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## A Study Designed To Investigate A New Dimension For Educational Accountability...Malpractice

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A STUDY DESIGNED TO INVESTIGATE A NEW DIMENSION FOR  
EDUCATIONAL ACCOUNTABILITY...MALPRACTICE

*University of Nevada, Las Vegas*

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A STUDY DESIGNED TO  
INVESTIGATE A NEW DIMENSION FOR  
EDUCATIONAL ACCOUNTABILITY . . . MALPRACTICE

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A Dissertation  
Presented to  
the Faculty of the College of Education  
University of Nevada, Las Vegas

---

In Partial Fulfillment of  
the Requirements for the Degree of  
Doctor of Education

---

by  
Marshall C. Darnell  
June 30, 1977

DISSERTATION APPROVAL  
THE COLLEGE OF EDUCATION  
UNIVERSITY OF NEVADA, LAS VEGAS

This dissertation, written under the direction of the Advisor/Chairman of the Candidate's Graduate Committee, and with the assistance and approval of all members of the Committee, is presented for acceptance to the Faculty of the School of Education of the University of Nevada, Las Vegas, in partial fulfillment of the requirements for the degree of Doctor of Education.

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TITLE: "A STUDY DESIGNED TO INVESTIGATE A  
NEW DIMENSION FOR EDUCATIONAL  
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m.c.d.  
June, 1977

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## CHAPTER I

### THE PROBLEM

#### Introduction and Background of the Problem

If you are an educator, and if you are presently engaged in practicing this profession in one of the nation's schools, there is a very real possibility that you will be sued by one of your students. Should the student be a minor and unable to take an individual action against you, then you could be brought into court by the youth's parents or legal guardians. Rennard Strickland (et al., 1976) reports that:

Thousands of teachers have discovered only after being sued that there are legal as well as educational consequences attached to even small and seemingly innocuous decisions made in the classroom. Others have been stunned to find themselves judged liable for damages in instances when they assumed they bore no responsibility. Every day as teachers are making hundreds of decisions in performance of their professional duties or in pursuit of their private lives, potential plaintiffs lie in wait, ready to sue for negligence, malfeasance, neglect of duty, denial of constitutional rights, infliction of cruel or unusual punishment, or unfitness to teach. (30:p. a)

The legal immunity barrier which has separated the school system from those they serve has been breached and, as Strickland continues:

The teaching professional increasingly faces legal hazards similar to those that have created the current medical malpractice crisis. . . .

Such charges (brought against educators), if supported by a jury, can add up to thousands or hundreds of thousands of dollars in court judgments against the individual teacher. Recently a teacher was sued for \$3 million for insulting a child; a teacher on the east coast paid \$775,000 for injuries

suffered by a child on the playground; and another group of teachers was named in a class action lawsuit by students who said they hadn't learned anything. (parantheses added, 30:p. a)

No doubt, most educators would be quick to acknowledge the existence of tort claims which could be brought against themselves if they had contributed to the physical injury of a student. Most educators would not argue with the notion that even professional misconduct was a matter that could be properly addressed by the courts; yet, this final case description suggests that another area of possible tort claims can now be brought before the judiciary for review. Educators are, quite possibly, not only responsible for the safety and welfare of the students, or the protection of their individual freedoms (1:p.3), but now the general public is asking the courts to determine if educators are not also accountable for the acquisition of knowledge by the students. In conjunction with this question comes the companion inquiry: Should the educators of this nation not be required to accurately report the skill attainment of those individuals that the school is obligated to serve (58:p. 492); and, while reporting the achievement of the individual students, should not educators identify agency success or failure?

Where there may have been some degree of professional agreement among the members of the educational fraternity on personal injury and professional misconduct cases, there is certain to be disagreement on the issue involving "productive accountability." (20:p. 121) Many educators would respond with the statement: To hold educators accountable for the total learning process would invite a serious misunderstanding of the educative act. However, in the Peter Doe v. San Francisco Unified School District court proceedings

(1973), educational officers and employees were charged with productive failure characterized by negligence, misrepresentation, breach of statutory duties, and constitutional deprivation of the right to an education. Susanne Martinez, attorney for the plaintiff, was quoted by Gary Saretsky (1973) as describing this legal action as:

Simply the forerunner of an effort on the part of parents to bring to focus, through the judicial system, attention upon the fact that the schools, the educational systems of this society, have failed to provide the Peter Does of this country the kind of education to which they're entitled. (72:p. 589)

Educational accountability now has a new look, and if there was once the idea that "productive accountability" was so nebulous a concept that no attention should be afforded the subject, and learning was such an infinite and complicated process that it could not be brought before laymen for review, now both of these theories were being openly questioned and, in the minds of some parents, completely dispelled. These parents (citizens) asserted that officers and other employees of a school had contributed to a personal injury of a student, and this malfeasance would disenfranchise this young American from the society now and for the future. The parents reported that the harm done did not occur with a single event, was not a human oversight or failure of educators to respond to an unusual occurrence, was not an omission of responsibility. Rather, this injury was a "duty of care" negligence which was successively repeated by educators as Peter Doe progressed through the educational system. (21:pp. 28-29)

If this charge does not create an immediate concern, the plaintiff further suggested that the same educators who were responsible for the malfeasance

continually denied the existence of the wrong, and formally reported that the student was obtaining the education expected for any secondary school student. The harshness of these implied and stated charges cannot be disregarded, and the new concepts of personal accountability, although foreign and negative to the minds of many educators, cannot be denied.

To emphasize the meaning of the changing mood of parents as it relates to the education of their children, actions of this nature did not occur in one isolated instance. During the past decade, there have been a number of actions brought before the courts for determination. The frequency of these cases, and the time span between their introduction in the judicial system, would not suggest an immediate crisis for the educational community. To the contrary, available literature devoted to this subject and produced by teachers, administrators, and legal officers promotes the notion that this phase of accountability should not suddenly replace the problems of finance, governance, and competency as the major issues confronting schools.

Certainly, some of the aspects of these cases could be identified as frivolous and implausible, some of the aspects of the charges could be discounted completely. Yet, these cases raised the question: Can any student recover damages from a school or school system when learning is not taking place? A second question would embrace the inquiry: What are the actual contractual obligations between the public and educational employees, and is there an implied duty to produce learning? The third question would consider a more extensive analysis of school operation: Can an educator be held centrally

accountable for the acquisition of knowledge? These were the areas of debate being brought to judicial hearings and the expressed label covering their description was malpractice.

A brief investigation into the origin of these inquiries will suggest that such questionable positions did not suddenly evolve into a theme of relative importance. Gary Saretsky reported in 1973:

Then Associate Commissioner of Education Don Davies provoked us to inquire: What are public schools accountable for? (72:p. 589)

D. D. Darland, in September of 1970, supported this question when he explained:

Never has so much been expected of teachers in this country. New conditions and demands have multiplied to produce a national crisis in education. Accordingly, the American teacher has become a most likely candidate for scapegoat of the 1970's. Evidence can be seen in the current drive to hold teachers responsible for assuring quality education in our schools. Indeed, this movement called accountability has all the characteristics of a panacea, and one which it appears difficult to fault. Quite generally, demands for teacher accountability are accompanied by blunt threats that if teachers don't achieve this, others will. (40:p. 41)

During this same year (1970) Myron Lieberman identified a growing national interest in the area of educational accountability. He commented:

It is significant that accountability in education was one of the featured topics at the annual meeting of the Education Commission of the States in Denver, Colorado, July 8-10, 1970. The fact that governors and legislators all over the country are confronting the issues in accountability suggests that educators had better do so also. As a matter of fact, this observer found widespread international interest in the subject at the conference of the International Association of Universities in Montreal in August; it appears that as education budgets increase, they generate more pressure for accountability, regardless of the country or the level of education involved. (63:pp. 194-195)

Both Darland and Lieberman were implying that immediate attention should be paid to the current concept of accountability. For they hypothesized

that, as the cost of education continued to increase, the taxpayer was no longer asking how much will education cost, but what am I getting for the money that is being supplied to maintain this system of schooling? This different approach in discussing the financial accounting for education was heightened by the apparent shortcomings and failures which were being identified by elected officials, lay citizens, and even a vast number of educators.

Robert L. Ebel (1972) records:

When the history of our times is written, it may designate the two decades following World War II as the golden age of American education. Never before was education more highly valued. Never before was so much of it so readily available to so many. Never before had it been supported so generously. Never before was so much expected of it.

But in this eighth decade of the twentieth century public education in this country appears to be in trouble. Taxpayers are revolting against the skyrocketing costs of education. Schools are being denied the funds they say they need for quality education. Teachers are uniting to press demands for higher pay and easier working conditions.

College and high school students have rebelled against what they call "the Establishment," resisting and overturning regulations, demanding pupil-directed rather than teacher-directed education, and turning in some cases to drink, drugs, and delinquency. Minorities are demanding equal treatment, which is surely their right. But when integration makes social differences more visible, and when equality of opportunity is not followed quickly by equality of achievement, frustration turns to anger which sometimes leads to violence.

