

# NEW ZEALAND SECONDARY SCHOOL PRINCIPALS’ UNDERSTANDING OF LAWS RELATING TO STUDENT DISCIPLINE

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## ABSTRACT

Education is a fundamental human right. For some children their right to education is denied when they are removed from school on disciplinary grounds. New Zealand Ministry of Education data shows substantial variation across schools in the rates of formal discipline measures. Additionally, there is evidence of children being unlawfully removed from school on disciplinary grounds. Responding to suggestions that principals may be unaware of the relevant law, this article reports on research conducted in New Zealand that explores principals’ familiarity with laws relating to student discipline. Consistent with overseas research into principals’ legal literacy, the findings indicate wide variation in principals’ awareness of the relevant law. Knowing how informed principals are about laws relating to student discipline means that support can be offered to principals to address any gaps in their understanding.

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## I INTRODUCTION

All New Zealand children have the right to education in a world-class inclusive education system.<sup>1</sup> Where a student is to be removed from school on disciplinary grounds this must be done in accordance with the provisions set out in the *Education and Training Act 2020* (NZ) ('*ETA20*').<sup>2</sup> However, evidence of students being unlawfully removed from school on disciplinary grounds, coupled with inconsistent implementation of the formal discipline provisions in *ETA20*, raises concerns over principals' awareness and understanding of laws relating to student discipline.<sup>3</sup> Without a sound understanding of their legal obligations and in the absence of clear support and guidance, principals may unintentionally compromise a child's rights and ultimately their right to education (*ETA20* s 33). Results from this study, the first to involve a nationwide survey of New Zealand secondary school principals' awareness and understanding of laws relating to student discipline, suggest a need for professional development for principals in a number of aspects of law relating to student discipline.

This article is organised into three parts. Part I explains the background to the study. It begins by setting out the legal and policy framework relating to student discipline in New Zealand. The primary focus is on the formal discipline measures of stand-down and suspension (referred to as 'the formal discipline measures'). Concerns regarding principals' application of these provisions are outlined and situated within the wider context of research into principals' legal literacy. Part II details the development and administration of the 'Student Discipline: Law, Policy and Practice Survey'. Finally, Part III reports on the survey results and considers the implications of these for principals' professional development.

### A *Student Discipline: New Zealand's Legal and Policy Framework*

The value placed on education in New Zealand society is reflected in both legislation and policy. *ETA20* s 33 guarantees the right to a free education to every child aged between 5 and 19 years. Various policies, including *Success for All*,<sup>4</sup> the *National Education Goals*<sup>5</sup> and the *Statement of National Education and Learning Priorities*,<sup>6</sup> reinforce the right to education in an inclusive education system that values all children. New Zealand has also demonstrated its commitment to education by ratifying numerous international treaties that protect the right to education, including the United Nations' *Convention on the Rights of the Child*<sup>7</sup> and

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<sup>1</sup> *Education and Training Act 2020* (NZ) s 33 ('*ETA20*'); Ministry of Education (NZ), *Success for All* (2010) <<https://www.education.govt.nz/assets/Documents/School/Inclusive-education/SuccessForAllEnglish.pdf>>; Ministry of Education (NZ), *The Statement of National Education and Learning Priorities (NELP) & Tertiary Education Strategy (TES)* (2020) <<https://assets.education.govt.nz/public/Documents/NELP-TES-documents/FULL-NELP-2020.pdf>>. The latter was issued by the Minister of Education pursuant to *ETA20* s 5.

<sup>2</sup> *Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999* (NZ) Rule 8.

<sup>3</sup> See below Part I.B.

<sup>4</sup> Ministry of Education, *Success for All* (n 1).

<sup>5</sup> 'The National Education Goals (NEGs)', *Ministry of Education* (Web Page, 30 August 2019) <<https://www.education.govt.nz/our-work/legislation/negs>>. The Goals were last amended in December 2004.

<sup>6</sup> Ministry of Education, *Statement of National Education and Learning Priorities* (n 1).

<sup>7</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 28–29.

*Convention on the Rights of Persons with Disabilities*.<sup>8</sup> Given the fundamental importance of education, any denial of this right, either temporarily or permanently, should be reserved for extreme circumstances.

Such circumstances are set out in *ETA20* ss 79–89, which specify the disciplinary grounds on which a principal may remove a student from school and the process that must be followed. The least serious of the formal discipline measures is a stand-down, whereby the principal may remove a student from school for up to five school days.<sup>9</sup> A limitation on the total period of time for which a student may be stood down within both a term and a year of five days and ten days, respectively, is imposed.<sup>10</sup> No such time limitations are imposed where a principal suspends a student. Instead, it is the board of trustees<sup>11</sup> who determines whether to lift the suspension so the student can return to school,<sup>12</sup> impose conditions for the student’s return to school,<sup>13</sup> or impose the most serious response of excluding a student under 16 years of age<sup>14</sup> or expelling a student over 16 years of age.<sup>15</sup> Further regulation of the practices and procedures that are to be followed under *ETA20* ss 79–89 is provided by way of the *Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999* (NZ) (‘Rules’). Additionally, the Ministry of Education (‘the Ministry’) has issued guidelines to assist principals and boards of trustees with meeting their legal obligations.<sup>16</sup> The guidelines reinforce Parliament’s intention in *ETA20* ss 79–89 by stipulating that the formal discipline measures are actions of ‘last resort’.<sup>17</sup>

## B *The Current Context: Cause for Concern*

The Ministry reports annually on the rates of formal discipline measures. Latest figures show an increase in stand-down and suspension rates at a national level.<sup>18</sup> Interestingly, at an individual school level, Ministry data shows substantial variation across secondary schools in

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<sup>8</sup> *Convention on the Rights of Persons with Disabilities*, UN Doc A/RES/61/106 (24 January 2007, adopted 13 December 2006) art 24.

<sup>9</sup> *ETA20* s 80(2).

<sup>10</sup> *Ibid* s 80(2)(a)–(b).

<sup>11</sup> In the New Zealand education system, every state and state-integrated school and kura has a board of trustees. The board is responsible for the governance and management of the school.

<sup>12</sup> *ETA20* s 81(1)(a).

<sup>13</sup> *Ibid* s 81(1)(b).

<sup>14</sup> *Ibid* s 81(1)(c).

<sup>15</sup> *Ibid* s 83(1)(c). It is only where a student is excluded that the principal has a legal obligation to try and arrange another school for the student to attend (at s 81(6)).

