Alexander & Alexander, 2009, p. 1168).
4. Litigation: A judicial contest aiming to determine and enforce legal rights (Gifis, 1998, p. 281).

5. Negligence: A breach of legal duty, or a failure, resulting in damage to a client, to perform acts that are part of the professional's obligation (Baker & Gerler, 2008, p. 101).
6. Privileged communication: A legal doctrine established through federal and state constitutions, statutes, regulations, and common law (Remley, Sikes, Ganderson, & Hermann, 2007). If an interaction is designated as privileged communication under the law, a judge may not force the professional involved to disclose what was said by a client in an interview (Remley, 1985, p. 184).
7. Professional school counselor: A certified/licensed educator trained in school counseling with unique qualification and skills to address all students' academic, personal/social and career development needs (American School Counselor Association, nd).
8. Secondary School: Either middle or high school.
9. Statutory Law: Law that is enacted by legislative bodies and is "written down or on the books" (Fischer & Zehnle, 1997, p. 10).
10. Tort: A wrong against an individual (Alexander & Alexander, 2009).

## CHAPTER II

### Review of the Literature

The review of the literature will focus on how the law and courts have impacted on public school counselors in the performance of their job responsibilities.

#### The Law

Historically, the role of law in a society has been to preserve order and to minimize confusion and disarray (Grilliot, 1979). While society allows individuals to pursue their own self interest, there may come a time when that pursuit brings about conflict. Society has developed the institution of law to help resolve those conflicts in an acceptable manner. Society uses law to establish the rights of individuals and groups. With these rights, individuals can act on the belief that society, as a whole, will support their legitimate claims against another individual's opposite claim (Fischer & Zehnle, 1977). Society uses the legal system as a way of deciding if a person's rights have been violated or if a person's claim of "illegality" is true or not (Bruening, 1978, p. 1). When deciding if a person's rights have been violated, the legal system takes into account past case law that has established precedents, statutory law, and ultimately, the Constitution of the United States (Bruening, 1978).

Law can be divided into two parts, statutory law and common law. Statutory law or "written down or on the books" is developed by legislative bodies (Fischer & Zehnle, 1977, p. 10). The general reason to have these laws is to provide society with guidelines by which to live. Laws enacted by legislative bodies typically have gone through an extensive and time-consuming process wherein expert opinions are sought, many viewpoints have been taken into account, and large amounts of data are gathered and dissected (Fischer & Zehnle, 1977). Statutory law exists both at the federal and state level and can be reviewed by the courts to

decide whether it is constitutional or not (Hay, 1976). In the United States, statutory law has been the most effective method of developing new laws or altering existing laws (Alexander & Alexander, 2009).

Common law or case law is the other form of law and is developed by the judiciary. Courts apply common law when a claim is presented that is not governed by statutory law or where statutory law is ambiguous. In case law, decisions are made by judges who take into account past judicial opinions. Decisions made by a higher court are considered to be precedents and are binding on the lower courts in that jurisdiction. Decisions made by courts at the same level may be used for guidance when making judgments (Fischer & Zehnle, 1977).

A key distinction in the United States legal system is between criminal and civil law. In criminal law, the government brings an action against an individual or organization, alleging that a crime based on statutory law has been committed. Punishment for a crime can be a fine, imprisonment, or even death, as in Virginia (Grilliot, 1979). Civil law actions are brought between individuals based on the claim that a wrong (tort) or a breach of a contract (contract suit) has occurred. Grilliot (1979) defines a tort as “any wrongful act, not involving a breach of an agreement, for which a civil action may be maintained” (p. 35). Tort actions consist of a duty owed to the plaintiff under law (not contract), a breach of that duty, and damages occurring as a result of that breach. In civil actions, the courts try to resolve the conflict by deciding which party is in the right, determining monetary damages, or ordering one individual to do something or to refrain from doing something. Contract actions are brought about when there is a breach of an agreement (Grilliot, 1979). In contract lawsuits, courts typically order either money to be paid to the injured party for the sum expected to be gained from the contract or the specific

performance of the obligations of the contract where monetary damages are inadequate (Grilliot, 1979).

Tort law can be divided into three separate categories: intentional interference, strict liability, and negligence. Generally, intentional torts are due to someone's deliberate action against another that causes some sort of damage. Assault and battery is one of the most frequently seen intentional torts in education. Another type of intentional tort is false imprisonment where someone illegally restricts another's ability to move or leave the general vicinity (Alexander & Alexander, 2009).

Strict liability is another type of tort where there is an injured party, but the person or persons at fault is not established. Strict liability could come into play when a party creates a significantly unsafe or dangerous situation and it harms another individual. Historically, strict liability torts have been rarely seen in schools (Alexander & Alexander, 2009).

The most frequently seen tort in education is negligence. Torts of negligence are due to a person's action or failure to act based upon certain standards. As a result of this action or failure to act, another party is injured in some way. In negligence, the plaintiff must show that a duty was owed, a standard of care was not met, there was a connection between the negligence and the injury, and finally, that an actual loss occurred (Alexander & Alexander, 2009).

The burden of proof also differs between criminal and civil law cases. In order to convict someone of committing a criminal offense, guilt must be proven beyond a reasonable doubt. In civil law, the standard of proof is at a "lesser degree" (Grilliot, 1979, p. 23). The plaintiff needs only to show a "preponderance of evidence" in the case (Alexander & Alexander, 2009, p. 17).

Lawsuits against educators and school systems can be brought in either state or federal court depending on the circumstances of each case. For instance, an individual educator or a

school system could be sued and held liable for damages in a state civil court for committing an act of negligence. If on the other hand, a federal constitutional right such as freedom from unreasonable search and seizure or a federal statute such as the Individuals with Disabilities Education Act (IDEA) is at issue, then the case would proceed in federal court (Alexander & Alexander, 2009). In addition to the state/federal distinction, a case can involve either civil or criminal liability. For example, if a theft is alleged, an individual could be sued in civil court for monetary damages by a person whose property was stolen, and, at the same time be prosecuted and punished under the same set of facts by the government in criminal court for larceny (Cataldo, Kempin, Stockton, & Weber, 1973). Civil lawsuits are brought against schools and school counselors much more frequently than are criminal lawsuits (Alexander & Alexander, 2009).

### Public School Counselors and School Law

#### *Preparing School Counselors*

This study surveyed the 16 university/college school counseling preparation programs in the Commonwealth of Virginia to assess if and/or how students were being taught school law. Of the 11 programs that responded, the survey revealed that only one school, Norfolk State University, offered a class specifically on school law. Seven of the 11 programs (64%) reported covering school law as part of other courses, such as legal and ethical issues in counseling. Six of 11 programs (55%) stated that they offered other experiences that exposed their students to school law related issues. These experiences included workshops and lectures. This was a slight increase over Rawls' findings in his 1995 survey, where three of eight Virginia school counseling preparation programs (38%) reported covering school law as part of other courses (Rawls, 1997).

While it is encouraging that a majority of graduate school counseling preparation programs offer some experiences and courses in ethics and law, it is important to emphasize that they do differ. Additionally, since Rawls' 1995 survey, this study found that only one program in Virginia has offered a course specifically related to school law. School counselors should always perform their duties with the highest ethical standards, but also be aware of the legal issues when ultimately making decisions as they relate to their jobs. While the professions' ethical standards are widely agreed upon, the consequences for school counselors for not following the legal requirements can be much more severe (Erford, 2007). Appendix A lists the 16 universities/colleges that offer a school counseling preparation program and which responded to the survey.

*The Council for Accreditation of Counseling and Related Educational Programs - CACREP*

The Council for Accreditation of Counseling and Related Educational Programs (CACREP) is an organization that accredits counseling preparation programs in the United States based on a set of standards that are meant to ensure that graduates of CACREP programs have a sound understanding of the necessary skills to perform their job responsibilities effectively. As of February 2010, there were 199 accredited school counseling programs in the United States (CACREP, 2010). In its 2009 Standards (p. 9), CACREP requires that course work incorporate "ethical standards of professional organizations and credentialing bodies, and application of ethical and legal considerations in professional counseling." Currently, 10 out of Virginia's 16 graduate counseling preparation programs are CACREP accredited.

*The American School Counselor Association - ASCA*

In addition to CACREP, the American School Counselor Association (ASCA), through its national model, has also set standards for school counseling programs. The ASCA National

Model (2005) has an entire section related to ethical standards for school counselors. The standards are broken down into the responsibilities to students, parents/guardians, colleagues and professional associates, school and community, and self (The ASCA National Model, 2005).

Concerning responsibilities to students, the standards define the school counselors' roles as they relate to confidentiality, counseling plans, dual relationships, appropriate referrals, group work, danger to self or others, student records, evaluation, assessment and interpretation, technology, and student peer support program. Regarding responsibilities to parents/guardians, the standards define the school counselors' roles related to parents/guardians and confidentiality. On responsibilities to colleagues and professional associates, the standards address professional relationships and sharing information with other professionals. The standards go on to define school counselors' responsibilities to the school and to the community. Under responsibilities to self, the standards define professional competence and diversity. Lastly, the standards define the school counselors' responsibilities to the profession, specially defining professionalism and contribution to the profession. (The ASCA National Model, 2005).

ASCA also defines the role of school counselors within its National Model. ASCA states that, "Today's school counselors are vital members of the education team. They help all students in the areas of academic achievement, personal/social development and career development, ensuring today's students become the productive, well-adjusted adults of tomorrow" (American School Counselor Association, 2004, p. 1). As it relates to the law, ASCA states, "Professional school counselors have a master's degree or higher in school counseling or the substantial equivalent, meet the state certification/licensure standards and abide by the laws of the states in which they are employed" (American School Counselor Association, 2004, p. 1). While ASCA mentions the law, its National Model strongly emphasizes ethics. As mentioned earlier, ethics

and law do differ, and this distinction should be consistently made clear to individuals in graduate school counseling preparation programs.

### *School Counselors' Perceptions of Preparedness*

As public school counselors continue to take on more responsibilities, they will be exposed to more legal issues. Counselor preparation programs will need to continuously review, update, and adapt their programs so as to meet the needs of the ever-changing workplace, especially by requiring more courses in school law (Hermann, 2002). Hermann surveyed 500 school counselors nationally on their feelings of preparedness in school law related issues that they might encounter during a school year. He also sought to determine the percentage and frequency of legal issues counselors faced in their jobs during a 12-month period of time (Hermann, 2002).

Hermann's methodology consisted of selecting 500 members of the American School Counselor Association. Out of the 500, 273 school counselors responded (55% response rate). The respondents were made up of 23.1% males and 75.8% females. The ethnicity makeup of the respondents was 87.9% European American, 6.6% African American, 1.1% Asian American, 1.1% Hispanic American, and .7% Native American. Hermann found that 88% of the school counselors had earned their master's degrees, 8% had earned their educational specialist degrees, and 4% had their doctorates. Respondents indicated that 74% had taken a course in ethics or law as it relates to school counseling. Every state was represented in the research project except Montana, Oklahoma, West Virginia, and Wyoming. One respondent was from Washington, DC and one was from outside the United States (Hermann, 2002, p. 13).

Only 2% of the 273 school counselors who responded said that they worked in elementary schools; 28% reported having worked at the middle school level, and 60% said they

worked in high schools. Three percent (3%) reported working at both the elementary and middle school levels and 4% said they were at both middle and high school levels. Three percent said they worked at all three levels (Hermann, 2002, p. 13).

The respondents' years of experience ranged from one to 35, with the mean being 11.83. A majority had five or more years of experience. Nearly three-fourths of the respondents said they took a class in "ethics or legal issues in counseling" and more than half said they "recently completed continuing education in ethics or legal issues." Nearly half (49.8%) reported being licensed professional counselors (Hermann, 2002, p. 13).

Hermann's survey focused on the following areas: "determining whether to report suspected child abuse; counselor/student confidentiality; determining whether a student poses a danger to others; determining whether a student is suicidal; and responding to a subpoena" (Hermann, 2002, p. 14). Hermann also sought to determine the frequency with which those legal issues were faced over the past year, using a Likert-type scale to survey feelings of preparedness ranging from one (not prepared) to five (very prepared). The independent variables were "having completed a course in ethics or legal issues; having completed continuing education in ethics or legal issues; degree held; years of experience, whether licensed by their state; and whether certified by NBCC" (Hermann, 2002, p. 14).

A panel of five experts was asked to review the survey before it was sent out. They were asked whether the survey accurately addressed the legal issues that the profession encountered. Lastly, 12 counselors who either worked in the schools or community were asked to take the survey to see if they were able to read and understand it (Hermann, 2002).

The survey was mailed to the 500 members of ASCA with a cover letter attached. A self-addressed stamped envelope accompanied the survey to promote its completion and return.

Additionally, a postcard was mailed to all 500 members reminding them to take and return the survey two weeks after the initial mailer was sent (Hermann, 2002). A response rate of 55% (273/500) was obtained through Hermann's efforts.

Hermann found that counselors' perceptions of preparedness varied depending on the legal issue. Survey results showed that school counselors frequently encountered legal issues; some of these, such as reporting child abuse, revealing confidential information, and completing threat assessments on suicidal students, were faced multiple times during a school year. The study also showed that only about half of the counselors had taken part in school law related classes that pertained to their jobs. Hermann reported only three out of 273 said they had been threatened with litigation, suggesting that suits against school counselors continue to be limited. Ultimately, Hermann found that respondents to the survey were facing more and more job-related legal issues. While suits versus school counselors are infrequent, Hermann concluded that counselors still face this risk and should take steps to familiarize themselves with the legal issues that relate to their positions (Hermann, 2002).

#### *Litigation and the Code of Virginia*

Scharffs and Welch (2005) state, "A generation ago, teachers, administrators, schools, school districts, and universities seldom worried about being held legally liable for their actions or failures to act. This is no longer the case. In recent years, educators and educational institutions have been found legally liable for a variety of types of misconduct, in a wide range of contexts, and under several legal theories, including criminal law, tort law, sexual harassment statutes, contract law, educational malpractice, and recently under the vague and uncertain equitable concept of fiduciary duty" (p. 159). Additionally, Dunklee and Shoop (2006) note that "the majority of legal actions brought against school districts and school administrators are not

based on their education leadership or knowledge of curriculum but, rather, on their failure to know the relevant law and to practice sound management based on an understanding of existing court decisions” (p. 2). Effective school counselors work closely with school administrators and are often involved in school law related issues during the school day. As Hermann’s study (2002) revealed, when working with students both school administrators and counselors deal with issues that are value-laden and can have legal implications if not handled appropriately.

According to Zirkel (2006), “within the past three years, media reports on how fear of litigation is adversely affecting the operations of American public schools have proliferated” (p. 461). As the fear of litigation continues to increase, school counselors should see the benefit of continuing education classes that relate to school law. A Public Agenda (2003) study found that educators frequently feel burdened by the threat being sued. Baker and Gerler (2008) report that “suits, whether won or lost by the plaintiffs, have the potential for causing counselors considerable stress and mental anguish, public embarrassment, and possible financial losses associated with defending themselves if the individuals and school districts do not have sufficient insurance” (p. 105). Likewise, mental health professionals have been negatively affected by the possibility of being sued. Remley and Herlihy (2007) note, "Counselors have become increasingly concerned about being sued for malpractice. Although malpractice lawsuits against mental health professionals have increased dramatically over the past decade, the total number of these lawsuits is relatively small" (p. 165). School counselors who have a better understanding of law-related issues will not only be able to better respond to legal challenges but also be more proactive in avoiding legal problems altogether (Fischer & Sorenson, 1996). Because education law varies from state to state, school counselors will need to be

knowledgeable about statutes and guidelines that impact them in the state in which they work (Stone, 2005).

Enacted in 2007, the *Code of Virginia, 8.01-220.1:2*, “grants immunity for teachers for the following:

A. Any teacher employed by a local school board in the Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct.

B. No school employee or school volunteer shall be liable for any civil damages arising from the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official in compliance with specified procedures.