Surely these problems are serious enough. But I believe there is one yet more serious, because it lies closer to the heart of our whole educational enterprise. We seem to have lost sight of, or become confused about, our main function as educators, our principal goal, our reason for existence. We have no good answer that we are sure of and can agree on to the question, What are schools for? (44:p. 3)

Supporting this dismal picture is the report submitted by B. Frank Brown (1974) on the investigations conducted by the Ford Foundation on the 30 million

dollars spent on school innovations and improvements during the decade of the sixties. Brown announces:

The Ford study, coupled with other evidence, makes it increasingly clear that the decade of change and innovation had no lasting effect on either changing the schools or improving the quality of teaching or learning.

Epitomized, what we had in the Sixties was a lot of curriculum projects that warmed the soul but didn't materially improve the schools. This era can only be called the decade of innovation in which the razor's edge of change became institutionalized. What the schools must now be about is total reform.

Another factor in the need for reform is the dwindling of public confidence in the school system. Schools are much like Churchill's observations about democracy. Churchill said, "Democracy is the worst form of government known to man except for every other form of government." (39:p. 47)

In accord with these thoughts, Harold W. Sobel (1970) offered this opinion:

A landmark event in the history of open education was the publication of Crisis in the Classroom in 1970. For three and a half years, Charles Silberman, working under a \$300,000 grant from the Carnegie Corporation, "sailed up the shallow creek of American education" (to quote the New York Times), "surveyed the landscape, and pronounced it joyless, mindless, barren." (76:p. 552)

While these assessments on the appearance of education are being discussed, and a rebuttal suggested, there is another objective fact which attests to the decline in American education and the rise of malpractice questions.

National test score averages, obtained from students who were exiting the nation's secondary schools, were falling at a dramatic rate. Stanley M. Elan, editor of the professional journal, Kappan, published, in March of 1974, the following:

Various reasons have been offered to explain why the average score of high school seniors who took the Scholastic Aptitude Test last year fell to

the lowest point ever. The decline has been continuous for 10 years, dropping from 478 to 443 verbal, and from 502 to 481 mathematical, since 1963. (46:p. 447)

Rationale was offered for this unprecedented decline; however, evidence prevailed that student achievement, which was measured by this respected instrument, was falling each year, and this decline was being attributed, in part, to agency failure.

In 1974, another series of damning publications became available for review by the general public. These documents, like their counterparts, identified serious problems with schools and schooling. Five national groups published statements during 1974 which called for sweeping reform and radical alterations in the Nation's schools. These recommendations came from the:

1. U. S. Office of Education's National Panel on High Schools and Adolescent Education;
2. Kettering Commission;
3. National Association of Secondary School Principals;
4. Panel on Youth, President's Science Advisory Committee; and,
5. Educational Facilities Laboratories Report. (69:p. 587)

In striking contrast to these findings was the 1959 James B. Conant Report on the comprehensive high school. In the American High School Today, 21 recommendations for school change were made; however, no radical alterations in the basic pattern of American education were felt necessary by the author to improve the secondary schools. What may have been true for this year of 1959 was in doubt by 1974. (69:p. 587)

Roger and Billie DeMont (1976), in analyzing this rapid turn of events,

state:

Public dissatisfaction with educational institutions has been well documented during the last decade and continues to be expressed as educators struggle to defend themselves, retaliate, or take corrective action. A basic assumption of the authors is that this dissatisfaction cannot be rationalized away and that it is based on valid demands for excellence in the delivery of educational services. (41:p. 60)

Harold Ladas, of Hunter College, (1974) may have captured the central theme of this dissatisfaction when he emphasized that:

Grades, once the standard indicator of student accomplishment, are now confused with mere attendance, with effort (regardless of the appropriateness of outcomes), with self-concept improvement, and for conflict avoidance. (61:pp. 185-187)

Coupled with the apparent credibility loss by educators, when it encompasses grading and properly representing the academic growth of the school-age youth, there was another indicator that the lay public was concerned with the area of student performance. As early as 1971, George Gallup, in his third annual survey of public education, established the fact that 70% of the citizens surveyed were interested and in favor of administering some nationally normed achievement examination to the graduating seniors of that year and for the years to come. This, he concluded, was conclusive evidence that the public wanted to be sure that it was getting its money's worth for the tax dollars spent on public education, and that the standards for public education were maintained at a high level. (49:p. 37)

As parents, they--we--worry about the amount of money spent on education, about the true value of a high school diploma, whether our children are prepared for the working world or a college education.

Because of these doubts and worries, the taxpayer is now turning to the one visible record of educational achievement available today--the various achievement scores used throughout any school system. (48:pp. 66-67)

These remarks by Roy H. Forbes (1976) epitomized the personal opinion expressed by many citizens. This analysis developed a relationship between the cost of education and expected student academic success.

Others looked deeper into the current educational problems and endeavored to suggest internal factors that have contributed to this mounting dissatisfaction and concern with education. Jack Dettre (1975) takes the position that the very structure of the educational system is suspect. He considers the very foundation of curriculum organization, the Carnegie Unit, to have simply outlived its usefulness.

The original purposes of the Carnegie Unit are no longer valid simply because neither high schools nor colleges exist as they did in 1900. (42:p. 101)

Evidence identifying educational problems continued to mount, almost to crisis proportions. Representatives of education acknowledged that there were difficulties with the process which covered many aspects of the organization. They agreed that the agency had depicted apparent failure from the years 1963-76, national commission reports requested radical alterations in the learning process, and "sacred" educational practices and organizational patterns were viewed as defective. This response did not deter critics from continuing in their identification of problem areas for the schools. Lawrence C. Pierce (1976) may have created a summary statement for a number of additional educational concerns when he expressed:

The overarching educational policy issue during the next decade will be how to improve the performance of students who attend public schools. The outstanding flaw in our elementary and secondary schools is that an unacceptably large proportion of young people, most noticeably in the cities, emerge from the system without the minimum skills necessary for either higher schooling or for entry into a career. The fault may well lie in the lack of articulation between the levels of public schooling or in the way we place young people in jobs. The fact remains that our schools are turning out young men and women unable to cope with the postsecondary world of work or education. . . .

Already policy makers are demanding accountability and taking a more direct role in the operation of schools. For example, the courts have ordered schools to provide educational services for handicapped students. A number of legislatures have enacted legislation establishing minimum competency standards in an attempt to insure that every child develops basic educational skills. Underlying the increasing political intrusions into educational decision making is the view that current educational problems are the result of incompetent school administrators and teachers. (Ironically, educators often encourage this view by saying that schooling is a matter of people working with people; that if you have good people, then the educational system will be good.) (70:pp. 174-175)

This discourse led to the ultimate question of: Who does what to whom, when, where, why, and how well? (67:pp. 38-40)

The term educational accountability had its origin in this theme and, although the idea was borrowed from industrial management, when this term was applied to education, according to Ornstein and Talmage (1974), it means:

    Holding some people (teachers and administrators), some agency (board of education or state department of education), or some organization (professional organization or private company) responsible for performing according to agreed-upon terms. (68:p. 11)

Evidence is available to demonstrate that this performance-based evaluation of the educational system and its employees began in 1969, was authored by Leon Lessinger, and is gaining momentum with each successive year. It is not a passing fad, nor is it a matter which will remain within the realm of

the educational community for discussion and resolution. For, as a number of researchers have suggested, the history and development of this new element (accountability) will govern educational strategies for an indefinite period. This could be observed, first, in governmental attention to the topic.

The complexity of the educational dilemma did not prevent some prompt action by elected state representatives. Leon Lessinger substantiates this inference in a seminar speech in Atlanta (1974) as reported by Stanley M. Elan:

By the fall of 1972 some 23 states had passed legislation or joint resolutions featuring some aspect of accountability. In little more than a year the number jumped to 33 and another dozen states are currently considering action of some kind. (45:p. 657)

Discussions on educational problems had moved rapidly from rhetoric to legislative mandate and, if there seemed to be an emergency interest in this area by some state government officials, they could easily explain this concern from one or more of the 4,000 books and articles which were published on this topic from 1969 to 1974. (45:p. 657)

For all this effort on the part of educators, citizens, and elected officials to bring a perspective to the current educational accountability issue, there remained one component of the accountability concept which had not been mentioned. What may have originally begun as an attempt to apply business management procedures to school fiscal operation had now come to include the school's "product" or output in learning. For the productivity feature of education, the final accounting measure would be educational malpractice legislation or judicial action.