<sup>16</sup> Ministry of Education (NZ), *Guidelines for Principals and Boards of Trustees on Stand-downs, Suspensions, Exclusions and Expulsions: Part 1 — Legal Options and Duties* (December 2009) <<https://assets.education.govt.nz/public/Documents/School/Managing-and-supporting-students/Stand-downs-suspensions-exclusions-and-expulsions-guidelines/17-5-18-SuspensionLegalGuideWEB-1.pdf>>.

<sup>17</sup> *Ibid* 6.

<sup>18</sup> ‘Stand-downs, Suspensions, Exclusions and Expulsions from School’, *Education Counts* (Web Page) <<https://www.educationcounts.govt.nz/indicators/main/student-engagement-participation/stand-downs-suspensions-exclusions-expulsions>>. This is based on 2019 data, which is the most recent data available on the website at the time of this publication.

the rates of stand-downs and suspensions.<sup>19</sup> Schools with similar profiles have marked differences in their stand-down and suspension rates.<sup>20</sup> This is consistent with data gathered by YouthLaw Aotearoa ('YouthLaw'), which shows alarming discrepancies in the way that individual schools respond to student misbehaviour.<sup>21</sup> One of the reasons for this, YouthLaw suggests, is 'substantial misunderstanding'<sup>22</sup> among principals and boards alike as to the scope of their authority to discipline students under the *Education Act 1989* (NZ),<sup>23</sup> and the requirements of the principles of natural justice.

In addition to errors being made when a student is disciplined under *ETA20* s 80, there is evidence of unlawful disciplinary practices occurring. These include principals using provisions that relate to exemptions or restrictions on attendance<sup>24</sup> to send students home on disciplinary grounds,<sup>25</sup> and students being sent home from school as a disciplinary measure without the principal invoking *ETA20* s 80. The latter is colloquially referred to within the education sector as a 'Kiwi suspension',<sup>26</sup> and includes situations where a principal suggests to a student's parents that they remove their child from the school as a preferable alternative to the child facing the board disciplinary committee, which could result in exclusion or expulsion.<sup>27</sup> All such practices are unlawful, as the *Rules* specify that the only way in which a principal can send a student home from school on disciplinary grounds is by standing-down or suspending the student.<sup>28</sup> While the Ministry has condemned these unlawful removals,<sup>29</sup> it does not collect data on such practices, making it difficult to know how widespread they are.<sup>30</sup>

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<sup>19</sup> 'Find Your Nearest School', *Education Counts* (Web Page) <<https://www.educationcounts.govt.nz/find-school>>.

<sup>20</sup> 'Profile' refers to school decile, region, area type and ethnic and gender composition. For an explanation of the school decile system, see below n 92.

<sup>21</sup> Jen Walsh, 'Barriers to Education in New Zealand: The Rise of Informal Removals of Students in New Zealand' (Research Report, YouthLaw Aotearoa, 2016) <<http://youthlaw.co.nz/resources>>. YouthLaw is a community law centre that provides free legal services to anyone aged under 25. They also carry out research and make submissions on law and policy affecting children and young people.

<sup>22</sup> *Ibid* 6.

<sup>23</sup> Repealed by *ETA20*.

<sup>24</sup> In particular *Education Act 1989* (NZ) ss 19, 27, repealed with minor amendments by *ETA20* ss 77, 45.

<sup>25</sup> Andrew Smith, 'New Zealand Families' Experience of Having a Teenager Excluded from School' (2009) 27(2) *Pastoral Care in Education* 89; Jen Walsh (n 21).

<sup>26</sup> The earliest use of the term the author could locate was in Jan Breakwell, 'Control and Management of Schools: Disciplinary Powers of Boards of Trustees' (1993) 5(4) *Education and the Law in New Zealand* 99. Despite being referred to as a 'Kiwi suspension', this practice is not confined to New Zealand. For a discussion of this practice in England and Wales, see, eg, Office of the Children's Commissioner for England, *Report on Illegal Exclusions: 'Always Someone Else's Problem'* (Report, 2013) <[https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/Always\\_Someone\\_Elves\\_Problem.pdf](https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/Always_Someone_Elves_Problem.pdf)>.

<sup>27</sup> Robert Ludbrook, 'School Exclusions in Australia and New Zealand: Review of Laws and Policies' (2003) 1 *Education Law Journal* 15; Adele Redmond, 'Talks Underway to Pilot Appeals Panel for School Board of Trustees' Decisions', *Stuff* (online, 11 October 2017) <<https://www.stuff.co.nz/national/education/97758384/talks-under-way-to-pilot-appeals-panel-for-school-boards-of-trustees-decisions>>.

<sup>28</sup> *Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999* (NZ) Rule 8.

<sup>29</sup> John Gerritsen, 'Illegal School Suspensions on the Rise: Report', *Radio New Zealand* (online, 17 October 2016) <<https://www.rnz.co.nz/news/national/315796/illegal-school-suspensions-on-the-rise-report>>.

<sup>30</sup> YouthLaw Aotearoa, 'Out of School Out of Mind: The Need for an Independent Education Review Tribunal' (Research Report, 2012) <<http://youthlaw.co.nz/resources>>; Jen Walsh (n 21).

Evidence of these practices is primarily drawn from complaints made to YouthLaw<sup>31</sup> and the Office of the Children’s Commissioner for Aotearoa,<sup>32</sup> along with media reports.<sup>33</sup> YouthLaw has suggested that there has been a ‘dramatic increase’ in these unlawful removals over time.<sup>34</sup> During the period between 2011 and 2015, the number of cases of unlawful removals that YouthLaw dealt with tripled.<sup>35</sup> Interestingly, Ministry data shows that there was a decrease in formal discipline measures during this same period.<sup>36</sup> Despite evidence of unlawful removals occurring and errors being made during the discipline process, there have not been any studies in New Zealand investigating whether principals are aware that such actions are unlawful. Indeed, writing back in 1994 about student discipline, Casey called for further research in the area and specifically questioned whether ‘principals and boards are conversant enough with the *Education Act* and the *Ministry of Education Guidelines* to handle suspension cases properly and fairly’.<sup>37</sup>

### C Principals’ Legal Literacy

Internationally the importance of principals having an understanding of education law has received considerable attention from researchers. Studies across a range of jurisdictions have highlighted the relevance of the law to principals’ daily practice.<sup>38</sup> There is widespread agreement in the literature that, while principals do not need law degrees<sup>39</sup> or to be legal

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<sup>31</sup> Jen Walsh (n 21).