C. This section shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law, or to prohibit any person subject to bullying or a criminal act from seeking redress under any other provision of law.”

It is important to emphasize that the Code of Virginia does not protect educators from gross negligence. The United States continues to be a highly litigious country, but when school counselors have acted with due diligence in performing their duties, they have prevailed when sued (Stone, 2005). As mentioned, when educators do act inappropriately, lawsuits can be

brought in either state or federal court depending on the circumstances of each case. In addition to the state/federal distinction discussed earlier, a suit can involve either civil or criminal liability. Civil lawsuits are brought against educators and school systems much more frequently than are criminal lawsuits (Alexander & Alexander, 2009).

#### *Relating School Counselor Responsibilities to School Law*

In 1997, Richard Rawls surveyed 400 high school counselors to assess their level of school law knowledge specifically in the areas of tort liability, counselors and their employment, and student rights. After obtaining 250 responses (62.5% response rate), Rawls found that the counselors surveyed had a less than adequate knowledge of school law related issues. As mentioned, Rawls also surveyed 13 colleges/universities in Virginia that offered school counseling preparation programs. Most of the eight schools that responded offered little or no training in school law as part of their programs (Rawls, 1997).

Some of Rawls' recommendations based on his findings were that school law instruction be offered at the school division level and that university/college school counselor preparation programs provide a mandatory school law related class. He also suggested that school law instruction be a requirement before a current counselor can be recertified in the Commonwealth. Rawls suggested that school systems should provide in-service training for their counselors on school law related issues (Rawls, 1997).

Since Rawls' 1997 study, many authors (e.g., Capuzzi, 2002; Glossoff and Pate, 2002; Hermann, 2002; Isaacs & Stone, 1999; Kirby, 2008; Lambie, 2005; Sealander, 1999; Simpson, 1999; Stone, 2002) have written various articles on the vulnerability of school counselors on legal issues such as confidentiality, student suicide, abortion notification to parents, and reporting child abuse. Counseling students with disabilities, dealing with issues of bullying, and

handling claims of sexual harassment have also opened school counselors to an increased level of liability (Hermann, 2002). The following section will discuss some of the major legal issues that counselors have had to deal with in recent years.

### *Confidentiality and Privileged Communication*

Since 1997, one of the main issues that school counselors have encountered is confidentiality. Sealander (1999), Isaacs and Stone (1999), and Glossoff and Pate (2002) have written on this topic. Sealander explains that parents continue to have concerns about their child's school records and how they are utilized. School counselors, among other school educators, must be familiar with the privileges given to students and their parents regarding school records.

Confidentiality is a key component in any counseling relationship; however, not all states have granted privileged communication to school counselors when working with students. (Sealander, 1999). While a school counselor's relationship with a student may be confidential, confidentiality does not mean that a school counselor is legally allowed to withhold information from certain individuals. Baker and Gerler (2008) define confidentiality as "a situation in which one has been entrusted with the secrets or private affairs of another" (p. 96). Confidentiality is an ethical term set forth by those in the profession. Privileged communication on the other hand, is a legal term set by society through federal and state constitutions, statutes, regulations, and common law (Remley, Sikes, Ganderson, & Hermann, 2007). Remley (1985) explains that "if an interaction is designated as privileged communication under the law, a judge may not force the professional involved to disclose what was said by a client in an interview" (p. 184). Privileged communication is meant to protect the client, not the counselor. The client has the

ability to claim or waive the privilege; however, it is ultimately the client's decision, not the counselor's (Erford, 2007).

Fischer and Sorenson (1996), Sheeley and Herlihy (1987), and Stone (2005) report that between 16 to 20 states grant some level of privileged communication to their school counselors: Virginia, however, is not one of those states. The *Code of Virginia, 8.01-400.2*, grants this privilege only to "licensed professional counselors, licensed clinical social workers, licensed psychologists, and licensed marriage and family therapists." While privileged communication is recognized in some states, professionals are still required to notify appropriate authorities if clients threaten to harm other persons. In the case *Tarasoff v. Regents of University of California* (1976), the court ruled that licensed doctors had the duty to notify individuals who had been threatened by patients in a counseling session, holding that "the protective privilege ends where the public peril begins." Likewise, *The Family Educational Rights and Privacy Act (FERPA)* states that personal information can be disclosed to parents and other officials when the health and safety of others may be impacted.

Isaacs and Stone (1999) note that confidentiality is essential to "gaining a client's trust" (p. 258). In its 1992 release of their ethical standards for school counselors, the American School Counselor Association (ASCA) said that "Each person has the right to privacy and thereby the right to expect the counselor-client relationships to comply with all laws, policies and ethical standards pertaining to confidentiality" (p. 1). However, school counselors need to understand that confidentiality standards vary from state to state and from school district to school district (Isaacs & Stone, 1999). School counselors often have to consider the right of parents to receive information about their child, while keeping in mind the child's best interests.

Isaacs and Stone (1999) surveyed 627 Florida school counselors on how they dealt with issues relating to confidentiality. They further studied which situations caused counselors to most often commit a breach of confidentiality with their students and discovered that most counselors would break confidentiality on topics relating to “impending suicide or suicide pact; retaliation for victimization; use of crack cocaine; sexual intercourse with multiple partners when HIV positive; armed robbery; indications of depression; abortion; and marijuana use” (Isaacs & Stone, 1999, p. 261).

Isaacs and Stone’s (1999) sent a survey to eight Florida district counseling supervisors. They requested that the surveys be given to counselors at each school level, and then collected. The identities of the counselors completing the survey would not be revealed. Various school districts across the state participated in the survey. Of those 627 school counselors who responded, 23% worked at the high school level, 11% worked at the middle school level, and 66% worked at the elementary school level. One hundred percent (100%) of the districts surveyed participated in the survey. Isaacs and Stone (1999) stated “that more than 90% of available counselors in each district responded” (p. 261).

The survey was developed based upon recent court rulings and state statutes regarding the handling of student confidentiality. Demographic information collected included school setting, years of working as a counselor, and the number of confidentiality issues faced during the previous two school years. Isaacs and Stone (1999) posited hypothetical situations and asked school counselors if they would break confidentiality. Respondents had to either choose between “Yes, it is very likely that I would break confidentiality,” “No, it is unlikely that I would break confidentiality,” or “I am not certain what I would do in this situation” (Isaacs & Stone, 1999, p. 261). Following these scenarios, respondents then were asked to answer true/false

statements relating to confidentiality. Isaacs and Stone used a frequency analysis with the data gathered, specifically on the respondents as a group, then on their school settings (elementary, middle, high). To analyze the frequency of how the counselors responded, a Chi Square analysis was utilized and found results at a significance level of .001 (Isaacs & Stone, 1999).

The study found that a majority of counselors “would not drive students to an abortion appointment; would inform students of confidentiality limits at some point during counseling; would not reveal counseling sessions contents to parents or teachers; would share information with counselors at another school about former students; would inform students of confidentiality limits at the outset of counseling; would refer students for contraceptive information; did not feel confident dealing with many issues of concern in small groups; or would protect the whereabouts of students who had run away from dysfunctional families” (Isaacs & Stone, 1999, p. 261). The school counselors surveyed seemed to break confidentiality more as the issues became more severe and perilous. It was also discovered that high school counselors would break confidentiality less often than middle or elementary school counselors, which suggested that school counselors considered the age of the students when breaking confidentiality (Isaacs & Stone, 1999).

Reinforcing the principle that trust and confidentiality are important to school counselors’ work, Glossoff and Pate (2002) state that “Trust is an essential component in the development of helping relationships. Counselors regard the promise of confidentiality to be essential for the development of client trust” (p. 20). However, counselors need to be aware of the legal issues related to the “legal status of minors, privileged communication, and informed consent” (Glossoff & Pate, 2002, p. 21).

*The Family Educational Rights and Privacy Act (FERPA)* states that the rights of the parents are transferred to the students at age 18. However, there is an exception to this rule when a student is still considered a dependent of his/her parents in the eyes of the Internal Revenue Service. Also known as the Buckley Amendment, FERPA is broken into four separate parts. Part one mandates that school systems receiving federal funds must adhere to FERPA or be in danger of losing that funding. Part two requires that a parent must first give consent to any school function or curriculum that may have an impact on her or his child's values or behaviors, such as personal counseling by a school counselor or family life education. Part three involves funding and restricts the unlawful access to a student's record without parental consent. Lastly, part four sets guidelines for children who are a part of federal surveys or data collection (Baker & Gerler, 2008). While FERPA was established to protect parents' rights to access school records of their child, the Supreme Court ruled in *Gonzaga University v. Doe* (2002) that "FERPA confers no direct private right of action to sue for damages" (Alexander & Alexander, 2009, p. 721). However, FERPA does allow parents to file a grievance and seek a resolution through an administrative process established by the federal government.

School counselors are often driven by their ethical standards when it comes to confidentiality, but they must ultimately consider the laws related to privileged communication, not ethics, when dealing with confidentiality. While FERPA's guidelines on privacy for students under 18 are specific, it would still behoove school counselors to consider all policies and laws when maintaining confidentiality with a student, especially when the health and safety of others are involved (Glosoff & Pate, 2002). Sealander (1999) recognized that while keeping up with the frequent changes in school law can be extremely difficult, school counselors must find a way to do so. School counselors should continue to collaborate with one another on issues related to

confidentiality so that they will ensure consistent best practices. By doing this, students' rights and their best interests will be protected as well.

### *Academic and Personal Counseling*

Before 2001, a school counselor had never been found negligent over a matter of academic advisement by a court of law (Stone, 2002). However in 2001, the Iowa Supreme Court in *Sain v. Cedar Rapids Community School District* (2001) found that a school counselor was negligent in failing to act with reasonable care when providing a student with information regarding specific graduation requirements. In 1996, senior Bruce Sain, who accepted a basketball scholarship to Northern Illinois University, required additional credits in English to graduate from high school. His counselor, Larry Bowen, recommended that he take a technical communications course to meet the graduation requirement. Technical communications had not been endorsed by the National Collegiate Athletic Association (NCAA) Clearinghouse as a suitable course; however, Bowen said that it would be approved. Based on Bowen's recommendation, Sain took the course and eventually graduated.

During the summer leading up to Sain's freshman year at Northern Illinois, the NCAA notified him that his transcript did not meet the academic regulations for student athletes due to the technical communications course credit he earned during his senior year. As a result of the NCAA's decision, Sain was not allowed to keep his basketball scholarship. The student and his family filed suit against school officials for negligence and the counselor for misrepresentation.

Sain's initial suit was filed against both the NCAA and the school district for negligence and negligent misrepresentation. Soon after, the suit against the NCAA was dropped. The suit against school officials was dismissed by the trial court; Sain then appealed to the Iowa Supreme Court, which decided that the negligent misrepresentation was incorrectly "dismissed" by the

lower court. Justice Mark Cady stated that Iowa counselors can be liable for giving incorrect guidance regarding graduation requirements to their students.

In a similar California case, *Brown v. Compton Unified School District* (1998), a student sued his school counselor and the school district alleging that he lost his basketball scholarship to the University of Southern California (USC) because of inaccurate academic advisement. The plaintiff, James Brown Jr., claimed that he had completed a specific science class to meet the NCAA eligibility requirements. After graduation, Brown enrolled at USC, but later lost his scholarship because the science class did not meet the NCAA's eligibility requirements. Ultimately, the Court of Appeals ruled that the counselor and district, under state law, had immunity from liability for negligent misrepresentation.

Historically, courts have ruled in favor of counselors due to the large number of students that counselors have on their caseloads and the fact that graduation requirements and NCAA regulations are constantly changing (Fisher & Sorenson, 1996). However, Stone (2002) suggests that these two cases illustrate the importance of school counselors understanding the laws of the states in which they work, since they vary considerably. While both cases have a similar fact pattern, California state law provided immunity for the counselor, Iowa law did not.

Another problem some counselors have faced is working with students who are pregnant and in some cases contemplating an abortion (Stone, 2002). It is to be expected that families, especially parents, have strong opinions whether abortion is right or wrong. For this reason, school counselors must be well versed in the policies of their school and state as they relate to counseling students who are considering an abortion. An example of a Virginia's school board's regulation on counseling pregnant students is Fairfax County Public Schools' *Regulation 2504.4*, which states that school counselors should advise the student to tell her parents about the

pregnancy, and goes on to state that at no time should counselors feel obligated to withhold this information from the student's parents or school officials. Stone (2002) also recommends that counselors should consider the parents' rights, since students are sent to school to learn, not for counseling.

State laws vary on who is required to provide notification and consent before a minor can have an abortion. In Virginia, the law states that "a physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained" (*Virginia Parental Notice Act, 16.1-241*). Consent for the minor to have an abortion must be in writing and given by an appropriate individual such as a parent or legal guardian. Notification by the physician must be made in person or by phone at least 24 hours prior to the abortion. The constitutionality of the Act has been challenged, but in *Planned Parenthood of the Blue Ridge v. Camblos* (1998) the 4<sup>th</sup> Circuit Court of Appeals upheld the Act, stating "that the Commonwealth's parental notice statute, as legislation that respects the fundamental interests of responsible parents in the rearing and in the educational, moral, and religious development of their children, without unduly burdening the fundamental abortion right, is facially constitutional under the Fourteenth Amendment" (p. 5).

### *Suicide and Self-Injury*

Another major issue that the courts, school systems, and school counselors have had to deal with since 1997 is student suicide. Student suicide among adolescents has "more than tripled since the 1950s" (King, 2001, p. 55). Additionally, a 2002 survey showed that 13% of all adolescents admitted to engaging in some kind of self-mutilation (Ross & Heath, 2002). School counselors typically have a major role in school-based intervention plans if there is a student

who is contemplating suicide or self-injury. This role demands that counselors need to know how to act appropriately so as to avoid legal challenges (Capuzzi, 2002).

Simpson (1999) writes that the courts have been inconsistent in their rulings regarding school officials' and counselors' liability for student suicide, primarily because of state laws providing immunity to school employees. In the Maryland case of *Eisel v. Board of Education of Montgomery County* (1991), a student's parents sued school officials and a school counselor for negligence after their daughter committed suicide. The court ruled that the school counselor had an obligation to prevent the suicide when the counselor became aware of the student's suicidal thoughts. The court further ruled that the counselor was responsible for not warning the parents of the potential suicide, which could have prevented the act. In the Florida case of *Wyke v. Polk County School Board* (1997), the mother of a student who committed suicide on his third attempt sued Polk County School Board for not notifying her of her son's previous two attempts at school. A federal appeals court held that "school officials had duty under Florida law to inform mother of student's suicide attempts at school" (p. 1). In the case of *Armijo v. Wagon Mound Public Schools* (1998), a New Mexico federal appeals court denied summary judgment for the principal and school counselor when a student killed himself after he was disciplined at school. The court decided against Wagon Mound Public Schools because they created a dangerous situation by driving the student home, realizing he had suicidal thoughts and access to a firearm, leaving him alone, and failing to notify the parents.

More recently, in the case of *Sanford v. Stiles* (2006), the court held that a Pennsylvania school counselor was not liable for a student's death based on the fact that the mother was not able to show that the counselor acted inappropriately. The counselor, upon hearing that the student might be upset, met with him and did a threat assessment. After concluding that the boy

was not a danger to himself, the counselor allowed him to go back to class. A week later, the two spoke again and the counselor stated that there still was no apparent sign of distress. Later that evening, the boy hung himself in his home's basement. His mother sued the guidance counselor, stating that she was liable for her son's death. The court ruled that the counselor was not liable because her actions did not shock the conscience and she was immune under Pennsylvania state law.

These cases illustrate that school liability can occur when school officials are negligent in appropriately evaluating a suicidal student, notifying the parents, and/or referring the student to appropriate mental health resources (Zirkel, 2006). Additionally, Simpson's recommendation for counselors is that parents should always be notified if students show any inclination toward suicide, even if the notification breaks confidentiality. Counselors do have a responsibility to warn and protect others. While courts continue to vary on their decisions regarding liability for student suicides and state statutes differ as well, counselors should be mindful they can be held liable if they fail to act appropriately (Simpson, 1999).