This final component was added when Stanley M. Elan announced:

So far as the general public is concerned, a principal objective of the accountability movement is more bang for a buck. And Congressman John Brademas has identified an unspoken assumption about accountability: It's "the weapon we've long been seeking that will let us punish the teachers who can't make our children learn. This punitive interpretation of accountability is, of course, what the teachers' unions are responding to when they resist accountability in many of its forms." (45:p. 657)

Is such punitive action a plausible consideration? A case has been presented to demonstrate that both educators and state legislatures are currently engaged in attempts to redefine the purpose for public schooling. Once this has been accomplished, John Brademas and others have reasoned that this new description of the purpose for education could easily contain features that would hold individual teachers, administrators, and governing agencies accountable for the very end result of schooling--learning.

Such an event would contribute to educational malpractice discussion moving from the courts to the state legislatures. Enacted state statutes or codes would provide the parameters for not only judging the effectiveness of individual educators, but also establishing possible methods for conducting and receiving damages from individuals and schools when students have proven the existence of this misrepresentation, contractual abridgment, malfeasance, neglect of care, or any other of the many claims which could be engineered under such a state governance statement. It could be suggested that a code of this nature could, and most likely would, have far-reaching ramifications upon the total educational system. So, too, it can be suggested that the sequence of events has already begun which will properly support a hypothetical assumption that legislative enactment authorizing malpractice provisions for the educational system is

not far off. Educational malpractice legislation, then, may not be an entity unto itself for, as has been observed with most federal or state involvement in local educational agency management, a single event is never isolated. The passage of the Civil Rights Amendments affected all school systems, the Colorado statute describing competency had a direct effect upon each school of this state and, in each instance cited, management and operational aspects of the schools were influenced by such a directive. (91:pp. 6.0-6.1)

If educational malpractice legislation becomes a reality, all of education may have a new purpose. Educators may be faced with an accountability factor which will necessitate wholesale change for the process and, whether good or bad, it will be required by legislative mandate and enforced by judicial proceedings. Educational malpractice, now in its infancy, possesses the potential force to alter the total scope, purpose, and outcomes of public education.

#### Statement of the Problem

Individual state governments have received, by implied federal constitutional authority, the right to organize, maintain, and control the schools within their respective territories. To accomplish this task of school governance, the states have enacted legislation to regulate the separate functions of the educative process. In specific instances, where these regulations were developed to establish entrance age, employee certification, and subject content to be taught, such enactments have become minimum standards.

Minimum educational expectancy for students appears to be the next

regulatory enactment by some state agencies. Should a state develop the student literacy skill standards necessary to achieve graduate status, the question would then arise: What happens when a student, or students, do not meet the minimum standard? Will these students be provided some other legislated recourse for attaining the required career literacy skills, or will they have some redress through law if time or some other factor will prevent such competency attainment? Will educators be legally accountable for learning?

Based upon these questions, the purpose for this study will be to seek an answer to the educational issue:

Given the projected possibility of educational malpractice legislation applicable to the contractual and statutory obligations for certificated educational personnel, what is the current status of educational malpractice presently affecting the nation's secondary schools?

#### Purpose of the Study

The purpose of this study was to:

1. Identify and record selected data related to the topic, educational accountability.
2. Investigate any relationship which may exist between the educational accountability movement and the suggestive punitive force for this evaluative system.
3. Review the current literature describing or discussing the area of educational malpractice which may demonstrate agreement among the authors on the importance of this topic.
4. Ascertain if the criticism of education has been one force

- responsible for the current interest in educational malpractice .
5. Determine if the concept of educational malpractice has been subjected to investigative research, and if there is agreement on the findings, conclusions, and/or predictive outcomes provided by these searches .
  6. Determine if the trend for parents to seek judicial redress for the apparent failure of schools to have their students master career literacy skills will continue to support a public interest in educational malpractice through the enactment of legislation describing expected minimum academic accomplishment for students .
  7. Assess the relative importance which practicing educators and state attorneys general place on this issue for the present and the immediate future .
  8. Determine the current status of legislative action on the topic of educational malpractice from each of the individual states .
  9. Determine if information on the issue of educational malpractice has been brought to the individual states by any individuals from outside this area .
  10. Evaluate the data obtained from the survey respondents to judge if a substantial base of data can be identified to support any predictive inferences .

#### Assumptions

From the original inception of this project, a number of assumptions

have been made. These include a belief that:

1. There is evidence from all state governing agencies which will directly relate to the topic of educational accountability.
2. A continuing interest will be maintained by secondary school educators on the matter of improving secondary students' academic achievement.
3. The Peter Doe v. San Francisco Unified School District court proceeding has been the catalyst which has, in part, produced the impetus to initiate malpractice suits against educators.
4. The current malpractice cases are the forerunners to other court actions of a similar design.
5. Either through judicial action or by legislative mandate, a more comprehensive review of the purpose of schools will be considered during the decade ahead.
6. There will be an interest maintained in the decision-making process being utilized by the nation's secondary schools. This continued interest will be shown by lay citizens, members of the judicial system, and members of state legislatures. This interest, maintained by these three groups, may require that state legislatures enact minimum educational student achievement provisions governing the educative process.
7. The immunity doctrine, which has been applied to governmental agencies for a number of years, is now being challenged. With the

loss of the immunity doctrine, educators may be required to meet specific employment standards. A failure to meet these employment standards may subject the educators to malpractice court actions initiated by students or parents.

8. Malpractice suits may first be described as breach of contract actions.
9. There are restraining forces operating which will create enforcement problems for any malpractice legislation established for the institution of education.

#### Delimitations

1. The selection of a jury of experts who will provide an opinion on the current status of educational malpractice.
2. The use of original survey instruments and letters designed by the researcher for the purpose of obtaining information related to the topic of educational malpractice.
3. The introduction of specific concepts and terms germane to the topic but employed, in this study, with a new usage.
4. The interpretation of the data received from the survey instrument in relationship to the stated purpose of the study.
5. The time in which this study was conducted which began in January of 1977 and ended in May of this same year.

#### Limitations

1. A review of current literature from selected published and

unpublished works which discuss educational accountability and, more specifically, educational malpractice. This review of literature will generally extend from 1969 to 1977.

2. Estimates of the interest level from individual states as determined exclusively from responses provided through the survey instrument.
3. A survey of 50 educators presently serving as state officers for their affiliate to the National Association of Secondary School Principals.
4. A survey of 50 state directors/secretaries representing state affiliates for the National Educational Association.
5. A survey of the 50 Attorneys General. All survey respondents will be requested to respond to current status of malpractice legislation affecting the educational community within their area of jurisdiction. This status report will involve:
  - a. Discussions pertaining to this topic which have been recorded in state documents.
  - b. Pending legislation presently being drafted, or state statutes or codes awaiting introduction, hearing, vote, and/or review by the state governmental agency.
  - c. Established state statutes or codes identifying educational malpractice provisions.
6. An investigation of specific judicial proceedings which have been

(are) primarily concerned with the issue of educational malpractice.

7. A review of applied research having been conducted on the topic of educational malpractice.
8. A study of any existing legislative enactments for malpractice which have a direct relationship on the professional activity of education.
9. A review of any descriptive data received from the survey instrument.
10. A treatment of the responses provided by the individual survey groups as these data might reflect on the probability for enacted malpractice legislation affecting secondary schools, grades seven through twelve.

#### Definition of Terms

For the purpose of this study, the following terms are to be defined as follows:

1. Breach of Contractual Duties: The failure of individuals to meet all provisions of a written or verbal agreement (contract) which has been established between two or more parties and sanctioned under existing law.
2. Career Literacy: Learned skills which will enable an individual to obtain profitable employment and develop a purposeful lifestyle.

3. Constitutional Deprivation: A restraint which will inhibit any individual from enjoying the individual and human freedoms and rights guaranteed by the Federal and State Constitutions .
4. Educational Accountability: When used in this presentation, it will cover the total spectrum of expectancy levels for secondary schools created by historical tradition, federal or state law, local or state resolution, and agency purpose, as described by professional educators .
5. Educational Malpractice: Will involve two general considerations--these are:
  - a. Professional tort, or acts involving professional negligence, malfeasance, misrepresentation of position, breach of statutory duty, constitutional deprivation of citizenship rights .
  - b. Tort liability, or acts involving professional negligence where there has been physical injury to any student under the control and jurisdiction of a public school agency .
6. Judicial Opinion: Will refer to determinations made by jurists in the regular performance of their duties .
7. Legislative Enactment: Any state statute or code presently having authority to govern the conduct of activities within a specific region .
8. Malfeasance: Any action taken which could be considered unlawful or wrong in nature .