<sup>32</sup> Justice Andrew Becroft, ‘Is New Zealand the Best Place in the World to Educate a Child?’ (Guest Lecture, Equity through Education Symposium, Massey University, 13 February 2019).

<sup>33</sup> ‘Are School Exclusions Happening under the Radar?’, *Radio New Zealand Nine to Noon* (online, 19 July 2021) <<https://www.rnz.co.nz/national/programmes/ninetoon/audio/2018804539/are-school-exclusions-happening-under-the-radar>>; ‘Boy Unlawfully Suspended from School’, *Stuff* (online, 10 September 2019) <<https://www.stuff.co.nz/national/education/115661238/boy-unlawfully-suspended-from-school>>.

<sup>34</sup> Jen Walsh (n 21) 34.

<sup>35</sup> *Ibid.*

<sup>36</sup> ‘Stand-downs, Suspensions, Exclusions and Expulsions’ (n 18).

<sup>37</sup> Cathy Casey, ‘Suspensions and Expulsions in New Zealand State Schools’ (1994) 3 *New Zealand Annual Review of Education* 253.

<sup>38</sup> For the United States, see, eg, Howard Eberwein, ‘Raising Legal Literacy in Public Schools, a Call for Principal Leadership: A National Study of Secondary School Principals’ Knowledge of Public School Law’ (PhD Thesis, University of Massachusetts, 2008). For Malaysia, see, eg, Fatt Hee Tie, ‘A Study on the Legal Literacy of Urban Public School Administrators’ (2014) 46(2) *Education and Urban Society* 192. For Australia, see, eg, Allison Trimble, ‘Education Law, Schools, and School Principals: A Mixed Methods Study of the Impact of Law on Tasmanian School Principals’ (PhD Thesis, University of Tasmania, 2017); Paul McCann, ‘Principals’ Understandings of Aspects of the Law Impacting on the Administration of Catholic Schools: Some Implications for Leadership’ (PhD Thesis, Australian Catholic University, 2006). For Kuwait, see, eg, Ayesha Alazmi, ‘Principals’ Knowledge of School Law in Kuwait: Implications for Professional Development’ (2021) 35(1) *International Journal of Educational Management* 283. For Canada, see, eg, Nora Findlay, ‘In-School Administrators’ Knowledge of Education Law’ (2007) 17(2) *Education Law Journal* 177.

<sup>39</sup> RD Mawdsley and JJ Cumming, ‘The Origins and Development of Education Law as a Separate Field of Law in the United States and Australia’ (2008) 13(2) *Australia and New Zealand Journal of Law and Education* 7; Douglas Stewart, ‘School Principals and the Law: A Study of the Legal Knowledge Needed and Held by Principals in Government Schools in Queensland’ (PhD Thesis, Queensland University of Technology, 1996).

experts,<sup>40</sup> an accurate understanding of the law as it relates to their role is required.<sup>41</sup> Without an understanding of the relevant law, principals may unknowingly compromise students’ rights, adversely affecting students’ educational opportunities<sup>42</sup> and life outcomes.<sup>43</sup>

Given the importance of legal knowledge to the principal’s role, studies have been conducted to assess principals’ understanding of laws that are relevant to their practice. Surveys containing legal knowledge questions have typically been used for this purpose.<sup>44</sup> While most studies have examined principals’ legal literacy across a range of areas of law relating to education, more recently a number of studies have focused on specific areas such as special education laws,<sup>45</sup> censorship laws<sup>46</sup> and cyberbullying.<sup>47</sup> Although the content and form of the survey questions used in these studies have varied, the findings with respect to the legal knowledge variable have been consistent: principals lack sufficient knowledge of education law. Table 1 illustrates this point by setting out the mean legal knowledge score from a selection of studies.

Table 1: Selection of studies exploring principals’ legal literacy

Author, year	Participants	Country	Measure	Mean legal knowledge score
Overturf, 2007* <sup>48</sup>	122 principals	United States: Wisconsin	Survey	49.8%
Findlay, 2007 <sup>49</sup>	193 principals	Canada: Saskatchewan Province	Survey	47.5%
Power, 2007* <sup>50</sup>	236 principals	United States: Virginia	Survey	65.6%

<sup>40</sup> Allison Trimble, Neil Cranston and Jeanne Allen, ‘School Principals and Education Law: What Do They Know, What Do They Need to Know?’ (2012) 18(2) *Leading & Managing* 46.

<sup>41</sup> Findlay (n 38); Mark Butlin and Karen Trimmer, ‘The Need for an Understanding of Education Law Principles by School Principals’ in Karen Trimmer, Roselyn Dixon and Yvonne S Findlay (eds), *The Palgrave Handbook of Education Law for Schools* (Springer, 2018) 3; Patrick Walsh, *Educational Management and the Law: A Practical Guide for Managers Involved in Pre-School, Primary, Secondary and Tertiary Education in New Zealand* (Longman, 1997).

<sup>42</sup> Tara M Brown, ‘Lost and Turned Out: Academic, Social, and Emotional Experiences of Students Excluded from School’ (2007) 42(5) *Urban Education* 432; Daniel Quin and Sheryl A Hemphill, ‘Students’ Experiences of School Suspension’ (2014) 25(1) *Health Promotion Journal of Australia* 52.

<sup>43</sup> Sheryl Ann Hemphill and John Hargreaves, ‘The Impact of School Suspensions: A Student Wellbeing Issue’ (2009) 56(3–4) *ACHPER Healthy Lifestyles Journal* 5.

<sup>44</sup> Eberwein (n 38); McCann (n 38); Trimble (n 38); Stewart, ‘School Principals and the Law’ (n 39); Perry A Zirkel, ‘A Test on Supreme Court Decisions Affecting Education’ (1978) 59(8) *The Phi Delta Kappan* 521. In some studies, other methods such as focus groups, interviews and document analysis have also been used.

<sup>45</sup> Suruchi Singh, ‘Knowledge of Special Education Law among Administrators in a Southern California Special Education Local Plan Area’ (PhD Thesis, Brandman University, California, 2015); Wendy Overturf, ‘Knowledge of Special Education Law among Individuals Recently Licensed as Principals in Wisconsin’ (PhD Thesis, Edgewood College, 2007); Donna M Power, ‘Study of Selected Virginia School Principals’ Knowledge of Special Education Law’ (PhD Thesis, Virginia Polytechnic Institute and State University, 2007); Marie Boyd, ‘Public and Private School Principals’ Knowledge of Special Education Law’ (PhD Thesis, University of Nebraska, 2017).