### *Sexual Harassment*

Counselors often work with issues related to sexual harassment, and are commonly required to provide lessons to students on what constitutes sexual harassment and how they can report it. Stone (2000, p. 23) states that "sexual harassment has become a subject of social and educational debate and discourse." In 1997, the U.S. Department of Education's Office of Civil Rights documented the school district's obligations to its students regarding sexual harassment in its publication, *Sexual Harassment Policy Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*. The document provides "educational institutions with information regarding the standards that are used by the Office for Civil Rights (OCR), and

that institutions should use, to investigate and resolve allegations of sexual harassment of students engaged in by school employees, other students (peers), or third parties” (p. 12034).

In *Davis v. Monroe County Board of Education* (1999), the Supreme Court put schools on notice that monetary damages could be awarded if school officials do not take appropriate action on issues related to sexual harassment. In this case, the mother of a fifth grade student claimed that her daughter had been touched inappropriately by another student consistently for five months. The mother brought her concern to the principal twice; however, no disciplinary action was ever taken against the abuser. The Court ruled that because the plaintiff showed that the sexual harassment had been severe and the school acted with deliberate indifference, the school was liable under Title IX.

As seen in *Rost v. Steamboat Spring Re-2 School District* (2008), school systems continue to be sued for deliberate indifference when parents do not feel school officials are stopping sexual harassment. In *Rost*, a parent argued that her daughter’s Title IX rights had been violated because she was being consistently harassed by boys at her school. The child, while in eighth grade, began to show an unwillingness to attend school. In 2002, the mother informed both the middle school principal and school counselor about her concerns for her daughter. The school counselor met with the daughter and was told by the daughter that several boys had been “bothering her” but said nothing about being sexually harassed.

In the fall of 2002, the daughter began her freshman year at Steamboat Springs High School where the boys continued to bother her. Mrs. Rost once again voiced her concern, this time to the high school principal and school counselor, Mr. Schmidt and Ms. Boler, respectively. In January 2003, the daughter informed Ms. Boler that she had been repeatedly asked to provide “oral sex” to the boys in middle school. Based upon this new knowledge, Ms. Boler reported the

incident to the school's resource officer. Since it was determined that none of the incidents occurred on school grounds or in the school, Mr. Schmidt allowed the school resource officer to assume responsibility for the investigation. The officer investigated the accusation, then made a report to the district attorney, who decided not to prosecute the case due to the fact that he believed it would be too hard to prove that the sexual acts were not consensual and that the entire trial process would cause unnecessary stress to the child.

As a result, the mother filed suit against the school system, alleging that her daughter's Title IX and 14<sup>th</sup> Amendment rights had been violated. The district court granted summary judgment for the school system and the mother appealed. The 10<sup>th</sup> Circuit Court of Appeals then ruled that the daughter's reports of the boys "bothering her" in middle school did not meet the standard of notification of sexual harassment. Additionally, the court stated that the high school principal's decision to allow the school resource officer to take over the investigation did not constitute deliberate indifference. Similar cases, such as *Wilson v. Beaumont Independent School District* (2001), *Clark v. Bibb Country County Board of Education* (2001), and *Johnson v. Independent School District* (2002), show that individuals who sue the school systems must show that the school was deliberately indifferent to claims by a student of student harassment or they will not be awarded damages.

School systems may also be held liable for violating Title IX when their efforts to stop harassment are not sufficient, as seen in *Dawn L. v. Greater Johnstown School District* (2008). The school district was ordered to pay damages to the plaintiff for failing to adequately stop student to student harassment. As a result of the continued harassment, the mother decided to pull her 11-year-old daughter from school and then home school her. The court ruled that the

mother had no option, since the harasser could not be stopped and was allowed to remain in school without significant repercussions.

### *Bullying*

Nearly 30% of U.S. teenagers report being bullied, bullying others, or both (Nansel et al., 2001). In addition to the potential for physical harm, bullying can cause great anxiety. Students who have been bullied report feelings of helplessness, decreased academic achievement, and self-doubt. Because of the impact bullying has on students, schools and counselors constantly deal with issues that deal with bullying prevention and holding those who bully accountable (Kirby, 2008).

Since the 1999 Columbine shootings, 41 states have passed anti-bullying policies (State Anti-bullying Laws, 2010). Although the policies vary, they have defined what schools must do to prevent bullying and to make those who do bully accountable for their actions (Kirby, 2008). The American Medical Association (2008) describes bullying as a situation in which there is an obvious power over another, a desire to cause injury, and an established pattern of conduct. Individuals can bully others through their words or actions, causing both emotional and physical injury (Pace, 2001).

Kirby (2008) notes that litigation related to bullying continues to rise. While bullying is not a legal term, harassment is. In the case of *Theno v. Tonganoxie Unified School District* (2005), a student filed suit stating the school district did not sufficiently stop the bullying and sexual harassment that led him to drop out of school. The teenager had been complaining of taunting for four years. The school argued that it took the student's complaints with the utmost seriousness. However, the court decided that the school was liable and ordered the school district to pay damages.

School districts and officials have been granted immunity in some bullying cases because of state law providing that schools cannot be held accountable for negligence. In the case of *Smith v. Lincoln Park Public Schools* (2004), the Michigan Court of Appeals ruled that a school district was not liable for a student's suicide after the student had been bullied. While the Court of Appeals did agree that the bullying played a part in the student's suicide, the school district was granted governmental immunity under Michigan law. In *Albers v. Breen* (2004), the court's decision was similarly based on a provision of state law. A school social worker, principal, and district were sued because a student's name was made known to the student's bullies by school officials. The suit was dismissed because Illinois has a law protecting school employees from lawsuits.

Bullying issues have also cropped up through the Internet and email. Websites such as YouTube, Facebook, and MySpace and advances in technology have provided a plethora of avenues for students to bully (Wagner, 2008). Bullying using this form of technology can be especially harmful, since the Internet is an accessible and quick way to receive and send information to a large population (Kirby, 2008). Wagner (2008) states that "Cyberbullying has become a growing concern for school administrators" (p. 183).

### *Child Abuse and Reporting*

Lambie (2005) states that "rarely do ethical dilemmas confronting professional school counselors involve definite 'correct' or 'incorrect' choices. However, when it comes to reporting suspected child abuse and/or neglect, explicit laws and policies require that counselors have appropriate procedures available for managing suspected abuse" (p 249). A definite majority of school counselors understand that there is a legal obligation to report suspected incidents of child abuse; however, "procedural uncertainty, and other concerns may cause great anxiety" (Lambie,

2005, p 249). Sechrist (2000) writes that a majority of suspected abuse incidents go unreported by school counselors. Nevertheless, counselors have a legal responsibility to report such cases.

Lambie (2005) notes that Congress passed the *National Child Abuse Prevention and Treatment Act* in 1974. Approximately 30 years later, the Act was revised and renamed the *Keeping Children and Families Safe Act of 2004*. The Act identified child abuse and neglect as:

Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.

Child abuse laws vary from state to state. Many of them provide immunity for those who report child abuse. This affects school counselors, because often they are the ones who have to report suspected cases of child abuse. When counselors have acted with reasonable discretion and are required to report child abuse, historically they have not been held liable in criminal or civil suits. Counselors in states that grant privileged communication are expected to report their suspicions to Child Protective Services as well. While civil suits against school counselors have been extremely rare, they may still be held responsible if they fail to act in accordance with their state's reporting laws (Lambie, 2005). In Virginia, *Code 22.1-291.3* provides that all school employees are mandatory reporters and are required by law to report any suspected child abuse. Licensure requirements for educators in Virginia also include mandatory child abuse reporting training (Code of Virginia, 22.1-298.8).

### *Students with Disabilities*

Scarborough and Deck (1998) write that the federal Individuals with Disabilities Education Act (IDEA) has brought about added responsibilities to the position of school counseling. IDEA has made counselors focus more on individual students, especially those with

disabilities. Additionally, school counselors and other educators are now asked to look at what students with disabilities can do rather than what they cannot do. School counselors who understand the special education laws are better able to ensure that students with disabilities are receiving the services they require to be successful in school. When schools do not provide mandated special education services to their students with disabilities, they open themselves to possible litigation (Scarborough & Deck, 1998).

The dramatic increase in special education litigation continues to be a major concern for school systems across the country (Chandler, 2009). School systems have been sued by parents for not finding that students are eligible for special education services, as in *Springer v. Fairfax County School Board* (1998). In that case, the parents decided to enroll their son in a private school after he failed the 11<sup>th</sup> grade. The parents then sued the Fairfax County School Board, seeking reimbursement for tuition that was paid to the private school. The parents argued that the school district should have found that their son had an emotional disability under IDEA and therefore should be liable for tuition reimbursement. The lower court ruled in favor of the School Board, agreeing with the Virginia review officer that the student did not meet the criteria for being disabled under IDEA. On appeal, the 4<sup>th</sup> Circuit Court of Appeals upheld the lower court's decision, holding that the parents did not offer sufficient evidence that their son had an emotional disability.

In a similar case, parents in *Mr. N.C. v. Bedford Central School District* (2008) sued the school system for not providing their child a free appropriate public education under IDEA. The parents argued that their son had an emotional disability; however, the special education committee said that there was not enough evidence that the disability had a profound educational impact. The parents appealed the decision to the New York State review office, where the

decision was upheld. The parents then sued Bedford in district court. The district court agreed with the state's review office, stating there was insufficient evidence of a disability. Ultimately, the parents appealed to the 2<sup>nd</sup> Court of Appeals, where the lower court's decision was affirmed.

Cases like these demonstrate that school systems and educators must be familiar with the guidelines set forth by IDEA. Since school counselors are often members of the special education committees that decide which students meet the criteria of having a disability, they should be up to date on the regulations. While school counselors should be advocates for their students, it is imperative that they also be familiar with the provisions of IDEA.

### Summary

The review of the literature has shown that school counselors continue to encounter issues that relate to the law. The Code of Virginia provides immunity to school educators, but when gross negligence is proven, counselors can be held liable. While CACREP and ASCA continue to set standards to follow, there continues to be a need to make more of a connection between the ethics of the profession and the law. Although suits have been rare, especially those that ultimately rule against the school counselor, the research has shown that the concern and fear of counselors are legitimate. Further research is needed to decide whether school counselors have acquired an improved understanding of law-related issues since Rawls' 1997 study.

## CHAPTER III

### Methods

The objective of this study was to assess the knowledge base of public secondary school counselors in specific areas of school law directly related to the issues school counselors encounter within their job responsibilities. Based upon the literature review, the four specific areas of school law identified were student rights, special education issues, counselor/employee issues, and liability. The study analyzed the relationship between the knowledge base of public secondary school counselors and school level, highest degree earned, years of experience as a school counselor, type and timeliness of school law training, and membership in professional associations. The study sought to determine whether public secondary school counselors, in the past 10 years, have been threatened with litigation, subpoenaed to appear in court, or have actually testified in court. Like Rawls (1997), the study assessed what type of school law training is being offered at graduate school counseling programs in Virginia by sending an assessment survey to the 16 graduate school counseling programs in the commonwealth (Appendix A).

### Research Questions

The study answered the following research questions:

1. To what extent are public secondary school counselors in the Commonwealth of Virginia knowledgeable about relevant school law related issues?
2. What is the relationship between school counselors' knowledge of school law and
  - a. school level?
  - b. highest degree of education earned?
  - c. years of experience as a public school counselor?

- d. school law training type?
- e. timeliness of school law training?
- f. membership in professional associations?
- g. extent of involvement with legal action related to their position as secondary public school counselor over the past 10 years?

### Variables

This study examined the following independent variables:

- 1. school level (grades served in their school)
- 2. highest degree earned
- 3. years of experience as a public school counselor
- 4. type of school law preparation
- 5. timeliness of school law preparation
- 6. membership in professional associations
- 7. extent of involvement with legal action

The dependent variables in this study were the mean scores of the public secondary school counselors on the assessment in the following areas: student rights, counselor/employee issues, liability, special education, and total score.

### Population Description and Procedures

The assessment was given to a sample of public secondary school counselors in the Commonwealth of Virginia. Since a good estimate of the population variance of the school counselor assessment was not available, the required sample size for the study was calculated using the formula for a proportion. This formula, using the maximum variability of  $p = .5$ , produces a more conservative sample size estimate than would be calculated by the sample size

of a mean formula. For this reason, Israel (1992) states that “the sample size for the proportion is frequently preferred” (p. 4).

The following proportion formula and scale was used (Rea & Parker, 1997):

$$n = \frac{Z_{\alpha}^2 [p(1-p)]N}{Z_{\alpha}^2 [p(1-p)] + (N-1)C_p^2}$$

where:

- n = sample size needed
- Z = 1.96
- p = .5
- C = .05
- N = 1,892

The Z score was set at 1.96. This ensured that there will be a 95% level of confidence that the population estimates would fall between +/-2 standard deviations from the true population value. Rea and Parker (1997) recommend that the p value be set at .5. By doing this, the highest sample size possible was obtained. The degree of precision (C) was set at .05. In 2007-08, the Virginia Department of Education (VDOE) reported that there were 2,269 public secondary school counselors. Out of 2,269, a list of 1,892 public school counselors' email addresses could be identified by utilizing the VDOE's website at <http://www.doe.virginia.gov/Div/index.html#Schl>. This site provides direct links to all middle and high schools in Virginia. Therefore, N was 1,892. Utilizing the above formula, it was calculated that the estimated sample size (n) needed was 320. Israel (1992) recommends that the sample size be increased by 30% for those counselors who do not respond. Three hundred twenty (320) multiplied by .30 equals 96. Therefore, 96 plus 320 equals a 416 sample size. While a 70% response rate was assumed, meaning that 70% of the public secondary school counselors who received the assessment would complete and return it, a response rate of 66.8%

was obtained. A straight random sample was taken of public secondary school counselors using a random number generator found at [www.random.org](http://www.random.org).

### Instrumentation

A secure, online assessment was developed by the researcher and sent to the public secondary school counselors in Virginia. In order to develop a valid assessment, the following procedures took place. First, to establish the domain, a review of the literature was performed to identify areas of school law that counselors encounter in the workplace. Second, an interview protocol was developed based on the school law issues in Appendix B. The school law issues listed were based on the literature review. Third, structured interviews were conducted with a coordinator of school counseling for a Virginia county school system, a director of student services at a public high school who oversees a staff of school counselors, and a lead counselor at a middle school. The individuals were asked how the school law issues in Appendix B affect public secondary school counselors as they relate to their job responsibilities. Each individual was asked the same questions to ensure consistency. Individuals were able to suggest additional school law issues if they believed the list was not complete. The interviews were recorded, transcribed, and then analyzed to identify which school law issues were mentioned most often. This identification assisted the researcher in making sure those items were represented in the assessment. A final list of school law issues was then developed based upon the literature review and interviews.

### *Assessment Development*

An assessment was developed consisting of three parts: Part I: School Law Assessment; Part II: Personal and School Information; and Part III: School Law Preparation. The assessment consisted of 40 true/false questions, ensuring that it would not take an excessive amount of time

to complete (Appendix E). Slavin (2007) states that closed-ended questions, like true/false, are easier to code and more appealing to those completing the survey. When appropriate, questions, topics, and categories were similar to the ones found in the following studies: Brabrand (2003), *Virginia Principals and School Law*, Caldwell (1986), *Virginia Principals and School Law*, Ivey (2008), *A Study of Virginia Administrators with Responsibility for Division Special Education Services and Knowledge of Special Education School Law*, Power (2007), *A Study of Selected Virginia School Principals' Knowledge of Special Education Law*, and Rawls (1997), *Virginia High School Counselors and School Law*. Each true/false question was classified into one of the four specific areas of school law (student rights, counselor/employee issues, liability, and special education). There were 10 questions in each area, which assisted in identifying the knowledge base of public secondary school counselors in specific areas. It was determined that a total score would be found, along with scores for each of the four specific areas of school law.