9. Minimum Competency: The educational level of proficiency in any given number of content areas that must be obtained to reduce any impairment in living conditions or reduction in life opportunities. These minimum standards of educational attainment, as used in this study, will include those writing, listening, reading, and computational skills necessary for successful and nonrestricted residence in an industrial society where the literacy skill attainment for these areas will be measured by an elementary grade placement of eight years.
10. Misfeasance: Any unlawful act conducted under the guise of proper conduct supported by implied common, local, state, or federal law.
11. Misrepresentation: A false or fraudulent impression provided by any individual for the purpose of personal gain.
12. Nonfeasance: Neglect in performing a contractual obligation, or a duty specified by standards of moral or ethical conduct.
13. Productive Accountability: A subsection of the accountability concept which pertains to the measurement of the efficiency and effectiveness of schools as determined by the demonstrated proficiency of students to use fundamental verbal and numeric skills.
14. Professional Negligence: An implied improper action taken by an educator and for which there is a duty of care, moral, ethical, or contractual obligation established to describe a standard of

conduct which must be met. Such negligence shall imply a status of employment with an educational agency and will be limited to the requirements for such a position.

15. Recognized Experts: A reference for those individuals who have demonstrated proficiency in their selected fields of vocational endeavor and who have:
  - a. Obtained the level of skill (training) and experience which has provided for role and job success above the established minimum standard.
  - b. Been recognized by their colleagues in the same field of endeavor as an authority on specific topic areas.
  - c. Provided this degree of expertise to others in the form of published material, leadership roles, counseling, or discussions.
16. Status: The present or current condition displayed by any set of variables constituting a force which can have the ability to affect the conduct or behaviors of selected individuals.
17. The Judiciary: Those courts of primary jurisdiction where matters of dispute are judged with respect to the constitution, laws, and codes of the various states and nation.

#### Procedure

This study has been a descriptive research project designed to obtain data from a number of sources. Once the data has been secured, inferences

will be drawn from the available information. The procedures employed for the purpose of investigating such a potential educational concern are as follows:

1. A review has been made of the related literature which applied to the area of malpractice. As designed in the literature, educational malpractice was related to the accountability movement within education. Any reports, articles, and applied research which showed some direct relationship between these two concepts have been studied.
2. Following these attempts to isolate information related to the topic of educational malpractice, a survey was undertaken to identify judicial reviews related to the topic under investigation. Cases of the status of Peter Doe v. San Francisco Unified School District were sought, as well as cases involving:
  - a. Student academic performance expectancies.
  - b. School assessment or evaluation cases.
3. A national survey was then undertaken to determine the present status of educational malpractice legislation within each of the 50 states. In conjunction with this assessment, an effort was made to determine:
  - a. The current interest level in each of the 50 states on the issue of educational malpractice as reported by a selected jury.
  - b. If professional educators and attorneys general would judge

- the importance of this issue for their respective states .
- c. If the respondents would provide an opinion on the effect that any such educational malpractice legislation might have on the conduct of education within their respective states or the nation .
  - d. The titles, codes, and basic parameters of any state statutes passed by state governing bodies describing educational malpractice .
4. A review was then conducted on any applied research which had been accomplished for the area of educational malpractice . This approach followed the method established by Stuart Sandow in his study, and followed the suggested format displayed at the Mayflower Conference held in Washington, D. C. (1972).
  5. The information obtained from all sources was then summarized, the questions answered, conclusions were deduced, and recommendations were made which would relate to the new dimension in educational accountability--malpractice. A section on possible predictive consequences completed the study .

### Organization of the Study

Chapter I has presented the general background information pertinent to the topic under investigation . In support of these data, a statement of the problem to be studied has been provided which included: the purpose of the

study; assumptions; delimitations, limitations; and definition of terms used. The procedures employed in the project, and a description of the organizational design, completed this first section. Chapter II contained a review of the related literature which has had some special significance on the scope of the investigation. This area has dealt specifically with the development of a position to support the concept that a logical progression has existed between educational accountability and the introduction of educational malpractice court action. Chapter III described the procedures which have been selected to research the topic. This section also included an explanation of the instruments which were developed in an effort to obtain specific information on the issue of educational malpractice. Chapter IV offered a presentation, analysis, and interpretation of the data. From this interpretation, the status of educational malpractice was identified, and the facilitating or restraining forces which were present and affected this issue were labeled. These acts subsequently allowed for an opportunity to test the assumptions and establish a response for the statement of the problem. Chapter V completed the main body of the research project by summarizing the findings, presenting conclusions, and offering recommendations and predictive consequences. The dissertation was then concluded with appendixes and a bibliography of the references cited.

## CHAPTER II

### REVIEW OF THE LITERATURE

#### The Emergence of the Concept of Educational Accountability

Educational accountability has emerged upon the educational scene as a viable force. Fred Richards (1972) states:

This decade may well be called the Decade of Accountability. A seemingly endless procession of journals, conferences, and legislative committees continues to leap into the growing national debate over the degree to which educators should be held accountable for the consequences of their actions and decisions. Stephen Barro writes that "the basic idea... is that school systems and schools, or more precisely, the professional educators who operate them, would be held responsible for educational outcomes--for what children learn." Perhaps both institutions and educators may soon be judged, as John Dewey insisted they should, by the kind of humanness they foster, by their total effect upon man, and by the degree to which they facilitate the maximum growth of every member of society. Thus, educators may soon be held accountable both for what children learn and for what they become as a discernible consequence of school experiences. (33:p. 79)

Scarvia B. Anderson (1971) enforces this notion:

Accountability is already a powerful force in education for at least two reasons. First, it has managed in a relatively short time to accumulate the trappings of a discipline; parts of accountability have been delineated, the delineation of the parts has been reinforced by names for them, there are roles associated with the parts, and some techniques have been offered for carrying out the roles. Second, accountability is a large enough vessel to hold the concerns of many parties to the educational process; even if they are not all sympathetic, they are all involved. (33:p. 15)

The question might quite properly be asked: Why this renewed interest in the outcomes of education? Has this not always been an essential element in

the education process? Evidence is available to demonstrate that this factor has existed for over two thousand years. Aristotle observed:

I repeat that, if a man is to turn out well, he must have been properly educated and trained, and must thereafter persevere in good habits of life. . .

The best that could happen would be the institution of a sound system of public supervision of these matters. But, if they are entirely neglected by the state, it is the plain duty of the private citizen to help his own children and friends to become good men or, if that is beyond him, at least to make it his ambition. (32:p. 312)

This concept of parental accountability continued until the beginning of the twentieth century. Richard Strahan (1973) described the doctrinal change in both the control and education of this nation's youth for this era. He observed:

The interest of the state or sovereign in promoting the welfare of its citizens has greatly increased, and public free schools have brought about a general dissemination which many have felt is the strongest attribute of a free society. As state after state in the United States has enacted compulsory attendance laws the ability to make decisions which control the extent and nature of education of his child has been wrenched from the parent. . .

The state has also assumed that it may determine to a large degree the nature of the educational program that a child may undertake by the system of required courses to be offered by an accredited school. . .

As the state has assumed many parental responsibilities in regard to a child's education, it has also clothed itself with much of parental authority. The legal doctrine which has developed in administrative theory has accomplished this by assuming "in loco parentis." Literally, this doctrine clothes the school administrator or the teacher with the role of the parent when he is administering or teaching the child in school, both as to the content of the program and the child's behavior while he pursues his school-work. By defining the school's function in this way, school officials did assume control of the child in much the same ways the parents have controlled him under common law doctrines. (29:pp. 19-20)

Lee Garber and Charles Micken (1963) continue:

"Why has the state seen fit to encourage or promote a system of free

public schools?" Again, few people have an adequate answer to this question. If their answer is to be judged by their actions, it would appear that many look upon the school as an agency created for the purpose of relieving parents from a duty that has long been recognized as theirs under the common law. Blackstone, the eminent English jurist, who attempted, in his Commentaries, to put the unwritten or common law into written form, had the following to say on this matter: "The . . . duty of parents to their children is that of giving them an education suitable to their station in life; a duty pointed out by reason and of far the greatest importance of any." (9:p. 13)

The answer to the inquiry: Has not accountability always been a factor in the educative process? is obvious by reason and law. Joe Huber (1974) remarks:

Actually accountability in the school business is as old as the original three R's. Accountability always has been the fourth R of education--responsibility. Jacob Landers supported this contention in a recent article, when he suggested that accountability is an old idea in a new bottle. (55:p. 14)

The results expected from an education may also be apparent, and the implied logical consideration by Aristotle, Blackstone, and Huber would be that an educational process should produce an acceptable outcome for both the child and society. This last consideration has produced a renewed interest in educational accountability.

Frank J. Sciara and Richard K. Jant (1972) report:

The age of accountability is dawning in American education and could well become one of the most important educational movements in the decade of the 1970s. Beginning as a flickering spark in the twilight of the 60s, and fanned into flame by the federal government, politicians, taxpayers, unhappy parents, as well as private learning corporations, accountability has been transformed from a theoretical notion to a formidable force in American education.