<sup>46</sup> Philip Anderson and Karen Wetzal, ‘A Survey of Legal Knowledge of High School Principals on Censorship Issues’ (1982) 71(2) *English Journal* 34.

<sup>47</sup> N Purdy and C McGuckin, ‘Cyberbullying, Schools and the Law: A Comparative Study in Northern Ireland and the Republic of Ireland’ (2015) 57(4) *Educational Research (Windsor)* 420.

<sup>48</sup> Overturf (n 45).

<sup>49</sup> Findlay (n 38).

<sup>50</sup> Power (n 45).

Eberwein, 2008 <sup>51</sup>	493 principals	United States: Nationwide	Survey	58.7%
Singh, 2015* <sup>52</sup>	65 principals and assistant principals	United States: California	Survey	52.6%
Trimble, 2017 <sup>53</sup>	34 principals for survey, 26 interviews with a range of people in the Tasmanian education sector	Australia: Tasmania	Survey, interviews	52.7%
Boyd, 2017* <sup>54</sup>	97 private and public school principals	United States: Nebraska and Iowa	Survey	66%
Alazmi, 2021 <sup>55</sup>	369 principals	Kuwait: Nationwide	Survey	48.9%

\* Survey focused on knowledge of special education laws.

There have only been two New Zealand studies that have explored principals' knowledge of education law.<sup>56</sup> These were Master's theses with very small sample sizes of six<sup>57</sup> and eleven<sup>58</sup> principals, respectively. Additionally, both studies focused on principals' knowledge of various aspects of law, with only a small number of questions relating to student discipline. Consistent with overseas research, these studies found that the principals had limited knowledge of education-related law. Based on their findings, both authors recommended more extensive research into New Zealand principals' understanding of the law.

## II THE PROJECT

In light of the concerns outlined above regarding student discipline practices and principals' legal literacy, this study aimed to explore New Zealand secondary school principals' awareness and understanding of laws relating to student discipline.

### *A Research Method*

To achieve this study's objective, the 'Student Discipline: Law Policy and Practice Survey' was developed. The survey utilised a mixed methods design with both quantitative and qualitative questions designed to collect data that would provide an indication of principals' awareness and understanding of laws relating to student discipline. As discussed above, surveys have been used in previous studies exploring principals' legal literacy.<sup>59</sup> The survey

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<sup>51</sup> Eberwein (n 38).

<sup>52</sup> Singh (n 45).

<sup>53</sup> Trimble (n 38).

<sup>54</sup> Boyd (n 45).

<sup>55</sup> Alazmi (n 38).

<sup>56</sup> David Wardle, 'School Related Law: Do Principals Know What They Need to Know?' (Master's Thesis, Massey University, 2006); Priscilla Naidoo, 'Legal Literacy: Auckland Secondary School Principals' Understanding of Education Law' (Master's Thesis, Auckland University of Technology, 2018).

<sup>57</sup> Wardle (n 56).

<sup>58</sup> Naidoo (n 56).

<sup>59</sup> Douglas Stewart, 'Legalisation of Education: Implications for Principals' Professional Knowledge' (1998) 36(2) *Journal of Educational Administration* 129; Matthew Militello, David Schimmel and Howard Eberwein, 'If They Knew, They Would Change: How Legal Knowledge Impacts Principals' Practice' (2009) 93(1) *NAASSP Bulletin* 27; Trimble (n 38).

design was informed both by literature on survey best practice,<sup>60</sup> and by surveys used in previous studies to assess principals' legal literacy.<sup>61</sup>

The survey was organised into six sections. The first two sections gathered principal and school demographic data. Questions in the third and fourth sections asked principals to self-assess their knowledge of student discipline laws, before answering 21 questions relating to student discipline laws. The two final sections enquired into principals' experience with legal challenges as a result of student discipline decisions that they had made and their views on the legal framework relating to student discipline.

### 1 *Legal Knowledge Questions*

Although the survey design was informed by surveys used in previous studies, it was not possible to use the legal knowledge questions from these surveys to assess principals' legal literacy due to the different legal framework for student discipline in New Zealand. Additionally, as mentioned above, many of the surveys used in previous research have examined principals' legal literacy across a range of areas of their practice, with only a couple of questions relating to student discipline. The 21 legal knowledge questions ('LKQs') for this survey were therefore developed specifically for the New Zealand context. These questions were developed from statute, primarily the *Education Act 1989* (NZ)<sup>62</sup> and the *Rules*, along with common law.

Given the relative dearth of case law relating to student discipline in New Zealand, reference was made to data from a number of other sources to identify aspects of the law that were particularly pertinent in the New Zealand school context. Specifically, reference was made to data from the following agencies who provide advice and/or deal with complaints relating to students' access to education, including discipline issues: New Zealand Human Rights Commission,<sup>63</sup> Office of the Children's Commissioner for Aotearoa,<sup>64</sup> New Zealand School Trustees Association,<sup>65</sup> Office of the Ombudsman<sup>66</sup> and YouthLaw.<sup>67</sup> This data provided a useful insight into common legal issues relating to student discipline. For example, data from YouthLaw showed that the most common advice queries that they receive relate to schools'

<sup>60</sup> Don Dillman, Jolene Smyth and Leah Christian, *Internet, Phone, Mail and Mixed-Mode Surveys: The Tailored Design Method* (Wiley, 4<sup>th</sup> ed, 2014); Paul Lavrakas, *Encyclopedia of Survey Research Methods* (Sage, 2008).

<sup>61</sup> The six-section structure detailed above and the question format were guided in particular by the 'Principals' Education Law Survey' used by Eberwein (n 38).

<sup>62</sup> The *Education Act 1989* (NZ) was in force at the time the survey was administered. As noted at n 23 above, and in accompanying text, it has since been repealed and replaced by *ETA20*.

<sup>63</sup> Human Rights Commission, *Annual Report 2018/19* (Report, November 2019).

<sup>64</sup> Office of the Children's Commissioner for Aotearoa, Submission to Education and Workforce Committee, Parliament of New Zealand, *Access to Education for All at School: Submission of the Children's Commissioner for the Proposed Education Act Amendment about the Right to Attend School* (13 June 2019).

<sup>65</sup> New Zealand School Trustees Association, *NZSTA Membership Consultation: Supporting Students with Significant Behavioural Needs* (Report, 12 November 2018).

<sup>66</sup> 'Resources and Publications', *Ombudsman* (Web Page) <<https://www.ombudsman.parliament.nz/resources>>.