Once the assessment was completed, a panel of experts was asked to review it to guarantee its content and construct validity. The panel of experts consisted of members of the Dissertation Committee and a school law professor at Virginia Tech. The panel was asked if the assessment questions were accurate statements of the legal requirements of public school counselors. The assessment was then piloted in September 2009 by the Virginia Tech Educational Leadership and Policy Studies Doctoral Cohort and a group of middle school directors of student services to ensure that the questions were understandable. Slavin (2007) suggests that piloting an assessment will help determine if there are any problems, such as perplexing questions, that need to be corrected before sending it out. Individuals from both pilot groups were interviewed so that feedback about the assessment could be obtained. A final analysis and adjustment of the assessment was conducted after these interviews occurred. Any

adjustments were approved by the committee. Since the assessment was ultimately sent to human subjects, Virginia Tech's Institutional Review Board (IRB) was asked to review the research study to ensure that the school counselors involved were treated fairly and that their rights were protected.

### Data Collection

An email was sent to the 416 randomly selected school counselors at the secondary level describing the assessment and providing directions (Appendix D). A link to a secure online assessment via Survey Monkey was provided in the email. When requested, a PDF file was emailed to selected school counselors, providing individuals the opportunity to complete the assessment with paper and pencil. The window for the assessment to be sent was from September 28 to October 31, 2009. To ensure a high response rate, school counselors that had not responded were sent three additional reminder emails and called once after the initial email was distributed. To provide an incentive for school counselors to participate, a donation was made for each completed assessment to St. Jude Children's Hospital ([www.stjude.org](http://www.stjude.org)), a hospital that treats children who have cancer and other diseases. Donation updates were included in the reminder emails. In addition, those individuals who completed the assessment were automatically entered to win one of 10 copies of *The Law of Schools, Students and Teachers in a Nutshell* written by Alexander and Alexander. Survey Monkey and Microsoft Excel were utilized to collect and track the completed assessments. Any respondent's comments about the study were also recorded (Appendix F).

### Data Analysis

Data analyses were completed using the Statistical Package for Social Sciences (SPSS). Descriptive statistics were calculated from the assessment. Then a one-way analysis of variance

(ANOVA), independent t-tests, and Pearson correlations were used, when appropriate, to determine the relationship between the independent variables and the knowledge base of public school counselors. This was completed to find a score for each of the four categories of school law defined earlier, as well as a total score. To determine if the relationship was significant, a .05 level of confidence was utilized. Data results were analyzed utilizing the following:

*Research Question 1*

To what extent are public secondary school counselors in the Commonwealth of Virginia knowledgeable about relevant school law related issues? Descriptive statistics were used to summarize the data.

Table 3.1

*Research Design for Question 1*

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	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/Employee	Liability	Special Education	
Descriptive Statistics					

*Research Question 2a*

What is the relationship between school counselors' knowledge of school law and school level? After combining grades 5 through 8 for middle and 9 through 12 for high, an independent t-test was used to determine if a significant difference existed between group means, assuming  $\alpha = .05$ . Eight counselors indicated that they worked at schools with grades 8-12 and were grouped into the high school category. Four counselors' responses indicated working at multiple grades at both the middle and high school level. Since the category in which they worked could not be determined, those four responses were not included.

Table 3.2  
*Research Design for Question 2a*

School Level	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/ Employee	Liability	Special Education	
Middle School					
High School					

*Research Question 2b*

What is the relationship between school counselors' knowledge of school law and highest degree of education earned? A one-way analysis of variance (ANOVA) was used to determine if a significant difference existed between group means, assuming  $\alpha = .05$ .

Table 3.3  
*Research Design for Question 2b*

Highest Degree Earned	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/Employee	Liability	Special Education	
Bachelor's					
Master's					
Master's + 30 (Educational Specialist)					
Doctorate					
Other – list					

*Research Question 2c*

What is the relationship between school counselors' knowledge of school law and years of experience as a public school counselor? A Pearson correlation was used to determine the relationship, assuming  $\alpha = .05$ .

Table 3.4  
*Research Design for Question 2c*

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Years of Experience	Student Rights	<u>Areas of School Law Knowledge</u>			Total
		Counselor/Employee	Liability	Special Education	
List					

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*Research Question 2d*

What is the relationship between school counselors' knowledge of school law and school law training type? A one-way analysis of variance (ANOVA) was used to determine if a significant difference existed between group means, assuming  $\alpha = .05$ .

Table 3.5  
*Research Design for Question 2d*

School Law Training	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/Employee	Liability	Special Education	
College/University course for credit					
School-system workshop					
Non-school system workshop					
Other – describe					
None					

*Research Question 2e*

What is the relationship between school counselors' knowledge of school law and the timeliness of school law training? A one-way analysis of variance (ANOVA) was used to determine if a significant difference existed between group means, assuming  $\alpha = .05$ .

Table 3.6  
*Research Design for Question 2e*

Timeliness	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/Employee	Liability	Special Education	
0-2 years					
3-4 years					
5-10 years					
10 + years					
None					

*Research Question 2f*

What is the relationship between school counselors' knowledge of school law and if a member in professional associations. A Pearson correlation was used to determine the relationship, assuming  $\alpha = .05$ .

Table 3.7  
*Research Design for Question 2f*

Professional Association	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/ Employee	Liability	Special Education	
National Association of Secondary School Principals (NASSP)					
Virginia Association of Secondary School Principals (VASSP)					
American School Counselor Association (ASCA)					
Virginia School Counselor Association (VSCA)					
American Counseling Association (ACA)					
None					
Other – list					

*Research Question 2g*

What is the relationship between school counselors’ knowledge of school law and extent of involvement with legal action as it relates to their position as secondary public school counselor over the past 10 years. Independent t-tests were used to determine if a significant difference existed between group means, assuming  $\alpha = .05$ .

Table 3.8  
*Research Design for Question 2g*

Experiences	<u>Areas of School Law Knowledge</u>				Total
	Student Rights	Counselor/Employee	Liability	Special Education	
Threatened with litigation					
Issued a subpoena					
Appeared as a witness or defendant in a court of law					

## CHAPTER IV

### Findings and Results

#### Presentation of the Data

This study was developed to determine to what extent public secondary school counselors in the Commonwealth of Virginia are knowledgeable about relevant school law related issues. The study also sought to determine if there is a significant relationship between the knowledge base of public secondary school counselors and school level, highest degree earned, years of experience as a school counselor, type and timeliness of school law training, and membership in professional associations. Additionally, the study sought to determine if there is a significant relationship between knowledge base and whether public secondary school counselors, in the past 10 years, were threatened with litigation, subpoenaed to appear in court, or actually testified in court.

#### Research Procedures

As previously stated, this study proposed to answer the following questions:

1. To what extent are public secondary school counselors in the Commonwealth of Virginia knowledgeable about relevant school law related issues?
2. What is the relationship between school counselors' knowledge of school law and
  - a. school level?
  - b. highest degree of education earned?
  - c. years of experience as a public school counselor?
  - d. school law training type?
  - e. timeliness of school law training?

- f. membership in professional associations?
- g. extent of involvement with legal action as it relates to their position as a secondary public school counselor over the past 10 years?

To determine the extent of knowledge and significance of relationships between variables, an online assessment was developed and utilized. The assessment consisted of three parts: Part I: School Law Assessment; Part II: Personal and School Information; and Part III: School Law Preparation. Part I was then divided into four specific areas of school law: student rights, school counselor/employee issues, liability, and special education. When appropriate, questions used were similar to the ones found in the following studies: Brabrand (2003), *Virginia Principals and School Law*, Caldwell (1986), *Virginia Principals and School Law*, Ivey (2008), *A Study of Virginia Administrators with Responsibility for Division Special Education Services and Knowledge of Special Education School Law*, Power (2007), *A Study of Selected Virginia School Principals' Knowledge of Special Education Law*, and Rawls (1997), *Virginia High School Counselors and School Law*. Part II consisted of questions determining school level, highest degree earned, years of experience as a school counselor, if ever a certified teacher, and if male or female. Part III consisted of questions determining type of school law training, timeliness of that training, membership in professional organizations, and extent of legal involvement. The assessment was then piloted in September 2009 by the Virginia Tech Educational Leadership and Policy Studies Doctoral Cohort and a group of middle school directors of student services to ensure that the questions were understandable.

An email describing the study and providing a link to the online assessment was sent to 416 randomly sampled public secondary school counselors in the Commonwealth of Virginia. The 416 were taken from a list of 1,892 public secondary school counselors who were identified

by utilizing the VDOE's website. To obtain a response rate of 66.8%, four additional requests were made to complete the assessment (three sets of emails, one set of phone calls). The first request was sent via email on September 28, 2009, with the final request being sent on October 31, 2009. To provide an incentive for school counselors to participate, a donation was made for each completed assessment to St. Jude Children's Hospital ([www.stjude.org](http://www.stjude.org)), a hospital that treats children who have cancer and other diseases. Donation updates were included in the reminder emails. A final donation was made to St. Jude Children's Hospital for \$278 for the 278 school counselors who completed the assessment. Additionally, those who completed the assessment were automatically entered to win one of 10 copies of *The Law of Schools, Students, and Teachers in a Nutshell* written by Alexander and Alexander. After the window closed, answers to the assessment were sent to the school counselors who requested this information.

#### Characteristics of Sample

Out of the 416 emails sent out, 278 assessments were collected (66.8% response rate). One hundred (100) responses were collected after the 1<sup>st</sup> set of emails was sent during the week of September 28, 2009 (24.0% response rate). Ninety-two (92) responses were collected after a 2<sup>nd</sup> set of emails was sent during the week of October 5, 2009 (46.2% response rate). Sixty-seven (67) responses were collected after a 3<sup>rd</sup> set of emails and a set of phone calls (62.3% response rate). Nineteen (19) responses were collected after a final set of emails was sent (66.8% response rate).

Of the 278 individuals who responded, nearly 86% (N = 237) identified themselves as school counselors. Another 11.6% (N = 32) identified themselves as guidance directors with student case loads. Less than 3% (2.5%, N = 7) identified themselves as guidance directors. Two (2) respondents did not respond to the question related to demographics.

Respondents reported having the following grade level responsibilities: 10 for grade 5 (3.6%), 75 for grade 6 (27%), 104 for grade 7 (37.4%), 113 for grade 8 (40.6%), 146 for grade 9 (52.5%), 149 for grade 10 (53.6%), 156 for grade 11 (56.1%), and 153 (55%) for grade 12. Respondents could choose more than one grade level; therefore, the total far exceeded 100%. Some middle schools in Virginia incorporate grade 5 in their student populations; therefore, it was included as an option. Over 79% (N = 220) of the respondents were female while 20.1% (N = 56) of the respondents were male. A majority of respondents, 74.5% (N = 207), reported having a masters degree. Over 58% (N = 161) indicated that they were not certified teachers while 41.7% (N = 115) said they had been certified. The mean response for experience in counseling was 9.64 years, with a median of 8.00 years, and a mode of 3.00 years of counseling experience. Years of experience ranged from one year to 38 years. Table 4.1 shows the frequencies and percentages of personal and school information.

Table 4.1  
*Frequencies and Percentages – Personal and School Information*

Gender	N	%**
Female	220	79.1
Male	56	20.1
Non-Response	2	.7
<b>Position</b>		
School Counselor	237	85.9
Guidance Director	7	2.5
Guidance Director w/Student Case Load	32	11.6
Non-Response	2	.7
<b>Certified Teacher</b>		
Yes	115	41.7
No	161	58.3
Non-Response	2	.7
<b>Highest Degree Earned</b>		
Bachelor's	1	.4
Master's	207	74.5
Master's + 30 (Educational Specialist)	63	22.8
Doctorate	5	1.8
Non-Response	2	.7
<b>Grade Level(s) for which Respondents had Responsibility*</b>		
5	10	3.6
6	75	27.0
7	104	37.4
8	113	40.6
9	146	52.5
10	149	53.6
11	156	56.1
12	153	55.0
<b>Years of Counseling Experience</b>		
Mean		9.6
Median		8.0
Mode		3.0

\*\*All percentages may not equal 100% due to rounding.

\*Respondents could choose more than one grade level; therefore the total far exceeds 100%.

In the area of school law training, 37.1% (N = 103) indicated taking a university/college course for credit. Nearly one-quarter, 24.5% (N = 68), reported taking a school-system workshop to obtain their school law training. Only 9.4% (N = 26) indicated taking a non-school system workshop, while 8.0% (N = 22) stated that they had some other type of school law training. More than one-third who responded, 36.0% (N = 100), indicated no school law training. Timeliness of school law training varied among respondents. Nearly 20% (N = 47) stated that they received training within the last two years, almost 12% (N = 33) indicated having their preparation 3-4 years ago, 19.8% (N = 55) reported receiving preparation 5-10 years ago, and 12.6% said they received their school law preparation more than 10 years ago. However, the largest percentage of respondents, 37.4% (N = 104), indicated no school law preparation. Less than 2% (1.4%, N = 4) chose not to respond to this question.

A large percentage of respondents, 46.4% (N = 129), indicated that they currently receive information about school law from their school systems. Another 32.7% (N = 91) reported receiving publications about school law updates, while 29.5% (N = 82) noted that they receive their information from conferences. Only 15.6% (N = 40) reported receiving school law information as “other.” More than one-quarter, 26.3% (N = 73), indicated that they did not receive any current information about school law.

Respondents indicated that they were members of the American School Counselor Association and the Virginia School Counselor Association most frequently, with 37.4 % (N = 104) and 41.7% (N = 116), respectively. The American Counseling Association (ACA) was represented by 9.7% (N = 27) of respondents and another 15.5% (N = 43) reported belonging to other types of associations, such as teaching associations. The Virginia Counseling Association (VCA), a branch of the ACA, was not included as an option; however, 10 of the 43 “other”

respondents indicated that they belonged to VCA. Almost a third, 32.7% (N = 91), said they did not belong to any type of association. Respondents were members of an average (mean) of 1.1 associations. Table 4.2 shows the frequencies and percentages of school law preparation.

Table 4.2  
*Frequencies and Percentages – School Law Preparation*

Type of School Law Preparation*	N	%**
University/College course for credit	103	37.1
School-system workshop	68	24.5
Non-school system workshop	26	9.4
Other	22	8.0
None	100	36.0
<b>Timeliness of School Law Preparation</b>		
0-2 years	47	16.9
3-4 years	33	11.9
5-10 years	55	19.8
10 + years	35	12.6
None	104	37.4
Non-Response	4	1.4
<b>How Do You Receive Current School Law Inform.*</b>		
School System	129	46.4
Publication	91	32.7
Conference	82	29.5
Other	40	14.5
None	73	26.3
<b>Association Membership*</b>		
National Association of Secondary School Principals	0	.0
Virginia Association of Secondary School Principals	1	.4
American Counseling Association	27	9.7
American School Counselor Association	104	37.4
Virginia School Counselor Association	116	41.7
None	91	32.7
Other	43	15.5
<b>Association Membership</b>		
Mean		1.1
Median		1.0

\*\*All percentages may not equal 100% due to rounding.

\*Respondents could choose more than one; therefore the total far exceeds 100%.

Only 6.5% (N = 18) of respondents indicated that they had been threatened with legal action as it related to their position as a school counselor. A larger percentage, 29.1% (N = 81), reported having been issued a subpoena to appear in court. However, only 18.3% (N = 51) said they had actually appeared as a witness or defendant in a court of law. Table 4.3 shows the frequencies and percentages of experiences with legal action.

Table 4.3  
*Frequencies and Percentages - Experiences with Legal Action*

Experiences with Legal Action	N	%
Threatened with litigation	18	6.5
Issued a subpoena	81	29.1
Appeared as a witness or defendant in a court of law	51	18.3

## Data Analysis

### *Research Question 1*

To what extent are public secondary school counselors in the Commonwealth of Virginia knowledgeable about relevant school law related issues?