Although the term is so new a precise definition has yet to emerge, its general meaning and thrust are quite clear: "the condition of being

accountable, liable, or responsible" (Webster's New World Dictionary). Basically, accountability means that public schools must prove that students at various levels meet some reasonable standard of achievement. The concept further implies that schools must show they use funds wisely--that expenditures justify educational outcomes. (26:p. 3)

In supporting this new dimension of accountability, Joe Huber (1974)

again states:

Most educators are casting about for a personally comfortable definition of accountability. Current literature suggest diverging, conflicting, and sometimes acceptable descriptions of accountability. . . . Myron Liebermann ascribes a "core of meaning" to the concept based on a common sense notion. "There is accountability when resources and efforts are related to results in ways that are useful for policy making."

Perhaps the most prolific author in the accountability controversy is Leon Lessinger; he simply defines the term as "the ability to deliver on promises." William C. Miller sets forth what he calls a "working definition" which should be intellectually palatable: "Holding an individual or group responsible for a level of performance or accomplishment for specific pupils." (55:pp. 13-14)

Stephen J. Knezevich, in a paper presented to the annual convention of American School Administrators in 1974, defined educational accountability as:

A system of delivering desired educational outputs wherein it is specified that every person (or group) is answerable (or responsible), to some degree, to another person (or position, agency) for something, expressed in terms of performance levels (or results, achievement), to be realized within certain constraints (such as specific time periods or within stated financial limits). (96:p. 2)

After having offered a definition for the term accountability, will this be sufficient to describe the full impact that this abstract concept would have on the educational process? Stephen M. Barro (1970) would suggest that there is a difference between simply defining the term and making the idea operational.

He notes:

Accountability in the abstract is a concept to which few would take exception. The doctrine that those employed by the public to provide a service--especially those vested with decision-making (sic) power--should be answerable for their product is one that is accepted readily in other spheres and that many would be willing to extend, in principle, to public education. The problems arise in making the concept operational. Then it becomes necessary to deal with a number of sticky questions:

To what extent should each participant in the educational process--teacher, principal, and administrator--be held responsible for results?

To whom should they be responsible? . . .

How will each participant's contribution be determined?

What will be the consequences for professional educators of being held responsible?

These are substantive issues that need to be treated in a discussion of approaches to implementing the accountability concept. (20:p. 49)

Harold G. Shane (1973) emphasizes yet another factor of this new concept when he cited:

And at the risk of hearing cries of heresy, it seems essential that we reverse some of our long-ingrained ideas and vigorously emphasize that "success" does not necessarily reside in the nineteenth-century dictum that the able child should rise above his father's station in life. With social conditions and social attitudes changing (and with chemists, engineers, psychologists, lawyers, teachers, anthropologists, et al. unemployed or underemployed), there appears to be new and great merit in school climates--and in mass media--which would encourage some cobblers' sons to remain cobblers' sons, lest we end up unshod a few years hence. (74:p. 328)

In the process of accountability, there had been advanced a doctrine that those people engaged in this activity should be held accountable for their actions, and the end result was to be the positive proof that the purpose for education was being met. Where there had always existed the factor of personal

responsibility to the purpose of education, Harold Shane expressed a weakness with the nineteenth-century dictum that every generation had to surpass the contributions of the preceding generation. Was this the only fault with the current educational enterprise? Was this the underlying failure of the system that, simply stated, education has over-succeeded?

George Weber, in the 1977 edition of Britannica, Book of the Year, produced the following analysis:

A century ago it seemed useful for decennial census to find out how many Americans were illiterate. The question was asked directly. In the census of 1870, 20% of Americans ten years of age or older were recorded as illiterate.

. . . In the Korean War 19% of those drafted were rejected for military service on the grounds of "educational deficiencies" (a euphemism that by then had replaced "functional illiteracy" in military usage).

David Harman, an Israeli adult education expert, contended in 1970 that perhaps half the adults in the United States were functional illiterates because of those life insurance policies and apartment leases, but most people in the field would not agree with him. There are regulatory bodies to deal with the provisions of these documents, and individuals can turn to more literate friends, social workers, and lawyers for help. In the past, a fifth-grade level has been cited as the minimum needed if a person is to function successfully. More recently an eighth-grade level has been advocated, and that seems reasonable. On that basis, perhaps 10 to 20% of American adults are functional illiterates. . .

The main cause of functional illiteracy, however, is a deficiency in the quality of schooling. . . In recent decades U.S. public schools have followed the practice of passing children on year after year without regard to their attainments. Thus a significant number of young people finish 8, 10, or 12 years of schooling without achieving functional literacy. Recently the embarrassment created by these young functional illiterates has led some states and local school districts to adopt proficiency standards for promotion from grade to grade and for high school diplomas. (5:pp. 301-302)

John I. Goodlad (1973) believes:

This is the winter of our educational discontent. Until recently, we believed that we had only to provide some new subject matter here, inject a heavier dose of phonics there, or tighten the discipline a little, to improve both the system and society. Better schools (defined in largely quantitative terms) would mean more jobs, a brisker economy, safer cities, and more aware, dedicated citizens. Or so we thought. Dwindling confidence in these relationships reflects both declining public confidence in the schools and the tenacity with which we cling to the "learning equals school" equation. Painfully, we are coming to realize that grades predict grades, that success in school begets success in more school but is no guarantee of good workers, committed citizens, happy mothers and fathers, or compassionate human beings.

The schools have been poked and probed, judged and weighed--and found wanting. Whereas for many years they fulfilled brilliantly the primary purpose for which they were founded--the creation of one nation out of millions of immigrants--recent decades brought them new kinds of clientele whose needs could not be met with the formulas and procedures that had been used previously. (25:pp. 3-4)

Expanding on this dismal picture created for education by Goodlad

were James P. Clark and Scott D. Thompson (1976) who concluded:

Many citizens view schools today with a certain skepticism. They feel that despite heavy expenditures the educational gains are negligible at best. What is the purpose, the public asks, of sending students to school for 12 years if upon graduation these young persons cannot read well or compute accurately? A resistance is growing toward the mere attendance of students in school; new questions are being asked about the outcomes of this attendance. (6:p. 3)

If literacy was the purpose of education, could it be supported that this design of education was not being met? Clark and Thompson continue:

Declining test scores and other indicators of marginal student performance play a part in the public's determination to define the high school diploma. Among the concerns are these:

- Scores on the Scholastic Aptitude Test (SAT) have fallen from a mean of 473 on the verbal section in 1965 to a mean of 434 in 1975; and from a mean of 496 on the mathematics section in 1965 to a mean of 472 in 1975.

- The National Assessment of Education Progress (NAEP) in 1975 reported a decline in science knowledge among American students between 1969 and 1973 equivalent to a half-year loss in learning.
- NAEP also has reported in a nationwide survey of 17-year-old students and young adults that "many consumers are not prepared to shop wisely because of their inability to use fundamental math principles such as figuring with fractions or working with percents."
- Twenty-three million Americans are functionally illiterate, according to a study sponsored by the U.S. Office of Education.
- Comparative surveys of writing skills in 1970 and 1974 show 13- and 17-year-old youth to be using a more limited vocabulary and writing in a shorter, more "primer-like" style in 1974 than in 1970.
- The American College Testing (ACT) program also has reported a decline in the average scores of students applying for college admission.
- The Association of American Publishers revised its textbook study guide for college freshmen in 1975, gearing the reading level down to the ninth grade.
- College officials, business firms, and public agencies are dismayed at the inability of younger persons to express themselves clearly in writing. (6:p. 4)

Bernice P. Biggs stated: If citizen literacy was the expectancy of American education, as Max Lerner (1971) says, (36:p. 476), there was mounting evidence that this outcome was not being met. Marvin C. Alkin (1972) noted:

The public has lost faith in educational institutions. Traditional acceptance of educational programs on the basis of their past performance and apparent but unsubstantiated worth is no longer the rule. The public has demanded that schools demonstrate that resources are being utilized "properly." But this has meant far more than mere financial accounting to ensure that funds have not been illegally spent or embezzled. What is demanded instead is that schools demonstrate that the outcomes they are producing are worth the dollar investment provided by communities. In short, what has been called for is a system of "Educational Accountability." (25:p. 194)

Mario D. Fantini (1972) addressed this theme:

No matter how you look at it, the current push for accountability cannot be met by our present structure of public education. The structure handicaps the ability of the professional educator to be responsive to public demands, except in conventional ways that will receive even more public resistance.

Especially threatened by the push for accountability are the "front-line" agents of schools, teachers and principals. Right now they see themselves on a collision course with the public, a fact that has sent them running to their professional organizations for protection.