<sup>67</sup> YouthLaw Aotearoa, Submission to the Tomorrow's Schools Independent Taskforce, *Tomorrow's Schools Review* (2019); Kenton Starr and Naushyn Janah, 'Challenging the Barriers: Ensuring Access to Education for Children with Special Educational Needs' (Research Report, September 2016) <<http://youthlaw.co.nz/resources>>; Jen Walsh (n 21).

processes and, in particular, students being sent home on disciplinary grounds without the procedures under the *Education Act 1989* (NZ) being followed.<sup>68</sup> These aspects of the law were incorporated into the LKQs.

To establish its validity, the survey was reviewed by two academic experts. Their feedback was used to make minor amendments to the wording and order of several questions. The survey was then piloted with two principals to determine whether the questions were: (a) sufficiently clear; (b) logically ordered; and (c) effective in eliciting the desired information about principals' familiarity with laws relating to student discipline. Drawing on cognitive interviewing techniques,<sup>69</sup> the pilot participants were asked to explain their interpretation of each question and the response choices. Minor amendments to both question wording and layout were made based on feedback from the pilot. Once these amendments had been made the survey was reviewed by the Director of the Centre for Educational Evaluation and Monitoring at the University of Canterbury, based on his expertise in assessment and survey design.

## B *Sample*

An email invitation to complete the survey was sent to all principals from state and state-integrated secondary schools throughout New Zealand. Secondary school principals were chosen because the average age for students being formally disciplined is 13–15 years,<sup>70</sup> which corresponds to Years 9–11 at secondary school. The principals' names and their contact information were obtained from the Ministry. As shown in Figure 1 below, a total of 76 principals (23% of the principal population) from across the 10 education regions completed the survey.

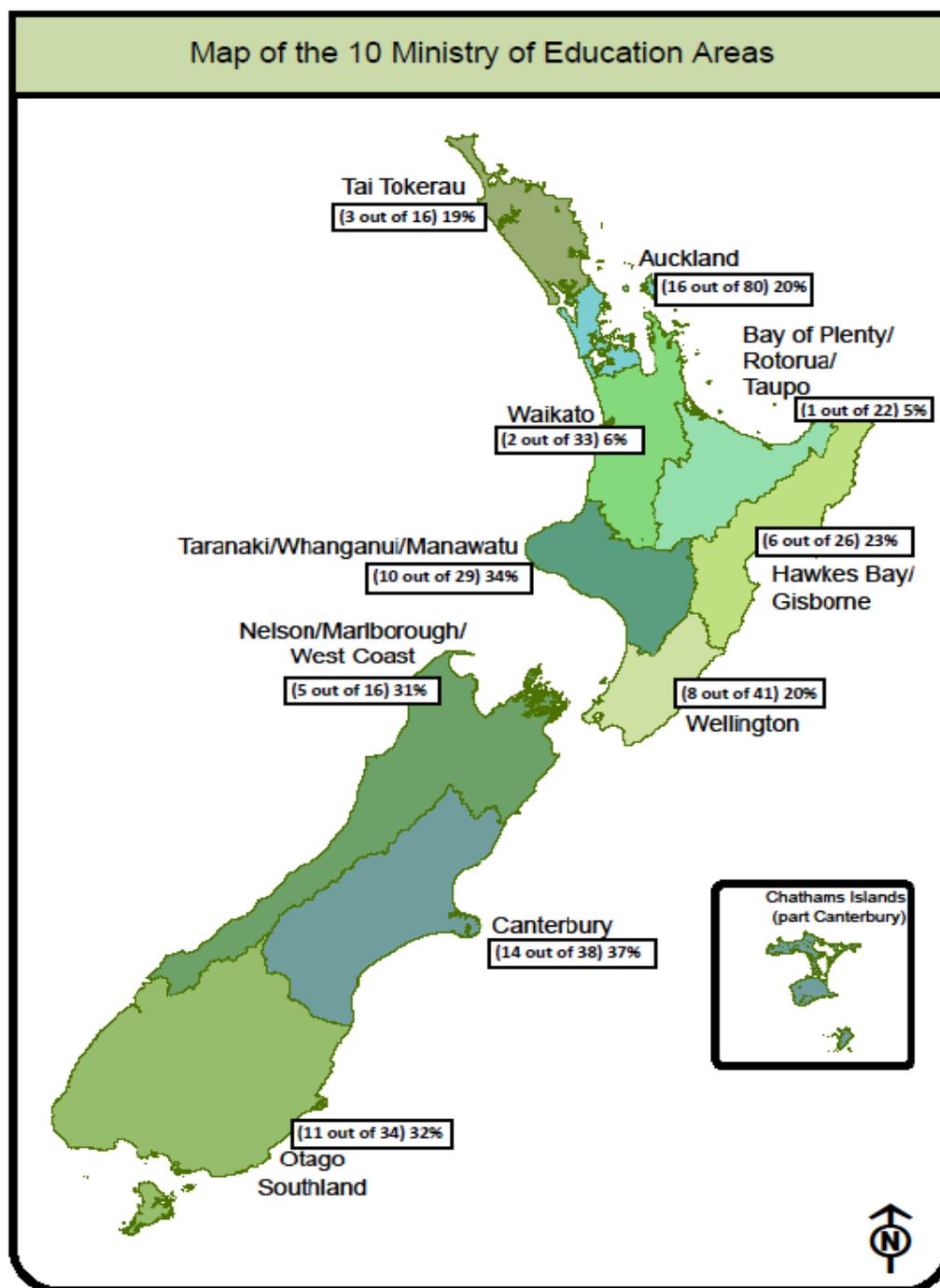
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<sup>68</sup> Starr and Janah (n 67); Jen Walsh (n 21).

<sup>69</sup> Gordon Willis, *Cognitive Interviewing: A Tool for Improving Questionnaire Design* (Sage, 2004).

<sup>70</sup> 'Stand-downs, Suspensions, Exclusions and Expulsions' (n 18).

Figure 1: Map of survey respondents from each education region



### *C Procedures*

The survey was delivered online using Qualtrics software. All principals who clicked the survey link from the email invitation were directed to an information and consent page. After reading this they were required to indicate their informed consent by ticking a checkbox. If they did so, they were directed to the first page of the survey. There was no time limit imposed for survey completion to enable principals to stop and start the survey if they were interrupted. The wide variation in the length of time taken by principals to complete the survey (from 9

minutes to 7 hours) suggests that some principals may have experienced such interruptions. A commitment statement was included in the information section at the start of the survey. This required participants to tick a box to indicate their commitment to answering the questions without assistance from an external source.<sup>71</sup> The study received ethical approval from the University of Canterbury’s Educational Research Human Ethics Committee.<sup>72</sup>

## D *Data Analysis*

The survey data was exported from Qualtrics into a Microsoft Excel spreadsheet, where the data was cleaned and coded. This included the removal of incomplete responses. The quantitative data was then imported into the Statistical Package for Social Sciences (version 25) for analysis, and the qualitative data was uploaded to NVivo 12 for analysis.