Due to low numbers, guidance directors with student case loads and guidance directors were combined into the school counselor category. Descriptive statistics were then used to summarize the data. The 40-item true/false assessment consisted of four subscales: student rights, counselor/employee issues, liability, and special education. Each subscale had 10 questions. The total mean score correct on the assessment was 29.42/40 (74%). Answers to missing questions were marked wrong. School counselors' mean scores correct for the subscales were as follows: student rights, which was the highest, (7.99/10), counselor/employee issues (7.14/10), special education (7.47/10), and liability (6.81/10), which was the lowest mean. Total scores on the assessment ranged from a low of eight to a high of 35. Subscale scores ranged from zero to 10. Table 4.4 shows the mean, median, standard deviations, and totals. Tables 4.5

– 4.8 show the summary of responses to the items contained in the four subscales. Figure 4.1 shows the comparison of percentages of mean scores between the four subscales and total score.

Table 4.4  
*Mean, Median, Standard Deviation, and Totals for Each Subscale in the Assessment*

Subscale	Mean	Median	Possible Score	Standard Deviation	N
Student Rights	7.99	8.00	10	1.13	278
Counselor/Employee Issues	7.14	7.00	10	1.25	278
Liability	6.81	7.00	10	1.15	278
Special Education	7.47	8.00	10	1.58	278
Total	29.42	29.00	40	3.10	278

Figure 4.1  
*Subscale and Total Mean Scores in Percentages*

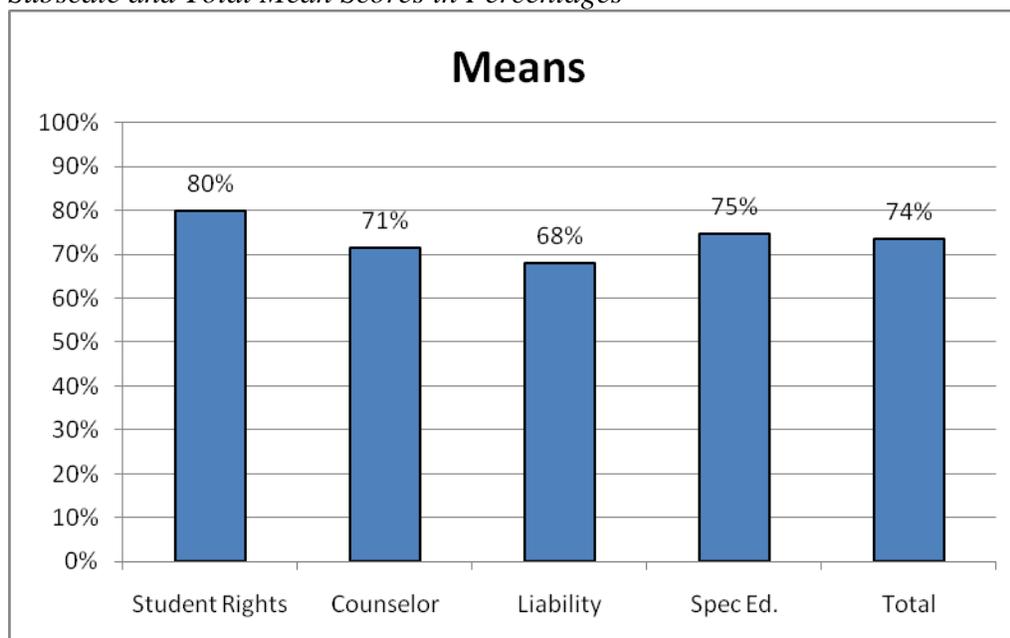


Table 4.5  
*Responses to Items Contained in the Student Rights Subscale*

Question	Item	True		False	
		N	%	N	%
1	A school system's policy to allow student-led, student-initiated prayers at high school football games does not violate the Establishment clause.	195	70.1	*83	*29.9
2	Only under extreme circumstances, which could endanger student health and safety, does the Supreme Court believe strip searches of students by school officials are reasonable.	*161	*57.9	117	42.1
3	A school official must obtain a search warrant before searching a student's locker.	7	2.5	*271	*97.5
4	Pupils have unlimited constitutional rights as individuals to exercise free speech in public schools.	27	9.7	*251	*90.3
5	Public school students are not required to recite the Pledge of Allegiance if they object because of religious reasons.	*274	*98.6	4	1.4
6	The school district must allow pupils the freedom of expression if it does not materially or substantially disrupt school activities.	*222	*79.9	56	20.1
7	School officials may review and/or edit the content of a valedictorian speech at graduation.	*262	*94.2	16	5.8
8	Students may organize a gay and lesbian club if the school allows other non-curricular clubs to meet.	*264	*95.0	14	5.0
9	School officials may implement a dress code for students.	*274	*98.6	4	1.4
10	A student may be disciplined for off-campus activities by school authorities.	*160	*57.6	118	42.4

\* Correct responses

At least 90% responded correctly on 6 of 10 items in the student rights subscale (items 3, 4, 5, 7, 8 and 9). Nearly 99% of respondents answered items 5 and 9 correctly, which had to do with reciting the Pledge of Allegiance and student dress codes, respectively. Only a third (29.9%) of the respondents got the first item correct, which dealt with Establishment clause and student initiated prayer.

Table 4.6  
*Responses to Items Contained in the Counselor/Employee Subscale*

Question	Item	True		False	
		N	%	N	%
1	Confidentiality is a legal term which restricts counselors from divulging information obtained in a counseling session.	217	78.1	*61	*21.9
2	Personal notes recorded by a counselor are confidential and may not be subpoenaed by a court.	36	12.9	*242	*87.1
3	All cases of suspected child abuse must be reported to Child Protective Services unless the reporting would put the child in danger.	94	33.8	*184	*66.2
4	Local school boards have the discretionary power to approve student release-time programs to attend religious instruction off of school grounds during school hours.	*204	*73.4	74	26.6
5	A public school counselor may read from the Bible and pray with a student, providing there is substantial community support for these exercises.	19	6.8	*259	*93.2
6	A school counselor may be fired for his/her oral and written statements clearly critical of school officials, even if there is no evidence that the statements had any effect on school operations or objectives.	101	36.3	*177	*63.7
7	School counselors who have attained continuing contract status may be dismissed for failure to comply with Virginia school laws and regulations providing proper procedures for dismissal are followed.	*264	*95.0	14	5.0
8	Before a minor can receive an abortion in the Commonwealth of Virginia parental consent must be granted.	*207	*74.5	71	25.5
9	The Code of Virginia requires school counselors to contact at least one of the student's parents when he or she has a reason to believe that there is an imminent risk of suicide.	*271	*97.5	7	2.5
10	In Virginia, a transferring student's records can be sent to the student's next school district without parent permission.	*116	*41.7	162	58.3

\*Correct responses

More than 90% responded correctly on items 5, 7, and 9. Nearly 98% answered item 9 correctly, which dealt with notifying parents when a student is at risk of committing suicide. Less than a quarter of respondents (21.9%) answered item 1 correctly, which had to do with confidentiality.

Table 4.7  
*Responses to Items Contained in the Liability Subscale*

Question	Item	True		False	
		N	%	N	%
1	Ethical codes established by licensing authorities take precedence over state and federal statutes, and school board policy when in conflict.	54	19.4	*224	*80.6
2	A student's injury, which could have been foreseen and prevented by "reasonable" care by an adult, may constitute negligence.	*275	*98.9	3	1.1
3	The Code of Virginia states that any educator can be held for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such educator's scope of employment.	249	89.6	*29	*10.4
4	Courts in other states have found school counselors liable for negligence for providing inaccurate academic counseling as it relates to graduation requirements.	*216	*77.7	62	22.3
5	School officials may be personally liable for not stopping a student's bullying of another student if they are deliberately indifferent to the victim's claims of being harassed.	*255	*91.7	23	8.3
6	A parent may not challenge the accuracy of school records maintained on their children.	8	2.9	*270	*91.1
7	The in loco parentis standard permits school counselors to take responsibility to protect students under their control while involved in school activities.	*230	*82.7	48	17.3
8	The courts have ordered schools to pay for special education students' tuition at private schools when the public schools failed to provide an appropriate education for those students.	*250	*89.9	28	10.1
9	A properly trained counselor with parental permission or a doctor's prescription is able to administer drugs to a student in the absence of the school nurse and is absolved from negligence if a mistake was made in the dosage and harm came to the student.	*43	*15.5	235	84.5
10	If a student cuts himself with a knife that was taken from a closed desk while the counselor was out of her office, mostly likely the counselor would be held liable.	176	63.3	*102	*36.7

\*Correct responses

Over 90% responded correctly on items 2, 5, 6, and 8 in the liability subscale. Almost 100% of respondents answered item 2 correctly (98.9%), which dealt with negligence. Respondents struggled with items 3 and 9, which had to do with immunity. Only 10.4% and 15.5% of respondents answered these items correctly, respectively. Sections 8.01-220.1:2 and

8.01-225 of the Code of Virginia specifically address these items and state that an employee of the school board shall not be liable unless he or she acts with gross negligence.

Table 4.8

*Responses to Items Contained in the Special Education Subscale*

Question	Item	True		False	
		N	%	N	%
1	Spanish speaking parents attended an eligibility meeting for their son for special education services. They were given a copy of the Procedural Safeguards Notice that was written in English. The parents did not speak English. The school was in violation of the IDEA for not sending Procedural Safeguards Notice in Spanish.	*250	*89.9	28	10.1
2	At an initial IEP meeting for a student with learning disabilities, no regular education teacher was present although there were five other special education teachers present. The student was scheduled to spend a small amount of time in the regular classroom. The school district is in violation of IDEA by not having the regular education teacher present.	*249	*89.6	29	10.4
3	A special education student with an MR disability was placed in a regular education classroom with a half day aide. She maintained steady academic progress even though she was half a year behind her classmates. School officials felt she needed to be in a more restrictive environment. School officials have a sound reason for a change in placement.	90	32.4	*188	*67.6
4	A parent transferred a second grader into a new school division at the end of May. Her child had a history of learning difficulties and the parent requested a formal evaluation for her child to be assessed for special education services. The principal informed the mother that testing could not be initiated until the start of the new school year. The principal followed appropriate regulatory guidelines.	35	12.6	*243	*87.4
5	Under the IDEA, an alteration in the delivery of related services, such as transportation, is considered a change in placement.	*166	59.7	112	40.3

Table 4.8 – continued  
*Responses to Items Contained in the Special Education Subscale*

Question	Item	True		False	
		N	%	N	%
6	Parents claimed that the school district authorized a change in placement without their permission because their child with disabilities was suspended for 10 days. The 10-day suspension was considered a change in placement.	96	34.5	*182	*65.5
7	School principals can permit the on-site delivery of special education services to students with disabilities whose parents have voluntarily enrolled them in private schools, including religious elementary and secondary schools.	*136	*48.9	142	51.1
8	A parent appealed the results of a manifestation determination and demanded that school officials postpone any long term suspension or expulsion until an expedited hearing could be held. This parent had a right to make these demands.	*229	*82.4	49	17.6
9	A student involved in a serious car accident returned to school in a fragile health state and as a quadriplegic. He needed full time one on one nursing services during the course of the school day. The school district claimed that they could not afford the expense of a full time nurse. The school district was required to pay for the full time nursing services.	*191	*68.7	87	31.3
10	Prior to an IEP meeting, a school district placed a student in a special education class before the IEP meeting was convened and the IEP written. This action was in violation of IDEA.	*244	*87.8	34	12.2

\*Correct responses

After rounding, 90% responded correctly on items 1 and 2 in the special education subscale. At least 82% or better correctly answered five out of 10 items (items 1, 2, 4, 8, and 10). Item 7, which dealt with providing special education services to students enrolled in private schools, was the question the smallest percentage of counselors answered correctly (48.9%).

*Research Question 2a*

What is the relationship between school counselors' knowledge of school law and school level?

Before the statistic could be calculated, two categories for middle and high school were created. After combining grades 5 through 8 for middle (N = 115) and 9 through 12 for high (N = 155), an independent t-test was used to determine if there was a significant difference between the counselors' knowledge of school law and school level. Eight counselors indicated that they worked at schools with grades 8-12 and were grouped into the high school category. Four counselors' responses indicated working at multiple grades at both the middle and high school level. Since the category in which they worked could not be determined, those four responses were not included. It was determined that there was a statistically significant difference between group mean scores with school counselors' knowledge and the subscale counselor/employee issues. Specifically, middle school counselors scored slightly better (mean = 7.37) than high school counselors (mean = 7.01) within that subscale ( $t = 2.53, p = .01$ ). It was also determined that there was no statistically significant difference between the two groups of counselors on the total score. Table 4.9 shows the results of counselors' knowledge of school law by school level.

Table 4.9  
*Results of t-tests for Counselors' Knowledge of School Law by School Level*

Subscale		Mean	t	df	p(F)
Student Rights	Middle	7.97	-.65	270	.66
	High	8.03			
Counselor/ Employee	Middle	7.37	2.53	270	<b>.01</b>
	High	7.01			
Liability	Middle	6.88	.430	270	.63
	High	6.81			
Special Education	Middle	7.56	1.35	270	.23
	High	7.50			
Total Score	Middle	29.74	1.62	270	.11
	High	29.14			

**Bold indicates significance at the .05 level**

*Research Question 2b*

What is the relationship between school counselors' knowledge of school law and highest degree of education earned?

Because only one respondent indicated a bachelor's degree, that response was combined with those who had master's degrees. A one-way ANOVA was used to determine if there was a significant difference between degree groups on the counselors' knowledge of school law. It was determined that there was no significant difference between group mean scores on any of the subscales or the total score. Table 4.10 shows the results of comparing counselors' knowledge of school law and highest degree earned.

Table 4.10

*Results of ANOVA for Counselors' Knowledge of School Law and Highest Degree*

Subscale		Sum of Squares	df	Mean Square	F	p(F)
Student Rights	Between Groups	6.59	2	3.29	2.83	.06
	Within Groups	316.32	272	1.16		
	Total	322.91	274			
Counselor/Employee	Between Groups	1.67	2	.83	.61	.54
	Within Groups	371.30	272	1.37		
	Total	372.97	274			
Liability	Between Groups	1.22	2	.61	.52	.60
	Within Groups	319.74	272	1.18		
	Total	320.96	274			
Special Education	Between Groups	.14	2	.07	.03	.97
	Within Groups	580.35	272	2.13		
	Total	580.49	274			
Total Score	Between Groups	13.59	2	6.79	.90	.41
	Within Groups	2052.17	272	7.55		
	Total	2065.76	274			

*Research Question 2c*

What is the relationship between school counselors' knowledge of school law and years of experience as a public school counselor?

After collecting each counselor's response for actual years of counseling experience, a Pearson correlation was used and resulted in a statistically significant positive relationship between total knowledge of school law and years counseling ( $r = .19, p = .00$ ). Furthermore, a statistically significant positive relationship was found between years of experience and the subscale special education ( $r = .14, p = .02$ ). Table 4.11 shows the results of comparing counselors' knowledge of school law by subscale and total score and years of experience.

Table 4.11

*Results of a Pearson Correlation for Counselors' Knowledge of School Law and Years Counseling*

		Subscales				
		Student Rights	Counselor/Employee	Liability	Special Education	Total Score
N = 275	<i>r</i>	.09	.10	.09	.14	.19
Years Counseling	<i>p( r)</i>	.12	.09	.13	<b>.02</b>	<b>.00</b>

**Bold indicates significance at .05 level**

*Research Question 2d*

What is the relationship between school counselors' knowledge of school law and type of school law training?

