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In-services and empty threats: The roles of organizational practices and workplace experiences in shaping U.S. educators' understandings of students' rights



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ABSTRACT

This paper applies theoretical frameworks from organizational sociology and sociolegal studies to examine factors associated with educators' conceptions of students' rights to due process in disciplinary actions. We analyze a unique representative data set of 402 teachers and 200 administrators in U.S. high schools to investigate how educators understand the rights to due process articulated in the Supreme Court case of *Goss v. Lopez* (1975). We then examine whether individual characteristics and participation in organizational processes are associated with educators' understandings of students' due process rights. Findings suggest that educators' understandings of students' entitlements to due process vary with educators' level of education, experience of school-related legal threats, and participation in district or diocese in-service training programs on students' rights. Results point to organizational climate as a key factor in shaping educators' rights conceptions and the role of law in American schools.

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1. Introduction

Concerns over student discipline and educational achievement have long occupied sociologists of education. More recently, however, research has explored these issues in relation to students' legal entitlements in American schools (Arum, 2003; Schimmel and Militello, 2007; Davies, 2009; Militello et al., 2009; Morrill et al., 2010; Bracy, 2010). Findings show that teachers and administrators hold limited knowledge of students' rights, despite citing the availability of due process for students facing disciplinary action as a leading legal concern that impacts their day-to-day decisions on the job (Militello and Schimmel, 2008; Militello et al., 2009). To address educators' lack of "legal literacy," researchers have called for increased training on school law (Schimmel and Militello, 2007; Davies, 2009; Militello et al., 2009).¹ The prevailing belief is that adequate training on students' due process rights will allay fears of litigation among educators (Schimmel

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¹ When referring to teachers and administrators in a general sense, we use the term "educators." If we mean to point out distinctions between these groups of school actors, we use "teacher" and/or "administrator." Furthermore, "administrator" will typically refer to site-based administrators, such as principals and assistant principals. When noting the potential role of district administrators, we explicitly make this distinction.

and Militello, 2007; Militello et al., 2009) and ensure the kind of fair and consistent student discipline associated with positive educational outcomes (Gottfredson, 2001; Arum, 2003; Gottfredson et al., 2005; Davies, 2009; Militello et al., 2009).

Although existing literature highlights educators' lack of "legal literacy" (Findlay, 2007; Militello and Schimmel, 2008; Davies, 2009; Militello et al., 2009), analyses of individuals' "correct" and "incorrect" knowledge of the law ignore the substantial ambiguity as to the due process rights the law requires when educators discipline students. Like most Supreme Court decisions, the ruling on *Goss v. Lopez* (1975) leaves significant room for interpretation of the due process rights students hold when facing suspension from school. Organizations respond to the ambiguity in law by outlining policies and procedures that shape the meaning of the law within the organizational context (Edelman, 1992; Edelman et al., 1993; Hoffmann, 2003; Albiston, 2005; Marshall, 2005). Similarly, we argue that the organizational processes implemented in response to the legal environment (Edelman, 1990; Edelman and Suchman, 1997; Arum, 2003) likely shape the meaning of law in U.S. high schools. In analyzing the role of law in American schools, research must take into account the likelihood that educators' experiences within school organizations inform their understandings of the rights entitled to students facing disciplinary sanctions.

Using a unique representative data set of 402 teachers and 200 administrators in U.S. high schools, we first investigate how educators understand the rights afforded under the Supreme Court case of *Goss v. Lopez* (1975). Next, we examine how educators' understandings of rights are associated with individual characteristics, school sector, experiences with perceived rights violations, training on students' rights, legal threats, formal lawsuits, and participation in organizational grievance procedures. To complement our quantitative analysis, we also draw upon in-depth interviews from a set of five public high schools across the United States.

Results show that educators' hold expansive conceptions of students' rights under *Goss v. Lopez*. Educators' conceptions of students' rights are not significantly associated with their involvement in formal lawsuits or interactions with lawyers on school-related matters. However, participation in organizational programs that disseminate information on school law within districts and dioceses (namely in-service trainings) is associated with expanded conceptions of students' rights. In contrast, educators with graduate degrees and educators who experience a school-related legal threat tend to view students' rights as more limited in scope. Our findings suggest that educators' understandings of students' rights are associated with multiple factors within school organizations that may serve to shape the meaning of school law. These findings underscore the importance of accounting for the influence of organizational climates and procedures in shaping educators' rights conceptions and the role of law in American schools.

2. Background

The extant literature claims that students' rights to due process are a leading legal concern for educators (Militello and Schimmel, 2008), yet an area of school law in which educators hold limited knowledge (Menacker and Pascarella, 1983; Gullatt and Tollett, 1997a, 1997b; Schimmel and Militello, 2007; Militello and Schimmel, 2008; Militello et al., 2009). Education researchers argue that inadequate knowledge of school law is associated with rights violations, litigation (McLoughlin et al., 1983; Ogletree and Lewis, 1985), and impaired judgment in enacting firm and consistent discipline (Davies, 2009; Militello et al., 2009). However, these studies fail to acknowledge the inherent ambiguity in law and do not engage important sociological and sociolegal approaches to how the law actually operates in different organizational contexts. Training on students' rights may indeed relate to changes in how teachers and administrators structure their routines and perform discipline in schools (Militello et al., 2009). Nevertheless, educators are also embedded in organizations that shape the meaning of students' rights through the interpretations of the law outlined in organizational procedures.

Sociolegal scholars and organizational sociologists have found that law regulating organizations is often ambiguous. Furthermore, the process of disseminating legal knowledge involves multiple layers in which actors may inflate the threat of legal sanctions or transform the meaning of law altogether (Edelman, 1992; Edelman et al., 1992, 2001). Organizations respond to the ambiguity of law and demands from the legal environment by constructing formal structures, such as grievance procedures, which mediate law (Edelman, 1990, 1992). Therefore, "new law can exert strong pressures on organizations to adopt structures or practices that demonstrate attention to normative expectations" of how organizations should treat actors (Edelman, 1990: 1406). Once in place, the compliance professionals who staff these structures may shape understandings of law and the extent to which law poses a threat to organizations (Lipsky, 1980; Lufler, 1980; Edelman, 1990, 1992; Edelman et al., 1992, 2001, 2011; Hawkins, 1992; Hoffmann, 2003). Research on organizational procedures dealing with discrimination (Bumiller, 1988; Engel and Munger, 2003; Edelman et al., 2011), sexual harassment (Gutek, 1985; Marshall, 2005), and family leave (Albiston, 2005) all note that such practices shape conceptions of rights, regardless of formal written policy.

In her account of sexual harassment grievance procedures, Marshall (2005) argues that managerial support, or lack thereof, alters how individuals define sexual harassment. In their enactment of formal written policy on sexual harassment, managers are able to deflect grievances to protect the interests of the organization, and to redefine all but the most egregious offenses as something less serious than harassment. Marshall found that women came to adopt managerial conceptions of what constitutes sexual harassment. In contrast, Hoffmann's (2003) study of dispute resolution procedures in two taxi companies shows that the grievance culture in an organization affects workers' likelihood of using formal grievance procedures as opposed to more informal procedures or taking no action. In a collectively owned worker cooperative that encouraged

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