### 1 *Legal Knowledge Questions*

Total performance scores were calculated for the 21 LKQs, with a maximum of 28 points available. As shown in Table 2, with the exception of LKQ3, one point was awarded for each correct response to an LKQ. For LKQ3, one point was available for each of the four questions (a, b, c, d) relating to the issue of jurisdiction. An additional point was also available for each of the four branch questions (9a, 10a, 11a, 20a).<sup>73</sup>

Table 2: Points awarded for legal knowledge questions

Question number	Points
1, 2, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19, 21	16
3a, b, c, d	4
9, 9a, 10, 10a, 11, 11a, 20, 20a	8
<b>Total</b>	<b>28</b>

The qualitative data from the open-ended questions was quantified so that it could be statistically analysed alongside the other quantitative survey data.<sup>74</sup> This involved assigning a numerical value of zero or one to each text response based on the extent to which the respondent demonstrated an understanding of the relevant law. The criteria for making these judgements were reviewed by the same two academic experts who reviewed the survey. Additionally, the scoring methodology was reviewed by a retired lecturer with specific expertise in administrative law and whose legal commentary has been cited by the courts in cases involving judicial review of student discipline decisions.

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<sup>71</sup> Research has shown commitment statements to be more effective than requests or time limits in reducing cheating on online surveys. See, eg, Scott Clifford and Jennifer Jerit, ‘Cheating on Political Knowledge Questions in Online Surveys: An Assessment of the Problem and Solutions’ (2016) 80(4) *Public Opinion Quarterly* 858.

<sup>72</sup> Reference number 2019/48 ERHEC.

<sup>73</sup> For these branch questions, an additional question was only displayed to respondents who chose a specific answer.

<sup>74</sup> Margarete Sandelowski, Corrine I Voils and George Knafl, ‘On Quantitizing’ (2009) 3(3) *Journal of Mixed Methods Research* 208.

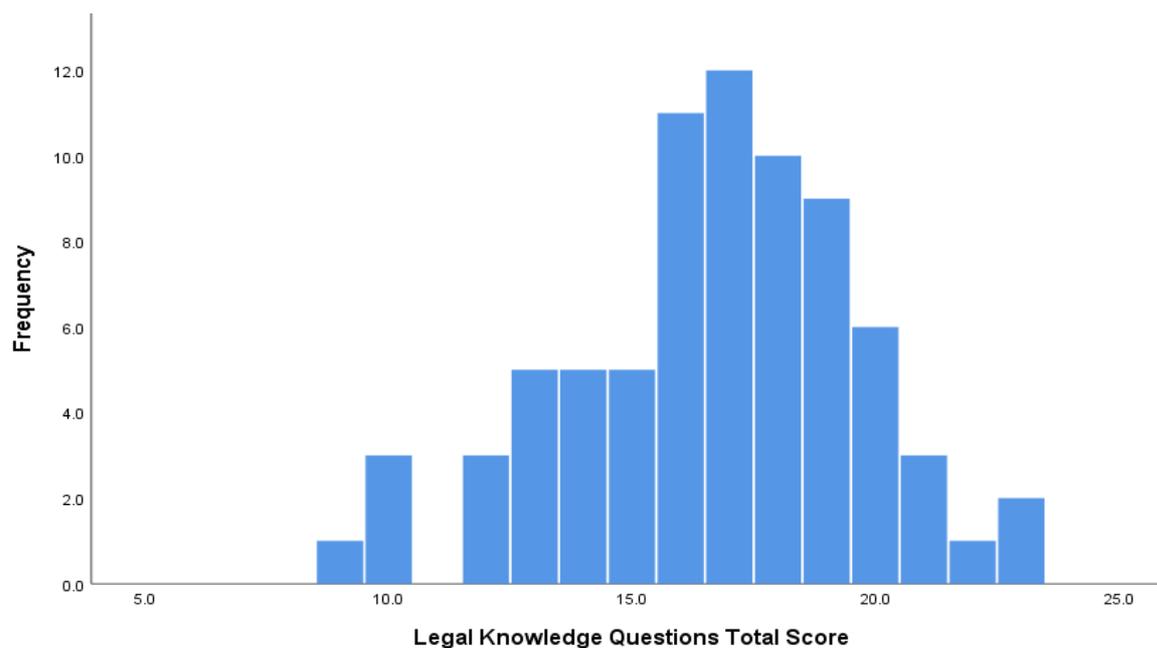
### III RESULTS AND DISCUSSION

This section provides an overview of the survey results. It begins by reporting principals’ total performance scores for the LKQs, before discussing the results for a selection of individual LKQs. Relationships between principals’ legal knowledge scores and a range of school- and principal-level variables are then explored along with differences in legal knowledge scores within variable groups.

#### A *Total Performance Scores*

As outlined above, a legal knowledge score was calculated for principals who completed the survey, based on their answers to the 21 LKQs. Figure 2 below shows the range in scores, from 9.0 (32.1%) to 23.0 (82.1%) out of a possible 28 points, with a mean legal knowledge score of 16.7 (59.5%) and a standard deviation of 3.0.<sup>75</sup> The mean legal knowledge score is consistent with the results from overseas studies that have used surveys to assess principals’ legal literacy,<sup>76</sup> and the range is similarly reflective of the wide variation in principals’ legal knowledge that has been reported in the literature.<sup>77</sup>

Figure 2: Principals’ total scores on legal knowledge questions



#### B *Individual Legal Knowledge Questions*

To provide a deeper insight into principals’ awareness and understanding of the various aspects of laws relating to student discipline that were assessed in the survey, frequency counts and

<sup>75</sup> Kurtosis and skewness statistics were examined and deemed to be approximately normal.

<sup>76</sup> See Table 1 above.

<sup>77</sup> See, eg, Boyd (n 45) where scores ranged from 45% to 85%.

percentages were calculated for individual LKQs. A selection of the results that are most relevant to the areas of concern identified in the preceding literature review is discussed below.