A one-way ANOVA was used to determine if there was a significant difference between the counselors' knowledge of school law and the type of school law training received. For each type of school law training, scores for respondents who took that type were compared to those who had not taken that type. Prior to utilizing the ANOVA, respondents were classified into yes/no categories to indicate if they received that specific type of school law training. After this was completed, the only significant differences found in total score was with university/college credit ( $F = 6.51, p = .01$ ). It was found that respondents who did not receive their school law training through university/college credit (mean = 29.88) scored slightly better than those who did (mean = 29.02). Within the four subscales, significant differences were also found between counselors' knowledge and counselor/employee issues ( $F = 4.91, p = .03$ ) and special education ( $F = 4.16, p = .04$ ). It was found that respondents who did not receive their school law training through university/college credit scored slightly better than those who did with counselor/employee issues and special education. Table 4.12 shows the results of comparing university/college school law training and counselors' knowledge of school law. Table 4.13 summarizes the comparisons of means. No significant differences were found with any of the other type of school law training. Tables 4.14 – 4.16 show the results of comparing counselors' knowledge of school law and school-system training, non-school system training, and other.

Table 4.12

*Results of ANOVA for Counselors' Knowledge of School Law and Type of School Law Training - University/College Credit*

Subscale		Sum of Squares	df	Mean Square	F	p(F)
Student Rights	Between Groups	.15	1	.15	.13	.72
	Within Groups	322.76	273	1.18		
	Total	322.91	274			
Counselor/ Employee	Between Groups	6.59	1	6.59	4.91	<b>.03</b>
	Within Groups	366.39	273	1.34		
	Total	372.967	274			
Liability	Between Groups	3.27	1	3.27	2.81	.10
	Within Groups	317.69	273	1.16		
	Total	320.96	274			
Special Education	Between Groups	8.71	1	8.71	4.16	<b>.04</b>
	Within Groups	571.78	273	2.09		
	Total	580.49	274			
Total Score	Between Groups	48.12	1	48.12	6.51	<b>.01</b>
	Within Groups	2017.64	273	7.39		
	Total	2065.76	274			

**Bold indicates significance at the .05 level**

Table 4.13

*Summary of Comparison of Means - Counselors' Knowledge of School Law and University/College Credit*

Subscale	Groups	Mean	Standard Deviation	N
Student Rights	Did not earn credit	8.00	1.01	172
	Did earn credit	8.05	1.21	103
	Total	8.02	1.09	275
Counselor/ Employee ( <b>p(F) &lt; .05</b> )	Did not earn credit	7.29	1.16	172
	Did earn credit	6.97	1.15	103
	Total	7.17	1.17	275
Liability	Did not earn credit	6.92	1.09	172
	Did earn credit	6.70	1.07	103
	Total	6.84	1.08	275
Special Education ( <b>p(F) &lt; .05</b> )	Did not earn credit	7.67	1.41	172
	Did earn credit	7.30	1.50	103
	Total	7.53	1.46	275
Total Score ( <b>p(F) &lt; .05</b> )	Did not earn credit	29.88	2.71	172
	Did earn credit	29.02	2.74	103
	Total	29.56	2.76	275

Table 4.14  
*Results of ANOVA for Counselors' Knowledge of School Law and Type of School Law Training – School-System Workshop*

Subscale		Sum of Squares	df	Mean Square	F	p(F)
Student Rights	Between Groups	.65	1	.65	.55	.46
	Within Groups	322.26	273	1.18		
	Total	322.91	274			
Counselor/Employee	Between Groups	2.99	1	2.99	2.21	.19
	Within Groups	369.97	273	1.36		
	Total	372.97	274			
Liability	Between Groups	.29	1	.29	.25	.62
	Within Groups	320.67	273	1.18		
	Total	320.96	274			
Special Education	Between Groups	.30	1	.30	.14	.71
	Within Groups	580.19	273	2.13		
	Total	580.49	274			
Total Score	Between Groups	13.13	1	13.13	1.75	.19
	Within Groups	2052.63	273	7.52		
	Total	2065.76	274			

Table 4.15  
*Results of ANOVA for Counselors' Knowledge of School Law and Type of School Law Training - Non-School System Workshop*

Subscale		Sum of Squares	df	Mean Square	F	p(F)
Student Rights	Between Groups	.53	1	.53	.45	.50
	Within Groups	322.38	273	1.18		
	Total	322.91	274			
Counselor/ Employee	Between Groups	.28	1	.28	.20	.65
	Within Groups	372.69	273	1.37		
	Total	372.97	274			
Liability	Between Groups	.20	1	.20	.17	.68
	Within Groups	320.76	273	1.18		
	Total	320.96	274			
Special Education	Between Groups	.06	1	.06	.03	.87
	Within Groups	580.43	273	2.13		
	Total	580.49	274			
Total Score	Between Groups	3.79	1	3.79	.50	.48
	Within Groups	2061.98	273	7.55		
	Total	2065.76	274			

Table 4.16

*Results of ANOVA for Counselors' Knowledge of School Law and Type of School Law Training – Other*

		Sum of		Mean		
		Squares	df	Square	F	p(F)
Student Rights	Between Groups	.73	1	.73	.62	.43
	Within Groups	322.18	273	1.18		
	Total	322.91	274			
Counselor/ Employee	Between Groups	1.30	1	1.30	.97	.33
	Within Groups	371.67	273	1.36		
	Total	372.97	274			
Liability	Between Groups	.23	1	.23	.20	.66
	Within Groups	320.73	273	1.18		
	Total	320.96	274			
Special Education	Between Groups	.20	1	.20	.09	.76
	Within Groups	580.29	273	2.13		
	Total	580.49	274			
Total Score	Between Groups	.10	1	.10	.01	.91
	Within Groups	2065.66	273	7.57		
	Total	2065.76	274			

*Research Question 2e*

What is the relationship between school counselors' knowledge of school law and timeliness of school law training?

A one-way ANOVA was used to determine if there was a significant difference between the counselors' knowledge of school law and timeliness of school law training. For each category of timeliness, scores for respondents who had been trained during that time were compared to those who had been trained in other time categories. It was determined that there was no statistically significant difference between group mean scores ( $F = .36, p = .84$ ). Table 4.17 shows the results of comparing counselors' knowledge of school law and timeliness of school law training.

Table 4.17

*Results of ANOVA for Counselors' Knowledge of School Law and Timeliness of School Law Training*

		Sum of		Mean		
		Squares	df	Square	F	p(F)
Student Rights	Between Groups	6.77	4	1.69	1.34	.26
	Within Groups	340.22	269	1.27		
	Total	347.00	273			
Counselor/Employee	Between Groups	2.49	4	.62	.45	.77
	Within Groups	370.45	269	1.38		
	Total	372.94	273			
Liability	Between Groups	7.40	4	1.85	1.60	.17
	Within Groups	310.85	269	1.16		
	Total	318.25	273			
Special Education	Between Groups	2.68	4	.67	.32	.87
	Within Groups	565.30	269	2.10		
	Total	567.97	273			
Total Score	Between Groups	11.21	4	2.80	.36	.84
	Within Groups	2094.47	269	7.79		
	Total	2105.68	273			

*Research Question 2f*

What is the relationship between school counselors' knowledge of school law and membership in professional associations? Membership in associations was calculated by summing the number of associations of which respondents were members.

Performing a Pearson correlation did not result in a statistically significant relationship between knowledge of school law and membership in professional associations ( $r = .08$   $p = .17$ ). Table 4.18 shows the results of comparing counselors' knowledge of school law and membership in professional associations.

Table 4.18

*Results of a Pearson Correlation for Counselors' Knowledge of School Law and the Number of Professional Associations of which Respondents were Members*

	Subscales				
	Student Rights	Counselor/Employee	Liability	Special Education	Total Score
N = 278					
<i>r</i>	-.01	.06	.10	.04	.08
<i>p(r)</i>	.92	.29	.10	.48	.17

*Research Question 2g*

What is the relationship between school counselors' knowledge of school law and extent of involvement with legal action as it relates to their position as a secondary public school counselor over the past 10 years?

Independent t-tests were used to determine if there was a significant difference between the counselors' knowledge of school law and being threatened with legal action, being issued a subpoena, and appearing as a witness in a court of law. For each type of legal involvement, scores for respondents who had taken part in that type were compared to those who had not taken part in that type. It was determined that there was no statistically significant difference between counselors' knowledge of school law and being threatened with legal action. ( $t = .26, p = .79$ ). Conversely, it was discovered that there was a statistically significant difference between counselors' knowledge of school law and being issued a subpoena ( $t = 3.10, p = .00$ ). There was also a statistically significant difference between counselors' knowledge and the subscale of special education ( $t = 2.68, p = .00$ ). Counselors who had been issued a subpoena scored better than those who had not, specifically in the area of special education and total score. Similarly, it was also determined that there was a statistically significant difference between counselors' knowledge of school law and appearing in a court of law ( $t = 2.41, p = .02$ ). A statistically significant difference was found in the subscale special education ( $t = 2.31, p = .02$ ). Again, counselors who had appeared in court scored better than those who had not in the subscale of special education and total score. Tables 4.19 – 4.21 show the results of comparing school law knowledge and being threatened with legal action, being issued a subpoena, and appearing as a witness or defendant in a court of law.

Table 4.19  
*Results of t-tests for Counselors' Knowledge of School Law and Being Threatened with Legal Action*

Subscale		Mean	t	df	p(F)
Student Rights	Threatened	8.28	1.10	272	.27
	Not Threatened	7.98			
Counselor/Employee	Threatened	6.83	-1.27	272	.21
	Not Threatened	7.20			
Liability	Threatened	7.00	.64	272	.52
	Not Threatened	6.83			
Special Education	Threatened	7.61	.20	272	.84
	Not Threatened	7.54			
Total Score	Threatened	29.72	.26	272	.79
	Not Threatened	29.54			

Table 4.20  
*Results of t-tests for Counselors' Knowledge of School Law and Being Issued a Subpoena*

Subscale		Mean	t	df	p(F)
Student Rights	Subpoena	8.17	1.68	272	.09
	No Subpoena	7.92			
Counselor/Employee	Subpoena	7.27	.92	272	.36
	No Subpoena	7.13			
Liability	Subpoena	6.98	1.32	272	.19
	No Subpoena	6.79			
Special Education	Subpoena	7.93	2.68	272	<b>.00</b>
	No Subpoena	7.38			
Total Score	Subpoena	30.35	3.10	272	<b>.00</b>
	No Subpoena	29.22			

**Bold indicates significance at the .05 level**

Table 4.21

*Results of t-tests for Counselors' Knowledge of School Law and Appearing as a Witness or Defendant*

Subscale		Mean	t	df	p(F)
Student Rights	Witness	8.22	1.54	272	.12
	Never a witness	7.95			
Counselor/Employee	Witness	7.26	.56	272	.57
	Never a witness	7.15			
Liability	Witness	6.96	.86	272	.39
	Never a witness	6.82			
Special Education	Witness	7.96	2.31	272	<b>.02</b>
	Never a witness	7.45			
Total Score	Witness	30.39	2.41	272	<b>.02</b>
	Never a witness	29.36			

**Bold indicates significance at the .05 level**

### Supplemental Analysis

While not a research question, additional analyses also found that counselors with a teaching certificate scored significantly higher than those who did not on students rights ( $t = 2.41, p = .02$ ), counselor issues ( $t = 2.23, p = .03$ ), and total knowledge of school law ( $t = 2.85, p = .01$ ). Table 4.22 shows the results of comparing school law knowledge of counselors having a teaching certificate and counselors who do not.

Table 4.22  
*Results of t-tests for Counselors' Knowledge of School Law and Having Earned Teaching Certificate*

Subscale		Mean	t	df	p(F)
Student Rights	Teaching Cert.	8.19	2.41	274	<b>.02</b>
	No Teaching Cert.	7.86			
Counselor/Employee	Teaching Cert.	7.35	2.23	274	<b>.03</b>
	No Teaching Cert.	7.03			
Liability	Teaching Cert.	6.90	.86	274	.38
	No Teaching Cert.	6.79			
Special Education	Teaching Cert.	7.64	1.11	274	.27
	No Teaching Cert.	7.45			
Total Score	Teaching Cert.	30.09	2.85	274	<b>.01</b>
	No Teaching Cert.	29.13			

**Bold indicates significance at the .05 level**

### Summary

Chapter IV reports the findings and results of this study. Respondents consisted of 278 Virginia public secondary school counselors. Respondents completed a 40 true/false question assessment. Demographic, school information, and school law preparation data were also collected. Significant differences or relationships were found between knowledge of school law and school level, years of school counseling experience, not taking a school law credit course,

being issued a subpoena or appearing as a witness or defendant in court, and having earned a teaching license. No significant differences were found with highest degree earned, school-system workshop training, non-school system workshop training, other types of school law training, timeliness of training, membership in professional associations, and being threatened with litigation. The results found in Chapter IV assisted in making conclusions and recommendations discussed in Chapter V. Table 4.23 shows the summary of where significant differences/correlations were found.

Table 4.23

*Summary of Research Questions where Significant Differences/Correlations were found*

Research Question	Areas of School Law Knowledge				Total
	Student Rights	Counselor/ Employee	Liability	Special Education	
2a. School Level					
Middle	-	<b>Yes</b>	-	-	-
High	-	-	-	-	-
2b. Highest Degree					
Master's	-	-	-	-	-
Mater's + 30	-	-	-	-	-
Doctorate	-	-	-	-	-
Other	-	-	-	-	-
2c. Years of Experience					
Correlation	-	-	-	<b>Yes</b>	<b>Yes</b>
2d. School Law Training					
University Credit (none)	-	<b>Yes</b>	-	<b>Yes</b>	<b>Yes</b>
School-system workshop	-	-	-	-	-
Non-school system workshop	-	-	-	-	-
Other	-	-	-	-	-
2e. Timeliness					
0-2 years	-	-	-	-	-
3-4 years	-	-	-	-	-
5-10 years	-	-	-	-	-
10+ years	-	-	-	-	-
2f. Professional Association					
Correlation	-	-	-	-	-
2g. Legal Experience					
Threatened with litigation	-	-	-	-	-
Issued a subpoena	-	-	-	<b>Yes</b>	<b>Yes</b>
Appeared as a witness or defendant	-	-	-	<b>Yes</b>	<b>Yes</b>
Supplemental Question					
Teaching Certificate	<b>Yes</b>	<b>Yes</b>	-	-	<b>Yes</b>

## CHAPTER V

### Discussion

The purpose of this study was to assess the knowledge base of public secondary school counselors in specific areas of school law. Those specific areas were directly related to the issues public school counselors encounter within their job responsibilities. Based upon the literature review, the four specific areas of school law include student rights, counselor/employee issues, liability, and special education. The study analyzed the relationship between the knowledge base of public secondary school counselors and school level, highest degree earned, years of experience as a school counselor, type and timeliness of school law training, and membership in professional associations. The study also sought to find if public secondary school counselors, in the past 10 years, have been threatened with litigation, have been subpoenaed to appear in court, and/or have actually testified in a court of law. Four hundred sixteen randomly selected Virginia public secondary school counselors out of a list of 1,892 were sent a link to an online assessment. In addition to measuring school law knowledge, the assessment was developed to collect demographic and professional information as well. Statistical methods and analysis were utilized, which included descriptive statistics, analysis of variance (ANOVA), independent t-tests, and Pearson correlations, as appropriate.

The purpose of this chapter is to provide a general summary of my findings and discuss and make conclusions based upon the results of the study. Recommendations will ultimately be made for possible future study and the implications for Virginia's public secondary school counselors.

### Summary of Findings

The purpose of the research questions was to learn which independent variables, if any, had direct impacts on knowledge in four specific areas: student rights, counselor/employee issues, liability, and special education. The assessment was made up of 40 true/false questions. The breakdown of the questions in the four specific areas was the following: 10 questions with student issues, 10 questions with school counselor/employee issues, 10 questions with liability, and 10 questions with special education issues. A score for each of the four areas and then a total was found for each of the respondents.