Given the nature of the major public demands for accountability, it is not surprising that teachers and other school agents feel they need protection. The demands, which fall into at least four interrelated categories, are formidable:

1. Fiscal matters. Faced with an inflationary economy and spiraling property taxes, overtaxed citizens have rebelled against school costs. . .
2. Educational productivity. Citizens want to know if they're getting the most for their educational dollar and if a relationship between school programs and educational objectives exists. They have begun to blame the school and teachers for Johnny's failure to read, his lack of motivation, his negative attitudes toward school, his dislike of certain programs. In short, they are questioning the schools' leadership patterns, instructional procedures, and institutional arrangement.
3. Consumer participation in educational decision-making. There is a growing sense that teachers, principals, and administrators control education through decision-making that favors professional interests rather than the interest of students and their parents. The public has the impression that educators are accountable to no one but themselves. . .
4. Consumer satisfaction. While related to the growing loss of confidence in public schools, consumer satisfaction extends also to the problem of providing quality education to a diverse consumer population. Over the years diversity has become a value which large numbers of citizens want to preserve and cultivate by connecting the school program with the particular learner, his style, and his cultural group. Put an end to the common learning and common educational process found in most schools, they say. (20:pp. 121-122)

W. Kenneth Richmond (1969) echoed this same position except in his work, The Education Industry, he is discussing this point from an international scale. He says:

During the past few years, a notable (and some would say dangerous) change has been taking place in the way that the educational system is regarded by those on its periphery: the administrators, the economists, the politicians, and all others concerned with justifying the vast expenditure, mainly from public funds, which education now demands. Such observers--and it must be acknowledged that they are neither impartial nor disinterested--have begun to ask how far the concepts which are applied to industrial efficiency are also applicable to educational efficiency. They have begun, for example, to question whether the outputs of the educational system represent a fair return on the investment in that system, just as an accountant might ask whether the products of some manufacturing process represent an optimal use of the capital invested in that process. (24:p. 3)

The decade of accountability has had its origin in what may be described as: (1) the failure of the educational agency to continue its successful reduction of population illiteracy; (2) the growing costs associated with the educational enterprise and the apparent decreased productivity; and, (3) the inability of this organization to effectively produce needed change within its own structure to eliminate what Christopher Jencks (1972) describes as "inequality." (12:p. 365)

Has this movement grown to such a degree that the entire process will be reformed or eliminated as it now appears? Wilson C. Riles (1971) stated that he believes not:

"Far from engineering man out of education, I believe accountability is an attempt to bring man back in . . . I view accountability as a process of setting goals, making available adequate resources to meet those goals, and conducting regular evaluations to determine if the goals are met." (11:p. 13)

If this is a possible predictable outcome for accountability as it applies to all educators, what of the individual? What will occur during the interval of time that exists between changing the system in a manner that will address each of the accountability concerns identified by the general public and surviving the current problems? Barry R. McGhan (1970) may have verbally expressed the concern educators have for the immediate future when he announced:

If we say that "someone is accountable" we usually mean that "he must suffer the consequences of his actions." We hardly ever mean the more positive "he will profit from the consequences of his actions." One wonders what the social and psychological ramifications might be if teachers have to carry out their jobs in a retributive atmosphere. (11:p. 363)

#### Personal Accountability for Educators

It has been suggested, with the increased criticism directed toward education, that the individual administrator and teacher may not be immune from the full force of the accountability movement.

John C. Hogan (1974) entered this part into accountability when he provided information on the legal action directed toward holding individuals responsible for specific educational outcomes.

A lawsuit that raises unique questions about the quality of education and the legal liability of school districts and schoolteachers for failing to instill in their students so basic a skill as reading ability has been filed against the San Francisco Unified School District. Peter N. Doe (a fictitious name assumed to spare the litigant public stigma and humiliation) graduated from the public schools of San Francisco with a B-minus average and received a high school diploma, yet he could hardly read at the fifth-grade level. When his mother discovered his plight, despite assurances by school authorities that her son was attaining the proper reading level, she decided to sue the San Francisco school district for \$1 million, which her attorney says may be scaled down to around \$5000 and recovery of the costs of private tutoring.

From a white, middle-class family background, Peter had no physical problems or disciplinary problems while in school, and he had a normal attendance record. Now working with a private tutor, within six months his reading ability is alleged to have jumped two years, which "establishes his ability to learn." The suit contends that Peter N. Doe graduated "unqualified for employment other than the most demeaning, unskilled, low-paid manual labor" and that under California law the school district was required to ensure that he met certain minimum requirements before receiving a high school diploma. The case "derives its legal basis from questions of negligence, misrepresentation, and several statutory claims."

Several opposing views of the possible outcome and propriety of this lawsuit are:

National attention attracted by the suit has "led to a lot of different strategies being developed in other states, including class action suits and challenges to teacher certification and other procedures of state educational systems."

Teachers should not take lightly suits by "individual consumers who have already bought products and are not happy about it."

Such "malpractice" suits attempt to make "scapegoats" out of teachers and school boards. "Teachers have little voice in financing, equipping, or organizing schools. There is no constitutional right of literacy, and the child himself might be guilty of contributory negligence."

"With the age of accountability, teachers can no longer blame parents, the environment, or the socioeconomic status of the family for non-teaching." (10:p. 132)

Identified in this action was the idea of negligence, in addition to a number of other charges. Considering the importance placed on the charges, it may be that the claim of negligence is the most serious and the one that could easily cause the greatest punitive response if proven. In reviewing this term, George M. Johnson (1969) defines the concept as:

The unintentional tort of negligence has been defined in various ways. A widely accepted definition is that given by the courts in Fouch v. Werner. "Negligence is either the omission of a person to do something which an ordinarily prudent person would have done under given

circumstances or the doing of something which an ordinary prudent person would not have done under such circumstances. It is not absolute or to be measured in all cases in accordance with some precise standard but always relates to some circumstance of time, place and person. . . ." Action or non-action is negligence when it creates an unreasonable risk of harm to some general class of persons. In order for a person injured by negligence to recover from the negligent person, it must be shown that the injured person was within the general class of persons to whom the negligent person owes a duty of care. The legal duty upon which negligence actions are based involves the duty of a person to use proper care in activities from which harm might reasonably be anticipated. Thus, the problems of negligence in the field of education can be considered in connection with the different relationships involved in the education process. (13:p. 132)

Howard C. Leibe (1965) further defines negligence in the law as:

Essentially, the law of negligence deals with conduct--either action or inaction--which, it is claimed by the injured person, does not measure up to the standard of behavior required by the law of all persons in society. . .

The historical development of the law of negligence has resulted in the development of a group of elements necessary to the successful maintenance of a suit based on negligence. These elements are, generally, as follows:

1. Duty to conform to a standard of behavior which will not subject others to an unreasonable risk of injury.
  2. Breach of that duty--failure to exercise due care.
  3. A sufficiently close causal connection between the conduct of behavior and the resulting injury.
  4. Damage or injury resulting to the rights or interests of another.
- (14:pp. 8-9)

When this principle is applied to education, Laurence W. Knowles

(1972) records:

Anglo-American tort liability is based on fault. . .

The standard of care that educators must exercise over their students is more easily stated than applied. It recently has been defined as that of "a person of ordinary prudence." But "person" is a generic term, and the courts do not consider a teacher an ordinary person. A Federal Appellate Court in Tennessee adopted the following standard:

Negligence is the failure to exercise due care, and this means due care under the circumstances of particular situations. A teacher's superiority in knowledge and experience imposes responsibilities in his dealing with students which become an inherent element in measuring his compliance with the due care which is required of him.

It is clear from the words of the court that an educator will be held to a high standard of care; much higher than an "average" individual. (21:pp. 28-29)

The strict application of these references is made with respect to personal injury cases and the responsibility that must be exerted by the educator toward the physical safety of the student. It could be expected that this same connotation would be applied if the concept of due care was continually violated in the area of learning. There has been resistance on the part of the courts to enter into this arena for much the same reason that prompted them to steadfastly hold to the immunity doctrine for school agencies. Where this once held complete control, now, as Edward C. Bolmeier (1973) states, there is a new approach:

Even though courts have generally followed tradition in holding governmental agencies immune from tort liability, the dissenting opinions frequently show the reluctance of the judiciary to hold fast to the antiquated doctrine. The following bitter denunciation is illustrative:

The whole doctrine of governmental immunity from liability for torts rests upon a rotten foundation. It is almost incredible that in the modern age of comparative sociological enlightenment and in a republic, the medieval absolutism supposed to be implied in the maxim, "the king can do no wrong," should exempt the various branches of government from liability from their torts, and that the entire burden of damages resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community, constituting the government, where it could be borne without hardship upon the individual, and where it justly belongs. (3:pp. 139-140)

When this doctrine is applied directly to specific educators in tort cases, Bolmeier (1971) again stresses:

Teachers, whose negligence or unreasonable behavior makes them liable for resulting pupil injuries, frequently claim immunity for the following reasons: (1) the relationship of a teacher to the pupil is analogous to that of a parent to his child (in loco parentis); (2) because of the master-servant relationship (respondeat superior), the school administrator, rather than the teacher, should assume the liability; and (3) since the school board is immune against liability by virtue of its sovereign status in the performance of a governmental function, the teacher should likewise be protected by immunity because teaching is a governmental function. (4:p. 128)