Questions with the highest rates of correct responses and that therefore seemed to be well understood by principals included the maximum length of time for which a student may be stood down at any one time (92.0%,  $n = 69$ ) and within one year (90.7%,  $n = 68$ ). Most principals (92.9%,  $n = 65$ ) were aware that there is a statute that sets out the laws relating to stand-down and suspension of a student. However, of the 65 principals who answered the question correctly, only a smaller percentage were able to specify the statute (78.6%,  $n = 44$ ). Incorrect answers included the '*Ministry of Education Guidelines*' and the '*Health and Safety Act*'. This result is consistent with Wardle's 2006 study involving New Zealand primary school principals, where only two principals (33%) said they were familiar with the *Education Act 1989* (NZ).<sup>78</sup> Given that the Act is the primary source of law in relation to student discipline, it is concerning that there is not a higher level of familiarity with this statute.

The highest percentage of correct responses was for LKQ20 (97.4%,  $n = 74$ ), which asked whether a principal has discretion when it comes to deciding whether to stand-down or suspend a student. However, a smaller proportion (73.2%,  $n = 52$ ) were able to answer LKQ20a correctly by explaining the purpose of this discretion. Responses were accepted as correct if the principal referred to the need for a case-by-case or individualised approach. Among the principals who answered this question incorrectly, there appeared to be some confusion between the exercise of discretion and the principles of natural justice. For example, respondents made comments such as, '[t]o ensure there is no bias decisions made. Student has the opportunity to be heard',<sup>79</sup> or simply stated, 'principles of natural justice'.<sup>80</sup>

Closely related to LKQ20 and LKQ20a, was LKQ1. Principals were invited to select from the options of 'true', 'false', 'unsure' and 'sometimes' in response to the statement, 'Students who are disciplined for the same behaviour must receive the same outcome'. Again, the majority (86.8%,  $n = 66$ ) of principals answered this correctly by selecting 'false'. Of concern, however, is that 13.1% of principals ( $n = 10$ ) responded with either 'true' or 'unsure'. Taken together, the results for these three questions (LKQ20, LKQ20a, LKQ1) suggest that while most principals recognise that they have discretion when disciplining students, there may be less understanding of how and why that discretion should be exercised. Support for this suggestion may be garnered from judicial review decisions and investigations carried out by the Ombudsman into student discipline decisions. Analysis of these decisions and recommendations shows that one of the main errors made by principals involves the failure to properly exercise their statutory discretion. This includes the fettering of their discretion by

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<sup>78</sup> The *Education Act 1989* (NZ) was the main source of a principal's legal authority at the time of Wardle's study: Wardle (n 56).

<sup>79</sup> P123. Codes beginning with 'P' were given to survey respondents to ensure anonymity when reporting results.

<sup>80</sup> P107, P112.

rigid reliance on a rule or policy,<sup>81</sup> and the failure to take into account all relevant matters when exercising their discretion.<sup>82</sup>

The highest rate of ‘unsure’ responses was recorded in relation to LKQ5, which explored principals’ understanding of the legal status of school rules. Twelve principals (16%) were unsure whether school rules sometimes take precedence over legislation. A further 18.4% ( $n = 14$ ) answered this question incorrectly, indicating that these principals may not realise that school rules are subject to other legislation, such as *ETA20* and the *New Zealand Bill of Rights Act 1990* (NZ). The status of school rules was also examined in LKQ2. Principals were asked whether a student could be sent home immediately if they break a school rule. Of the 23.7% ( $n = 18$ ) who answered this question incorrectly, the majority chose the ‘sometimes’ option and stated that a student could be sent home immediately either (a) on health and safety grounds or, (b) if the student’s parents had agreed to him or her being sent home. This suggests that some principals may not be aware that a student can only be sent home on disciplinary grounds if he or she has been stood down or suspended.<sup>83</sup> The results for these two questions (LKQ2 and LKQ5), which relate to the legal status of school rules, are significant when considered in the context of the concerns discussed above regarding students being unlawfully removed from school.

Two questions investigated principals’ familiarity with the principles of natural justice. Across both questions the percentage of correct responses was low. The first of these questions, LKQ7, asked principals to identify the principles of natural justice from a list of options. Only 3% ( $n = 4$ ) of the 75 principals who answered this question did so correctly. The second question asked principals to select the statements that described the principles of natural justice from a list of three options. Of the 74 principals who responded to this question, only 20.3% ( $n = 15$ ) answered it correctly by identifying the two statements that applied. All principals correctly identified that the principles of natural justice are aimed at ensuring students are treated fairly during the discipline process. However, more principals (25.7%,  $n = 19$ ) selected the incorrect option of the principles being a fixed set of rules than selected the correct option (21.6%,  $n = 16$ ) of the principles differing depending on the circumstances of each student’s case. The results for these two questions relating to natural justice closely reflect the findings from previous studies both in New Zealand<sup>84</sup> and overseas.<sup>85</sup> Familiarity with the principles of natural justice is critical for principals in ensuring the student discipline process is carried out in a fair and impartial manner. Indeed, concern over the lack of procedural fairness during the discipline process was one of the key reasons behind the introduction of the current legislative

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<sup>81</sup> *M & R v S and Board of Trustees of Palmerston North Boys’ High School* [2003] NZAR 705; *D v M and Board of Trustees of Auckland Grammar School* [2003] NZAR 726.

<sup>82</sup> Ombudsman New Zealand, *Investigation of Decision to Expel a High School Student with Aspergers* (Final Opinion No 178591 (W60658), December 2014); *Battison v Melloy* [2014] NZHC 1462.

<sup>83</sup> *Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999* (NZ) Rule 8.

<sup>84</sup> See Naidoo ( $n = 56$ ), where the 11 principal survey respondents were described as lacking understanding of the principles of natural justice; Wardle ( $n = 56$ ), where only one of the six primary school principals was able to provide a comprehensive explanation of the principles of natural justice.

<sup>85</sup> See, eg, McCann ( $n = 38$ ).

framework.<sup>86</sup> This is reflected in *ETA20*, which specifically identifies one of the purposes of the provisions in ss 79–89 as being to ensure that individual cases are dealt with in accordance with the principles of natural justice.<sup>87</sup>

### C Mean Legal Knowledge Score on Selected Variables

Inferential statistics were used to explore relationships between selected principal- and school-level variables, along with differences within variable groups in relation to the mean legal knowledge score. The conventional level for statistical significance ( $p \leq 0.05$ ) was applied for all analyses.