Since this study found that the mean score was 74%, it can be stated that Virginia public secondary school counselors have an average knowledge of school law. School counselors' mean scores for the subscales were as follows: student rights (7.99/10), counselor/employee issues (7.14/10), liability (6.81/10), and special education (7.47/10). Scores on the assessment ranged from a low of eight to a high of 35. Subscales ranged from zero to 10. School counselors scored highest in the student rights subscale and the lowest in liability. Interestingly, liability was the subscale that Caldwell (1986) and Rawls (1997) found to be the lowest subscale as well. These results may suggest that further training should be made available to school counselors to lessen the threat of liability. Still, this is an improvement from Rawls' (1997) study where high school counselors had a less than adequate knowledge base (42%). The specific items in which counselors scored the lowest on each of the subscales are found in Tables 5.1 - 5.4.

Table 5.1  
*Lowest Scored Items on Student Rights Subscale*

Question	Item	% Answered Correct
1	A school system's policy to allow student-led, student initiated prayers at high school football games does not violate the Establishment clause.	29.9
2	Only under extreme circumstances, which could endanger student health and safety, does the Supreme Court believe strip searches of students by school officials are reasonable.	57.9
10	A student may be disciplined for off-campus activities by school authorities.	57.6

Within the students rights subscale, question one gave counselors the most difficulty. In the study, most counselors thought that a school system's policy to allow student-led student initiated prayers at football games did not violate the Establishment clause. However, in *Santa Fe Independent School District v. Doe* (2000), the Supreme Court decided that this type of prayer did violate the Establishment clause. A more recent Supreme Court case, *Redding v. Safford* (2009), where the court ruled that school officials' strip search of a female student for two Advil was unconstitutional, should have assisted more counselors in answering the second question correctly.

While it would probably benefit school counselors to have a better understanding of student discipline, the results show that school counselors may have scored lower on these questions because they usually do not handle this responsibility in their schools. This responsibility usually falls to assistant principals and principals.

Table 5.2  
*Lowest Scored Items on Counselor/Employee Subscale*

Question	Item	% Answered Correct
1	Confidentiality is a legal term which restricts counselors from divulging information obtained in a counseling session.	21.9
10	In Virginia, a transferring student's records can be sent to the student's next school district without parent permission.	41.7

Question one was missed most often in the counselor/employee subscale. As explained, Baker and Gerler (2008) define confidentiality as “a situation in which one has been entrusted with the secrets or private affairs of another” and it is an ethical term set forth by those in the profession (p. 96). Privileged communication is a legal term set by society through federal and state constitutions, statutes, regulations, and common law (Remley, Sikes, Ganderson, & Hermann, 2007). The Family Educational Rights and Privacy Act of 1974 (FERPA) does allow the release of a student's records without the permission of a parent to another school system (20 U.S.C. § 1232g(b)(1)(B)). The transferring school must first make the parent aware of the transfer and provide copies of the information if requested. Parents should also be given a chance to argue the validity of any documentation within the student's record (Kaminski, K., Cafferky, J., Ewing, E., & Lacy, D., 2008).

Table 5.3  
*Lowest Scored Items on Liability Subscale*

Question	Item	% Answered Correct
3	The Code of Virginia states that any educator can be held for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such educator's scope of employment.	10.4
9	A properly trained counselor with parental permission or a doctor's prescription is able to administer drugs to a student in the absence of the school nurse and is absolved from negligence if a mistake was made in the dosage and harm came to the student.	15.5
10	If a student cuts himself with a knife that was taken from a closed desk while the counselor was out of her office, mostly likely the counselor would be held liable.	36.7

The low scores on questions one through three were of concern since these items were developed with the Code of Virginia, *8.01-220.1:2* and *8.01-225* in mind. As stated previously, the Code of Virginia, *8.01-220.1:2* grants immunity for being held liable for civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such educator's scope of employment. Likewise, Virginia's Good Samaritan law, *8.01-225*, protects school employees from ordinary negligence. While tort laws are state specific, some courts have found school employees not liable for student injuries because of Good Samaritan laws, save harmless provisions, and exculpatory notes (Alexander & Alexander, 2009).

Table 5.4  
*Lowest Scored Items on Special Education Subscale*

Question	Item	% Answered Correct
5	Under the IDEA, an alteration in the delivery of related services, such as transportation, is considered a change in placement	59.7
7	School principals can permit the on-site delivery of special education services to students with disabilities whose parents have voluntarily enrolled them in private schools, including religious elementary and secondary schools.	48.9

Both items five and seven are referred to in IDEA and in Virginia state law. Counselors should be aware of these laws since they are usually a part of a school's IEP team.

Transportation is considered a related service in Virginia and is discussed when developing a student's IEP. While school systems are not required to grant any specific special education student services, IDEA states they must provide a level of general services to all special education students who are educated in their jurisdiction (Kaminski, et al., 2008).

#### *School Counselors' Knowledge of School Law and School Level*

This study determined that there was only a difference among groups with the subscale counselor/employee issues. Middle school counselors had slightly better mean scores than high school counselors; however, there was no significant difference with total score. Therefore, it can be concluded that school counselors' total extent of knowledge of school law is not related to the level at which they work. Similarly, Power's 2007 study on principal's extent of knowledge of special education law did not find a relationship with grade level. These results suggest that school systems should possibly consider offering training opportunities at both the middle and high school level rather than choosing just one.

*School Counselors' Knowledge of School Law and Highest Degree of Education Earned*

This study found that there were no significant differences between school counselors' knowledge and the attainment of advanced degrees. Therefore, it can be suggested that obtaining more degrees than needed to become a school counselor in Virginia does little to improve school law knowledge. Similarly, Rawls (1997) found that highest degree did not make a difference with knowledge on the tort liability and student rights subscales.

*School Counselors' Knowledge of School Law and Years of Experience*

From the results found in this study, it can be stated that school counselors with more experience tend to be more knowledgeable about school law. This may suggest that veteran counselors have had more exposure to legal issues and/or training so their knowledge is greater than those new to the school counseling field. This result differed from Rawls (1997), who found that years of experience did not relate to knowledge. Rawls' (1997) study found that 51% of school counselors had more than 12 years of school counseling experience compared to this study, which found that 52% of school counselors had eight or fewer years of experience. Additionally, only 28% of respondents had 12 or more years of counseling experience. This contrast between percentages may explain why more experience today relates to greater school law knowledge: there are fewer veteran counselors than in 1997.

*School Counselors' Knowledge of School Law and School Law Training Type*

It was found that there was a difference between knowledge and school law training type. Specifically, counselors who did not complete a university/college school law credit course scored slightly better overall than those who did. They also scored better in the counselor/employee and special education subscales. No statistically significant difference was found with counselors who participated in school-system workshops, non-school system

workshops, or any other type of school law training. These results suggest that school counselors' extent of knowledge of school law is not impacted by various training opportunities. Additionally, since those school counselors who did not have school law course credit scored higher than those who did, it may suggest that there are other methods of gaining school law knowledge, such as job experience. Once again, this finding differs from Rawls (1997), who indicated that those respondents who had some type of school law training scored significantly better than those who did not.

#### *School Counselors' Knowledge of School Law and Timeliness of School Law Training*

This study found timeliness of school law training had no statistical significance with knowledge of school law, similar to the results found by Rawls (1997). Since this study already suggested that school law training type had no significance with knowledge of school law, it should not come as a surprise that timeliness did not have any significance either.

#### *School Counselors' Knowledge of School Law and Membership in Professional Associations*

It was determined that there was no statistically significant relationship between counselors' knowledge and membership in professional associations. This result indicates that membership in professional associations does not correlate with school counselors' knowledge of school law. Conversely, Rawls (1997) found that counselors who were members of more than one association had higher mean scores than those who were not. Bauman (2008) notes that school counselors' membership in associations is somewhat greater than that of other professionals in the counseling field; however, compared to principals' and teachers' membership levels, school counselors are far behind. This could explain why this study found that membership did not relate to extent of school law knowledge.

*School Counselors' Knowledge of School Law and Extent of Involvement with Legal Action*

This study found there was no statistically significant difference between counselors' knowledge and with being threatened with legal action. However, it did discover that counselors who had been issued a subpoena or appeared in a court of law scored better than those counselors who had not. These results indicate that when school counselors are actually subpoenaed or appear in court, the experiences force them to become more knowledgeable about school law.

*School Counselors' Knowledge of School Law and having earned a Teaching Certificate*

While not an original research question, this study found a significant difference between counselors' knowledge and having earned a teaching certificate. School counselors who had earned their teaching certificate scored better than those school counselors who had not in the subscales student rights, counselor/employee issues, and total score. This could suggest that individuals who had taught prior to becoming a school counselor have had additional opportunities to learn about school law.

### Discussion of Questionnaire

The assessment was developed consisting of three parts: Part I: School Law Assessment; Part II: Personal and School Information; and Part III: School Law Preparation. Part I of the assessment consisted of 40 true/false questions. Each question was classified into one of the four specific subscales of school law (student rights, school counselor/employee issues, liability, and special education). Each subscale had 10 questions. Part II of the assessment was composed of questions that related to being female or male, position held, years as a counselor, being a certified teacher, highest degree earned, and grade level. The last part of the assessment asked questions related to school law training, professional association membership, and extent of

involvement in litigation. The mean score correct on the 40-question true/false assessment was 29.42 (74%). School counselors' mean scores correct were highest with student rights (7.99/10) and lowest with liability (6.81/10). Scores on the total assessment ranged from a low of 8 to a high of 35.

To eliminate guesses, future studies should consider using a multiple choice option. This will also help improve internal reliability. Future studies may also want to define grade level or provide an "other" category to account for the few school counselors who work at schools with mixed middle and high school grades. This will assist in assessment completion and simplifying with data analysis.

#### Limitations of the Study

1. There was no control as to whether or not the individuals who responded received assistance from outside resources while participating in the assessment.
2. Only school counselors whose email addresses could be identified were eligible to participate in the assessment.
3. Some school counselors are also guidance directors; therefore, they could be exposed to school law related experiences more frequently due to their additional administrative responsibilities.

#### Delimitations of the Study

1. The assessment focused only on student rights, counselor/employee issues, liability, and special education.
2. The assessment was only sent to school counselors in Virginia.

### Findings of the Study

The study found that, on average, counselors held 9.6 years of experience and nearly 80% of those who responded were female. Three-quarters stated that they had received at least a master's degree while another 41.7% indicated having earned their teaching license. More than 37% of school counselors who reported receiving school law training indicated the preparation was through university/college credit courses. A majority (19.8%) of school counselors said they had received school law training within the last 5-10 years. Almost half (46.4%) stated that they receive their current school law information from their school system. The American School Counselor Association and the Virginia School Counselor Association were the most represented professional associations in the study with 37.4% and 41.7% participation, respectively.

Only 6.5% of school counselors stated that they had been threatened with litigation. While small, this percentage is higher than in Hermann's 2002 study, where fewer than 1% of ASCA school counselors reported being threatened. Another 29.1% of school counselors indicated that they had been issued a subpoena. However, only 18.3% of school counselors reported that they had appeared as a witness or defendant in a court of law.

The study found the average mean score correct was 29.42 out of 40 (74%). School counselors performed the highest on the student rights subscale (80% correct). School counselors performed the lowest on the liability subscale (68% correct). It was found that there were no statistically significant differences between school law knowledge and school level, except with middle school scoring higher than high school within the counselor/employee subscale. No statistically significant difference was found between school law knowledge and highest degree earned. It was determined that there was a statistically significant positive

relationship between school law knowledge and years of experience. Interestingly, the only statistically significant difference that existed between school law knowledge and school law training type was with not taking a university/college credit, while timeliness of school law training made no significant difference. Having memberships in professional associations also did not have significance with school law knowledge. There were statistically significant differences between school law knowledge and being issued a subpoena and appearing as a witness or defendant in a court of law. Lastly, there were significant differences between counselors' knowledge and having earned a teaching certificate.

### Conclusions

Based upon the results of this study, conclusions can be made about Virginia public secondary school counselors' knowledge of school law. With an average score of 74%, there are still gaps in the school law knowledge of Virginia public secondary school counselors. Those gaps exist more so in the areas of counselor/employee issues and liability, where the average scores were no better than 71%.

The number of years of counseling experience has a positive relationship with knowledge of school law. These results suggest that veteran school counselors are possibly being exposed to more school law resources and/or more counseling experiences that directly relate to school law over a longer career. School counselors newer to the field may not have had the opportunities to gain as great a knowledge of school law.

Results from this study show that those school counselors who had been issued a subpoena or had appeared as a witness or defendant in court were more knowledgeable about school law than those who had not. These findings could suggest that, when faced with the possibility of appearing in court, school counselors should take the necessary steps to ensure they

are knowledgeable about certain aspects of school law. Interestingly, school counselors who were threatened with litigation did not show a difference in knowledge of school law from those who had not been threatened. This could imply that school counselors understand that they can be threatened with being sued, but do not take action until the threat becomes a reality. Since more than 18% of counselors have indicated that they have had to appear in court, it is critical that they be knowledgeable about school law.

### Recommendations

Several recommendations can be made based upon the results of this study. A study should be conducted assessing the extent of knowledge of school counselors at the elementary school level (K-6) in the Commonwealth of Virginia. Rawls (1997) studied high school counselors' knowledge of school law. This study assessed middle and high school knowledge. A future study should focus on school counselors' knowledge of school law at the elementary school level.

A similar study should be conducted in other states or at the national level. In this way states could begin measuring and comparing their school counselors' knowledge of school law. Strengths and weaknesses could then be identified and additional actions could be taken at the state level. Since the average mean score on the assessment was 74%, recertification requirements for all school counselors in Virginia should include continuing education credits in school law. Local school systems should also consider investing in training their school counselors in school law related issues. Consideration should also be given to providing additional training opportunities for newer counselors in the field, since the results found that years of experience do have a relationship with extent of school law knowledge. Specific

attention should be given to the area of liability, since this is where Caldwell (1986) and Rawls (1997) found knowledge to be the lowest.

Since obtaining college credit in a school law course did not significantly impact school counselors' school law knowledge, graduate school counseling preparation programs should consider reviewing/changing their methods for teaching students about school law. More Virginia graduate school counseling preparation programs should consider offering a school law credit course since only one school, Norfolk State University, appears to offer such a class. It should be noted that while course credit can be earned, mastery of the subject matter is critical to gaining a true understanding.

Professional associations should consider providing their membership more school law related resources. While nearly 70% (67.3%) of respondents indicated belonging to some type of professional association, this did not have a significant impact on knowledge of school law. Professional associations may want to examine the ways through which they are exposing their membership to school law related information.

This study should be conducted again within the next 10 years to determine if school counselors' knowledge of school law is increasing and whether they are being provided opportunities to learn about school law. Rawls (1997) found a mean score of 42% correct among 250 Virginia high school counselors. Knowledge of school law appears to have improved, since this study found a mean score of 74% correct. A future study could determine if this positive trend continues over another decade.

Based upon several comments made by the school counselors who participated in the study, more school law training should occur for current and/or aspiring school counselors at the school, district, and university levels. School counselors indicated the need is there. School law

training has been made available to school administrators; however, comments suggest that, given the opportunity, school counselors would take advantage of similar training.

#### Implications for Future Study

A future study should consider using multiple choice questions rather than straight true/false. This would assist in minimizing the effect of guesses and increase discrimination and reliability. A future study should also examine the reasons why graduate school counseling preparation programs do not offer more opportunities for students to be exposed to school law related issues. Since obtaining school law course credit did not have significance, a future study should determine the effectiveness of Virginia's university/college school counselor preparation programs in preparing future school counselors in school law. In addition to asking if respondents had earned university/college credit in school law, a future study should inquire if special education law credit was earned as well. This study only asked if respondents obtained school law credit, not special education law credit. The research question: "What is the relationship between school law knowledge and number of years of prior teaching experience?" should be included in a future study. Since this study found that school counselors who had earned their teaching certificate scored higher than those who had not in the subscales student rights, counselor/employee issues, and total score, additional research should be completed to examine possible reasons for these results.