If once these doctrines held credibility, Bolmeier (1971) concluded that in none of the cases reviewed in this investigation (Teacher's Rights and Liabilities) have the courts agreed that any of the above claims are valid. (parentheses added, 3:p. 128)

Exceptions to the doctrine of non-liability are further described by E. Edmund Reutter, Jr. and Robert R. Hamilton (1970). They remarked:

The doctrine of immunity is subject to certain exceptions. These are statutory and judicial. The statutory ones vary markedly from state to state, and a substantial majority of states permit no, or very limited, exceptions. Since the doctrine of district immunity is a common law concept developed by the courts, it can be abrogated by legislative enactment or modified by the courts. Indeed there is much controversy as to whether the legislature or the courts should change it, if it is to be changed. (23:pp. 274-275)

The suggestion that state legislatures could dramatically alter the manner in which tort claims could be brought against a subagency of the government (by enacting governance statements covering specific aspects of the educational process) could be observed as early as August, 1973. In this year, the Cooperative Accountability Project (Phyllis Hawthorne, 1973) indicated that 27

states had passed some type of provision outlining accountability measures for assessment programs, evaluation of professional employees, performance contracting, planning, programming, and budgeting systems. (91:p. 1)

What was being considered, in some of these newly drafted state statutes, was a minimum expectance standard for student achievement. To exemplify this factor, the Colorado General Assembly passed an Educational Accountability Act on June 7, 1971. This Act states:

- (1) The general assembly hereby declares that the purpose of this article is to institute an accountability program to define and measure quality in education, and thus to help the public schools of Colorado to achieve such quality and to expand the life opportunities and options of the students of this state; further to provide to local school boards assistance in helping their school patrons to determine the relative value of their school program as compared to its cost.
- (2)(a) The general assembly further declares that the educational accountability program developed under this article should be designed to measure objectively the adequacy and efficiency of the educational programs offered by the public schools. . . It is the belief of the general assembly that in developing the evaluation mechanism, the following approaches, as a minimum, should be explored:
  - (b) Means of determining whether decisions affecting the educational process are advancing or impeding student achievement;
  - (c) Appropriate testing procedures to provide relevant comparative data at least in the fields of reading, language skills and mathematical skills;
  - (d) The role of the department of education in assisting school districts to strengthen their educational programs;
  - (e) Reporting to students, parents, boards of education, educators, and the general public on the educational performance of the public schools and providing data for the appraisal of such performance; and
  - (f) Provision of information which could help school districts to increase their efficiency in using available financial resources. (91:p. 6.0)

### A Task Force on Secondary Schools in a Changing Society (1975)

described minimum expectancy within the 50 states as:

A great diversity exists among the 50 states concerning requirements to graduate from high school. Some states legislate a number of specific courses, to include English, U.S. history, government, mathematics, physical education, consumer education, driver education, and health. In other states the local school district determines all qualifications for graduation, to include course requirements. The most typical situation is for some requirements to be mandated by the state legislature and some by the local school board.

Graduation requirements currently are under extensive review in a number of states. Among the forces acting to bring this review are these: (1) determination of the age of majority as 18 years, (2) extension of the constitutional rights of minors, (3) recognition of the early physical and social maturity of youth, (4) acceptance of the value of community-based education for youth, (5) popularity of alternative paths to learning, (6) revision of entrance requirements to college, (7) modifications in school-college relationships, and (8) advent of new approaches to credit verification.

Among those states actively reviewing and revising graduation requirements, two trends are evident. These include:

- (1) An extension of the local option to determine graduation requirements while concurrently reducing state mandates.
- (2) The development of performance standards as a requirement for graduation. . .

A second trend, the application of performance standards, tends to focus upon the development of a series of competencies considered necessary for effective adulthood. Normally, the criteria used to determine the level of competency are left to each school district. (27:pp. 39-40)

Educational accountability had come from relative obscurity to the halls of state assemblies. No doubt could exist that the idea of responsibility had always been present in the educational process and the concept of productivity was an established doctrine. Where productivity had not met the

anticipated or expected standard in any educational activity, there had existed for the educator the security of immunity from having to specifically answer for the consequences of his (her) actions. It has been shown that conditions within the educational system were being questioned by the general public and, as the immunity barrier fell, individual citizens were asking the courts and their elected representatives to provide a new doctrine of control and expectancy for the schools. Even more dramatic, when the general public had an opportunity to continue their support for public education through a general tax levy referendum, they voted against the increase in revenue and closed the schools. Schools or their agents were no longer revered by many citizens. (71:p. 72)

Personal accountability now emerged as a realistic possibility. Gary M. Little (1974) attests to this fact:

It was only a short time ago that the legal problems of education were almost exclusively business matters and perhaps complying with the general mandates of the State Board of Education. Seldom, if ever, was the professional educator personally confronted with legal problems other than those that might surround his contractual status. His role and that of the courts were well defined and seldom overlapped. Within the school community there existed a clear, supposedly natural, order with which the courts and others in the general society hesitated to interfere. Students had few, if any, rights other than those defined by educators. Teachers were held to a strict pattern of conformity, and each building administrator was the "law" in his particular domain.

Clearly, the days when the professional educator could be unconcerned with precepts of the law are gone forever. Court rulings expanding the rights and freedoms of students and educators, delicate school-community relations, and increased bureaucratization of education have all contributed to the closer relationship of law and education.

The concept of in loco parentis, which permitted the school to assume as much power over the student as that exercised by the child's parents, is dwindling in force. While the school is still responsible for the care, safety

and welfare of its students, the school's parental power to discipline and control students has diminished in scope. The community, through the law, is redefining the role of the school in the educational process. (16:p. 1)

As a summary statement to the changing legal role for school employees and officials, Theron Swainston (1976) states:

This need was confirmed in a statement made by Jessie M. Unruh while serving as speaker of the California Assembly. "In my judgement, informed legislature, governors, and administrators will no longer be content to know, in mere dollar terms, what constitutes the abstract needs of the schools. The politician of today, at least in my state, is unimpressed with continuing requests for more input without some concurrent idea of the schools output." (100:p. 2)

Swainston also continues with:

A continuing expansion of governmental function and an accelerating inflationary spiral have increased the cost of governments in general and thus an increase in taxes and/or governmental indebtedness. This coupled with dramatic and continuing exposes of corruption, inefficiency and malfeasance has caused widespread public suspicion of and resistance to government and governmental officials. Since public schools are a part of government and school administrators are viewed in part as public officials, a part of this public resistance and suspicion is transferred to them. (100:pp. 1-2)

A position has thus far been advanced in this work that the American schools are no longer viewed as agencies where "good men" are turned out. To the contrary, there is some evidence to suggest that a segment of the public is openly questioning the structure, purpose, goals and, most certainly, the specific outcomes for this organization. General statements regarding the purported failures of the schools challenged the notion of Schools Without Failure and suggest, as William Glasser (1969) might, that our present institutions are "designed for failure." (7:p. xi) Having accepted this position, some citizens have then asked the question: Who is responsible for this fault? Once, the

education of a child was the responsibility of the parent. When the state assumed greater control over the lives of the young, the responsibility shifted to this governmental entity. When the states enacted local governance provisions for controlling schools, and autonomy was vested in the community, the responsibility factor was assumed by the board of education. As this progression continues, the board of education, acting as a governing unit, employed especially trained and licensed professionals to handle the unique task of school maintenance. With this task came the variables of teaching--learning and school operation. It is not difficult to readily identify those individuals that the general citizen might suggest were at fault for any failure of the school agency. Not only were these individuals most observable in the process, they were the ones responsible. Taxes constituted the method of support for the schools and, as Stanley M. Elan (1974) suggests, the idea of support, failure, and punitive action are interrelated. This concept became apparent when:

Congressman John Brademas has identified an unspoken assumption about accountability: (Accountability) "It's the weapon we've long been seeking that will let us punish the teachers who can't make our children learn. This punitive interpretation of accountability is, of course, what teachers' unions are responding to when they resist accountability in many of its forms." (parentheses added, 45:p. 657)

### Educational Malpractice

What would such an action be labeled? The response to this question, according to Rennard Strickland, et al., (1976) would be Educational Malpractice. These authors note:

Doctors and lawyers are not the only professionals who must be

concerned about malpractice. The teaching professional faces many of the same legal hazards that have created the current malpractice crisis in health care. Because it covers such a wide range of possible situations, teaching malpractice is a growing threat to professional educators. As Black's Law Dictionary notes, malpractice is "any professional misconduct, unreasonable lack of skill or fidelity in professional . . . duties, evil practices, or illegal or immoral conduct" . . . .