There were no significant differences in the legal knowledge variable across any of the following school-level variables: region, authority (state or state-integrated), decile, gender (co-educational, single sex boys, single sex girls), area type (rural or urban) and PB4L School-Wide.<sup>88</sup> Similarly, there were few statistically significant differences among the legal knowledge scores when the data was disaggregated by principal-level variables. Males scored slightly higher than females, with a mean score of 16.9 (61.0%) as compared to 16.0 (57.2%). However, this difference was not statistically significant ( $t = 1.3$ ,  $df = 74$ ,  $p = .20$ ). There was also no association between the number of years a principal had been in their role and their legal knowledge score ( $r = -.01$ ,  $N = 76$ ,  $p = .97$ ). This result is consistent with findings from numerous overseas studies where no significant relationship was found between principals' survey scores and their years of experience.<sup>89</sup> Additionally, although the majority of principals (85.5%,  $n = 65$ ) had received training in laws relating to student discipline, no statistically significant difference was found between principals who had and had not received training ( $t = -1.99$ ,  $df = 11.6$ ,  $p = .07$ ). While this result may have been influenced by the small number of principals in the 'no training' ( $n = 11$ ) group relative to the 'training received' group ( $n = 55$ ), it is consistent with findings from several previous studies.<sup>90</sup> It has been suggested that the nature and duration of such training, which typically involves a half- or full-day workshop or seminar covering a range of areas of law, may account for these results.<sup>91</sup> Among principals in this study who had received training, most had attended a workshop (38.9%,  $n = 42$ ) or seminar (47.2%,  $n = 51$ ), with only 5.6% ( $n = 6$ ) having completed a postgraduate course with content relating to student discipline laws.

One variable where there was a significant difference in legal knowledge scores between groups was in relation to legal action. Thirty-eight principals (50%) reported facing actual or threatened legal action as a consequence of a student discipline decision that they had made.

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<sup>86</sup> Education Legislation Amendment Bill 1997 (NZ).

<sup>87</sup> *ETA20* s 78(c).

<sup>88</sup> PB4L (Positive Behaviour for Learning) School-Wide is a behaviour support framework based on the Positive Behavioural Interventions and Supports (PBIS) framework developed at the University of Oregon in the 1990s. It has been implemented in over 800 schools in New Zealand.

<sup>89</sup> See, eg, Boyd (n 45); McCann (n 38); Overturf (n 45); Singh (n 45). But see also Eberwein (n 38) and Trimble (n 38), who found that more experienced principals had higher legal knowledge scores.

<sup>90</sup> McCann (n 38); Stewart, 'School Principals and the Law' (n 39).

<sup>91</sup> Stewart, 'School Principals and the Law' (n 39); Eberwein (n 38).

The proportion of principals who had faced legal action increased the higher the school decile group,<sup>92</sup> with 38.1% of principals at decile one to three ( $n = 21$ ) schools facing legal action compared to 58.3% of principals at decile eight to ten schools ( $n = 24$ ). This result likely reflects access-to-justice issues and highlights the importance of the disputes panels that are to be established under *ETA20* and that will be free to access.<sup>93</sup> Interestingly, principals who had faced actual or threatened legal action had a significantly higher mean legal knowledge score than those who had not ( $t = -2.1$ ,  $df = 74$ ,  $p = .04$ , Cohen's  $d = 0.5$ ). This suggests that experiencing legal action may increase a principal's understanding of laws relating to student discipline. Qualitative data gathered from principals supports this suggestion, indicating that for many principals learning occurs through making mistakes.<sup>94</sup> Considered alongside the result relating to the influence of training on principals' legal knowledge score, this highlights the importance of understanding the features of effective training both in terms of content and delivery. To be effective, training must have a meaningful impact on principals' practice.

#### D Limitations

While this study provides a useful insight into principals' familiarity with laws relating to student discipline, it has several limitations. First, although diverse and broadly nationally representative in terms of principal and school demographics, the sample was self-selected. It is possible that the principals who responded to the survey had a particular interest in student discipline laws. This study does not therefore claim that those who took part are representative of the New Zealand secondary school principal population. Second, the survey question format may have affected the results. Questions that required principals to tick all the correct options in order to get the question correct were potentially more difficult than dichotomous questions. The dichotomous question format may also have oversimplified some aspects of the law. Finally, knowledge of the law does not necessarily translate into application of the law in daily practice. The second phase of this study is intended to address several of these limitations by using semi-structured interviews to explore how principals apply the law to a variety of student discipline fact scenarios.

#### IV CONCLUSION

Notwithstanding these limitations, this study provides a valuable insight into New Zealand secondary school principals' awareness and understanding of laws relating to student discipline. Consistent with overseas studies of principals' legal literacy,<sup>95</sup> the survey results highlight a number of gaps in New Zealand secondary school principals' knowledge of the

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<sup>92</sup> Deciles are used in New Zealand to target funding to state and state-integrated schools. A school's decile is a measure of the socio-economic position of its student community relative to other schools throughout the country. For further information about how deciles are calculated, see 'School Deciles', *Ministry of Education* (Web Page, 26 May 2021) <<https://www.education.govt.nz/school/funding-and-financials/resourcing/operational-funding/school-decile-ratings>>.

<sup>93</sup> *ETA20* ss 216–36 enable the establishment of these panels. No date has yet been set for their establishment.

<sup>94</sup> This data was gathered during phase two of this project, which involved semi-structured interviews with 16 of the 76 principals who responded to the survey.

<sup>95</sup> See above n 38.

relevant law. These results are significant when considered in the context of concerns discussed in Part I of this article over students' right to education being undermined by unlawful removal from school and inconsistent implementation of the formal discipline provisions in *ETA20*. The introduction under *ETA20* of minimum eligibility criteria for principal appointments,<sup>96</sup> along with a Leadership Centre,<sup>97</sup> offers a great opportunity to provide principals with support and guidance to ensure their legal obligations are met and children's rights are protected throughout the discipline process. The fact that 92% of survey respondents said they would change their discipline practices if they found out that they were unlawful, indicates an appetite for such training. Careful consideration now needs to be given to ensuring the content and delivery of such training translates into meaningful changes in practice.

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<sup>96</sup> The eligibility criteria are to be set by the Minister following reasonable efforts to consult with children, young people and their parents, whānau and communities, along with a range of relevant national bodies (*ETA20* s 617(2)). The criteria are intended to, inter alia, ensure consistency in the skills, competencies, knowledge and expertise of principals (at s 617(1)(a) and (d)).

<sup>97</sup> The establishment of a national Leadership Centre was one of the recommendations made by the Tomorrow's Schools Taskforce. The Teaching Council of Aotearoa New Zealand has accepted an invitation from the Minister of Education to establish the Leadership Centre.