A meta-analysis of previous studies conducted on knowledge of school law and school employees should be considered for additional research. Some studies to consider are Brabrand (2003), *Virginia Principals and School Law*, Caldwell (1986), *Virginia Principals and School Law*, Dumminger (1989), *Virginia Teachers and School Law*, Ivey (2008), *A Study of Virginia Administrators with Responsibility for Division Special Education Services and Knowledge of*

*Special Education School Law*, Power (2007), *A Study of Selected Virginia School Principals' Knowledge of Special Education Law*, and Rawls (1997), *Virginia High School Counselors and School Law*. Similarities and differences could be identified among the studies, then a comparison of group mean scores could be analyzed.

#### Summary

While Virginia public secondary school counselors' knowledge of school law has improved over the 12 years since Rawls (1997), there still seem to be gaps in understanding. More importantly, there does not appear to be a consistent or effective method for school counselors to obtain school law information or training. While overall knowledge of school law of counselors was found to be average, graduate school counseling programs, school systems, and professional associations should continue their efforts to provide the necessary school law resources needed to protect school counselors from possible liability.

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Appendix A  
School Counseling Preparation Programs in the Commonwealth of Virginia

The College of William & Mary\*

George Mason University

Hampton University\*

James Madison University\*

Liberty University\*

Longwood College

Lynchburg College

Marymount University\*

Norfolk State University\*

Old Dominion University\*

Radford University\*

Regent University\*

University of Virginia

Virginia Commonwealth University\*

Virginia State University

Virginia Tech\*

**\*Denotes responding**

## Appendix B

### School Law Issues related to School Counselors

#### Counselors' Responsibilities

1. counseling students who are suicidal
2. understanding confidentiality/privileged communication
3. working with students who have been sexually harassed/bullied
4. academic personal counseling
5. understanding parent rights
6. reporting child abuse
7. issues relating to special education
8. understanding federal, state, and local laws/policies

#### Student Rights

1. student searches and seizures
2. due process, suspensions, and expulsions
3. freedom of speech and press – 1<sup>st</sup> Amendment
4. student religious rights
5. FERPA – privacy regarding student information

#### Tort Liability

1. negligence and gross negligence

### Interview Questions

#### Counselors' Responsibilities

What should school counselors know about the law as it relates to:

1. counseling students who are suicidal?
2. confidentiality/privileged communication?
3. working with students who have been sexually harassed/bullied?
4. academic and personal counseling?
5. parental rights?
6. reporting child abuse?
7. special education?
8. specific federal, state, and local laws/policies?

#### Student Rights

What should school counselors know about the law as it relates to a student's rights and:

1. searches and seizures?
2. due process, suspensions, and expulsions?
3. freedom of speech and press?
4. religion?
5. FERPA – privacy regarding student information?

#### Tort Liability

1. What should a school counselor know about being sued for negligence and/or gross negligence?

Are there any additional areas that school counselors should have a strong understanding of as they relate to the law?

Appendix C  
Email and Survey sent to Graduate School Counseling Preparation Programs

Dear \_\_\_\_\_:

Below is a link to a secure survey inquiring about the school law related classes you currently offer to your graduate school counseling students. I am emailing this link to all of the graduate school counseling preparation programs in the Commonwealth of Virginia. The information I receive will be used as background research in my dissertation as it relates to the knowledge base of current school counselors in Virginia, specifically in the area of school law. Your assistance is very much appreciated as I pursue my doctorate in Educational Leadership and Policy Studies from Virginia Tech.

At your convenience, please go to the link provided and complete the 5-minute survey. If you have any questions or concerns, please call at 703-717-9710 or email [czarneck@vt.edu](mailto:czarneck@vt.edu)

[http://www.surveymonkey.com/s.aspx?sm=3g1smd\\_2f2QLNyMv5cy8Fvbg\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=3g1smd_2f2QLNyMv5cy8Fvbg_3d_3d)

Thank you for your time,

David A. Czarnecki

Dr. David Alexander & Dr. Pam Brott  
Dissertation Chair      Committee Member

Appendix C – continued  
Graduate School Counseling Preparation Program Survey

Please check the box that best describes your school counseling preparation program.

1. What is the name of the college/university that you represent? \_\_\_\_\_

2. Was a school law semester course taught as part of your school counseling preparation program?

Yes

No

If yes, please list the course number and name

\_\_\_\_\_

3. Was school law a required course for graduation?

Yes

No

4. If school law was not taught as a semester course, please list the course number(s) and name(s) in which school law was covered.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Did your graduate program offer any other seminars, activities, or professional development experiences that exposes counselors-in-training to school law related issues?

Yes

No

If yes, please list the seminar/activity name and length of time

\_\_\_\_\_

Appendix D  
Email sent to Virginia Public Secondary School Counselors

Dear Colleague:

I am a fellow public school counselor in Alexandria, Virginia currently working on my doctorate at Virginia Tech. My area of interest is assessing the knowledge base of Virginia's public school counselors specifically in the areas of school law. Litigation against school employees continues to rise. While principals and assistant principals are required to take a course in school law for their licenses, school counselors are not. For this reason, like school administrators, it is essential we have a sound understanding of school law related issues. I am requesting your assistance in determining if public secondary (middle/high) school counselors in Virginia have an adequate understanding of the law as it relates to your job responsibilities.

You were randomly selected from Virginia's Department of Education directory to complete secure online assessment via Survey Monkey at the link provided.

[http://www.surveymonkey.com/s.aspx?sm=vvFVeB28Bzuo7BebdJsgNw\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=vvFVeB28Bzuo7BebdJsgNw_3d_3d)

The assessment consists of 40 true/false questions and has been approved by Virginia Tech's Internal Review Board. It is meant to be confidential and no individual responses will be reported. If you choose to participate in this most important study, please go to the link above and complete the assessment. You can also complete the attached PDF then sent it to the address below. Completion of this assessment should take no longer than 20 minutes.

My goal for this assessment is to identify if there are gaps in school counselors' understanding as it relates to school law. Ultimately, this identification will assist principals, school systems, and graduate school counseling programs to develop additional training opportunities for counselors. By doing this, the real threat and fear of being liable in court can be reduced.

For every assessment completed, a donation will be made to St. Jude Children's Hospital ([www.stjude.org](http://www.stjude.org)), which is a hospital that treats children who have cancer and other diseases. In addition, every school counselor who completes the assessment will be automatically entered to win one of ten copies of *The Law of Schools, Students, and Teachers in a Nut Shell*, written by Dr. M. David Alexander. This assessment has been approved by Virginia Tech's Department of Education. Participation is completely voluntary and you can decide to discontinue at any time. If you have any questions, I can be reached at 703-717-9710 or [czarneck@vt.edu](mailto:czarneck@vt.edu). Thank you in advance for helping complete this most important assessment.

Thank you –

David Czarnecki

2132 Lee Highway  
Arlington, VA 22201

Appendix E  
Virginia Public Secondary School Counselors and School Law

Part I.

Student Rights

1. A school system's policy to allow student-led, student-initiated prayers at high school football games does not violate the Establishment clause.  
**False**
2. Only under extreme circumstances, which could endanger student health and safety, does the Supreme Court believe strip searches of students by school officials are reasonable.  
**True**
3. A school official must obtain a search warrant before searching a student's locker.  
**False**
4. Pupils have unlimited constitutional rights as individuals to exercise free speech in public schools.  
**False**
5. Public school students are not required to recite the Pledge of Allegiance if they object because of religious reasons.  
**True**
6. The school district must allow pupils the freedom of expression if it does not materially or substantially disrupt school activities.  
**True**
7. School officials may review and/or edit the content of a valedictorian speech at graduation.  
**True**
8. Students may organize a gay and lesbian club if the school allows other non-curricular clubs to meet.  
**True**
9. School officials may implement a dress code for students.  
**True**
10. A student may be disciplined for off-campus activities by school authorities.  
**True**

Counselor/Employee Issues

1. Confidentiality is a legal term which restricts counselors from divulging information obtained in a counseling session.

**False**

2. Personal notes recorded by a counselor are confidential and may not be subpoenaed by the court.

**False**

3. All cases of suspected child abuse must be reported to Child Protective Services unless the reporting would put the child in danger.

**False**

4. Local school boards have the discretionary power to approve student release-time programs to attend religious instruction off of school grounds during school hours.

**True**

5. A public school counselor may read from the Bible and pray with a student, providing there is substantial community support for these exercises.

**False**

6. A school counselor may be fired for their oral and written statements clearly critical of school officials, even if there is no evidence that the statements had any effect on school operations or objectives.

**False**

7. School counselors who have attained continuing contract status may be dismissed for failure to comply with Virginia school laws and regulations providing proper procedures for dismissal are followed.

**True**

8. Before a minor can receive an abortion in the Commonwealth of Virginia parental consent must be granted.

**True**

9. The Code of Virginia requires school counselors to contact at least one of the student's parents when he or she has a reason to believe that there is an imminent risk of suicide.

**True**

10. In Virginia, a transferring student's records can be sent to the student's next school district without parent permission.

**True**

### Liability

1. Ethical codes established by licensing authorities take precedence over state and federal statutes, and school board policy when in conflict.

**False**

2. A student's injury, which could have been foreseen and prevented by "reasonable" care by an adult, may constitute negligence.  
**True**
3. The Code of Virginia states that any educator can be held for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such educator's scope of employment.  
**False**
4. Courts in other states have found school counselors liable for negligence for providing inaccurate academic counseling as it relates to graduation requirements.  
**True**
5. School officials may be personally liable for not stopping a student's bullying of another student if they are deliberately indifferent to the victim's claims of being harassed.  
**True**
6. A parent may not challenge the accuracy of school records maintained on their children.  
**False**
7. The in loco parentis standard permits school counselors to take responsibility to protect students under their control while involved in school activities.  
**True**
8. The courts have ordered schools to pay for special education students' tuition at private schools when the public schools failed to provide an appropriate education for those students.  
**True**
9. A properly trained counselor with parental permission or a doctor's prescription is able to administer drugs to a student in the absence of the school nurse and is absolved from negligence if a mistake was made in the dosage and harm came to the student.  
**True**
10. If a student cuts himself with a knife that was taken from a closed desk while the counselor was out of her office, most likely the counselor would be held liable.  
**False**

### Special Education

1. Spanish speaking parents attended an eligibility meeting for their son for special education services. They were given a copy of the Procedural Safeguards Notice that was written in English. The parents did not speak English. The school was in violation of the IDEA for not sending Procedural Safeguards Notice in Spanish.  
**True**

2. At an initial IEP meeting for a student with learning disabilities, no regular education teacher was present although there were five other special education teachers present. The student was scheduled to spend a small amount of time in the regular classroom. The school district is in violation of IDEA by not having the regular education teacher present.  
**True**
3. A special education student with an MR disability was placed in a regular education classroom with a half day aide. She maintained steady academic progress even though she was half a year behind her classmates. School officials felt she needed to be in a more restrictive environment. School officials have a sound reason for a change in placement.  
**False**
4. A parent transferred a second grader into a new school division at the end of May. Her child had a history of learning difficulties and the parent requested a formal evaluation for her child to be assessed for special education services. The principal informed the mother that testing could not be initiated until the start of the new school year. The principal followed appropriate regulatory guidelines.  
**False**
5. Under the IDEA, an alteration in the delivery of related services, such as transportation, is considered a change in placement.  
**True**
6. Parents claimed that the school district authorized a change in placement without their permission because their child with disabilities was suspended for 10 days. The 10-day suspension was considered a change in placement.  
**False**
7. School principals can permit the on-site delivery of special education services to students with disabilities whose parents have voluntarily enrolled them in private schools, including religious elementary and secondary schools.  
**True**
8. A parent appealed the results of a manifestation determination and demanded that school officials postpone any long term suspension or expulsion until an expedited hearing could be held. This parent had a right to make these demands.  
**True**
9. A student involved in a serious car accident returned to school in a fragile health state and as a quadriplegic. He needed full time one on one nursing services during the course of the school day. The school district claimed that they could not afford the expense of a full time nurse. The school district was required to pay for the full time nursing services.  
**True**

10. Prior to an IEP meeting, a school district placed a student in a special education class before the IEP meeting was convened and the IEP written. This action was in violation of IDEA.

**True**

Part II. – Personal and School Information

1. Email address? \_\_\_\_\_ (for raffle purposes only)
2. Are you
  - a. Male
  - b. Female
3. What position do you hold?
  - a. School counselor
  - b. Guidance Director
  - c. Guidance Director with student case load
  - d. None
  - e. Other (specify)
4. How many years have you completed as a school counselor? \_\_\_\_\_  
(whole numbers only, ex. 3, 8, 15, 20)
5. Have you ever been a certified teacher?
  - a. yes
  - b. no
6. What is your highest degree earned
  - a. Bachelor's
  - b. Master's
  - c. Master's + 30 or Educational Specialist
  - d. Doctorate
  - e. Other – please explain \_\_\_\_\_
7. At what grade level do you work (click all that apply)
  - a. 5
  - b. 6
  - c. 7
  - d. 8
  - e. 9
  - f. 10
  - g. 11
  - h. 12

## Part III. – School Law Preparation

8. What type of school law preparation did you receive (check all that apply)
  - a. College/University course for credit
  - b. School system workshop
  - c. Non-school system workshop
  - d. None
  - e. Other – please explain \_\_\_\_\_
  
9. How recent was your school law preparation
  - a. 0-2 years
  - b. 3-4 years
  - c. 5-10 years
  - d. 10 + years
  - e. No school law preparation
  
10. How do you receive current school law information (check all that apply)
  - a. School system trainings
  - b. Publications
  - c. Conferences
  - d. None
  - e. Other – please explain \_\_\_\_\_
  
11. Do you belong to (Check all that apply)
  - a. National Association of Secondary Principals - NASSP
  - b. Virginia Association of Secondary Principals - VASSP
  - c. American School Counselor Association - ASCA
  - d. Virginia School Counselor Association - VSCA
  - e. American Counseling Association - ACA
  - f. None
  - g. Other – please explain \_\_\_\_\_
  
12. Within the past 10 years, have you been threatened with litigation as a public school counselor?
  - a. Yes
  - b. No
  
13. Within the past 10 years, have you been issued a subpoena to appear in court as it relates to your job as a public school counselor?
  - a. Yes
  - b. No
  
14. Within the past 10 years, have you actually been a witness or have testified in a court of law as it relates to your job as a public school counselor?
  - a. Yes
  - b. No

Appendix F  
Individual Comments from Respondents

“I will be really happy to see the results of this survey. Sure made me think.”

“I just completed your survey. Very interesting questions.”

“In response, I found your survey and topic very interesting. I also found my knowledge of school law to be subpar, at best.”

“This was very interesting. I did my best but was not sure of many questions.”

“Thank you for doing this important work. I believe this is a huge, gaping hole in the preparation of school counselors, both in graduate programs and in the county as far as what is supplied for new employees. Nowhere has this been covered. We do ethics to death, which is also critical, but learn nothing of this other vital piece of the work. The closest we ever got was discussing how ethical guidelines and the law.”

“Your area of interest is a DEFINITE area needing yearly updates, conferences, etc. for public school counselors, and St. Jude’s is my favorite charity.”

“I’m glad I was picked to take the survey– it was actually quite interesting to see the limits of what I know in regards to the law and my daily job. A class in school law is definitely something that *should* be part of a counseling degree.”

“I completed the survey this morning. I think that this is very important research as I don’t believe that my counselor education program focused enough on school law. I have much to learn in this area.”

“Thank you for providing this opportunity. I’m sure that I did not answer all (if many at all!) correct. As you review your results, please be sure to advocate for more training to be offered during contract hours for current counselors, and during college classes for those in school.”

“Done.....Wow.....Those were great questions.....Filled it out, but I was left wondering whether or not I knew the correct answers.”

“Wow! I’m more clueless than I imagined!”