Teachers proudly and justifiably proclaim themselves to be professionals. Deviation from professional standards--whether by doctors, lawyers, accountants, or educators--constitutes professional malpractice. Ballentine's Law Dictionary explains that malpractice is the "violation of a professional duty to act with reasonable care and in good faith without fraud or collusion" . . . . Thus the teacher, like fellow professionals in law and medicine, is subject to legal action when conduct falls below accepted professional standards. (30:p. xii)

As one would review the other professions, and the reported malpractice crisis that exists for the areas of medicine and law, an alarming picture emerges.

David Makofsky (1977) states:

The malpractice crisis in medicine has continued for more than two years. Its immediate cause was the decision of the major national malpractice carrier, Argonaut Insurance Company, to increase premiums for malpractice insurance by 196.8 percent. Present reports indicate that the rates may be four or five times as high in the near future but, at the time of their increase, Argonaut simply intended to leave the field of malpractice insurance and never expected the doctors to pay these new charges.

During this crisis the public has seen and learned a great deal about medicine as it has been practiced in the United States. It is now apparent that incompetence is a fairly wide-spread problem. It has been estimated that 5 percent of all practicing doctors--roughly 16,000 out of 320,000--are unfit for practice, being mentally ill, addicted to drugs, or ignorant of modern medicine. Thirty thousand Americans die yearly from faulty prescriptions, and ten times that number suffer dangerous side effects. Incompetent and unnecessary surgery is now a serious problem. But despite this situation, state and local medical societies are reluctant to act against doctors, and consumers are often too ill informed to separate good from bad medical service until it is too late. (64:p. 25)

Makofsky (1977) continues with this discussion and credits two other

factors for contributing to the increase of medical malpractice actions. First, he considers the high cost of medical treatment a factor that has led many patients to the offices of lawyers when they have received apparently minimal service. Second, with the increased technology of today, it is expected by many patients that they will receive immediate results from the services rendered by a practicing physician. When the costs and expectancy do not coincide, there is relief sought in the courts. (64:pp. 25-26)

Robert E. Kroll (1976) responded to the status of professional malpractice for attorneys.

*Legal malpractice, negligence committed by lawyers, is coming home to roost on the profession in the next two or three years. The flood of lawsuits aimed at lawyers now welling up could create jurisprudential havoc. Nevertheless, the profession is doing almost nothing to prevent a crisis which, in the words of one observer, "will make the medical malpractice crisis look trivial by comparison."*

And like the doctors' patients, the consumers of legal services will be hit with the soon-to-be staggering professional liability insurance premiums which attorneys will pass along in their fees. Worst of all, the quality of legal services may take a sudden drop. . .

Why has there been such an increase in legal malpractice? The reasons are largely the same as those for medical malpractice. The upsurge can be attributed partly to an increase in consumer (and lawyer) awareness of the existence of attorney incompetence. The client feels entitled to a higher caliber of legal assistance in exchange for the relatively high cost of the services. Some lawyers have charged that clients use malpractice as a way to protest what they consider usuriously high fees. . .

The law of attorney negligence has been greatly liberalized in recent years. It used to be said: "The lawyer is the only man in whom ignorance of the law is not punished." No more.

The decision handed down by the California Supreme Court in Smith v. Lewis (1975) significantly expands that standard of care, probably sets a national precedent and adds four very explicit criteria for any California

attorney to follow:

- (1) He must possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys (emphasis added).
- (2) He must discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.
- (3) Even with respect to an unsettled area of law (he must) undertake reasonable research in an effort to ascertain relevant legal principles.
- (4) Make an informed decision as to a course of conduct based upon an intelligent assessment of the problem. (60:pp. 553-554)

As the crisis has been explored for the related professions of medicine and law, a prediction has been made that this same problem is beginning for the educational community. Rita Dunn, et al., (1977) report:

Increasing attention has been focused on the many functionally illiterate students who are awarded high school diplomas each year and then are pushed out into the job market--only to be condemned to unemployment, marginal employment, or welfare. This attention has moved from voter unhappiness at school board meetings to taxpayer suits charging a type of educational malpractice. . . (43:p. 418)

"The little red schoolhouse ain't what it used to be," remarked Strickland (1976) (30:p. xi), and this is amplified by Arthur R. Olson (1975) who indicates:

Americans will spend well over \$100 billion this year for all forms of education, public and private, according to recent HEW figures. . .

This has brought the concept of accountability into the educational scene. What is it? Accountability is a tool--or a process--a way to give the public the facts they need to judge more accurately how well their schools are doing. . . .

When the question is asked, "Who is accountable to whom and for what?" we should understand that different participants are involved in the

accountability process. Individuals are accountable to their superiors, their clients, their peers, and themselves. . . . Accountability really is a personal and shared responsibility. (67:p. 38)

With this concept in mind, for both a personal and shared responsibility factor, it may be significant to this emerging educational issue to review the judicial actions which have already taken place on the topic of educational malpractice. In a review of this area, Strickland (1976) notes:

The trial of Socrates is without doubt the most famous teacher trial in history. In the year 399 B.C. the eighty-year-old Athenian philosopher-educator was charged with "corruption of the young" and brought before a jury of 501 of his fellow citizens, who found him guilty. The story of the trial as reported by Socrates' pupil Plato is an ennobling example for all who would be molders of the mind. (30: p. 3)

From this beginning, a number of other educators, historians, and philosophers have been subjected to civil and religious judicial actions which resulted in punitive measures ranging from embarrassment to physical injury. In the United States, M. Chester Nolte (1973) records the events of one of the first judicial proceedings engineered to discuss the malpractice of a teacher. He states:

When in 1927 John Thomas Scopes was convicted of teaching a theory that man was descended from a lower form of animal life, the courts reasoned that he had no right or privilege to serve the state except upon such terms as the state prescribed. (18:p. 34)

The court record describing this case provided the following summary report on the issue of what was to be taught and who was accountable to whom.

His liberty, his privilege, his immunity to teach and to proclaim the theory of evolution, elsewhere than in the service of the state, was in no wise touched by this (antievolution) law. The law is an act of the state as a corporation. It is a declaration of a master as to the character of the work the master's servant shall, or rather shall not, perform. In dealing

with its employees engaged in its own work, the state is not hampered by the Fourteenth Amendment to the Constitution of the United States. (18:p. 34)

As the record is extended, Nancy J. Bergstein (1976) reports:

In 1959, Columbia University sued a student and his parents to recover \$1,000 for tuition owed to the university. The student filed a counterclaim demanding damages of \$7,016, alleging that the university "had represented that it would teach the defendant wisdom, truth, character, enlightenment, understanding, justice, liberty, honesty, courage, beauty and similar virtues and qualities; that it would develop the whole man, maturity, well-roundedness, objective thinking and the like; and that because it failed to do so it was guilty of misrepresentation, to defendant's pecuniary damages." (35:p. 755)

During this same year, the state of Louisiana viewed the entry of a case of educational malpractice brought by a student who had failed the bar exam three times and alleged that the fault rested with his teachers. James M. Lenaghan (1973) says:

A related basis for a tort suit is the failure of the school to educate its graduates in basic skills. In a Louisiana case, a graduate of Southern University Law School who had failed the bar three times sued the university, its president, the State Board of Education, the state, and the governor for damages on the grounds that the state, by funding inferior schools, had deprived him and other students of the education provided by other state universities. The Louisiana Court of Appeals held that the State Board of Education would be the proper defendant. However, since there was no legislative waiver of immunity, the plaintiff could not maintain his suit. (22:p. 185)

The employees and officials of the San Francisco School District were probably shocked to learn, in 1972, that they had been listed as negligent and charged with intentional misrepresentation which deprived Peter W. Doe of basic academic skills. (75:pp. 1-2) The California Reporter (1976) offered this account of the charges in this action.

The first count, which is the prototype of the others (each of which incorporates all of its allegations by reference), sounds in negligence. Its opening allegations may be summarized, and quoted in part, as follows: . . .

"XI. Defendant school district, its agents and employees, negligently and carelessly failed to provide plaintiff with adequate instruction, guidance, counseling and/or supervision in basic academic skills such as reading and writing, although said school district had the authority, responsibility and ability . . . (to do so) . . . Defendant school district, its agents and employees, negligently failed to use reasonable care in the discharge of its duties to provide plaintiff with adequate instruction . . . in basic academic skills (,) and failed to exercise that degree of professional skill required of an ordinary prudent educator under the same circumstances (,) as exemplified, but not limited to (,) the following acts:"

In five enumerated subsections which follow in the same paragraph ("XI."), plaintiff alleges that the school district and its agents and employees, "negligently and carelessly" in each instance, (1) failed to apprehend his reading disabilities, (2) assigned him to classes in which he could not read "the books and other materials," (3) allowed him "to pass and advance from a course or grade level" with knowledge that he had not achieved either its completion or the skills "necessary for him to succeed or benefit from subsequent courses," (4) assigned him to classes in which the instructors were unqualified or which were not "geared" to his reading level, and (5) permitted him to graduate from high school although he was "unable to read above the eighth grade level, as required by Education Code section 8573, . . . thereby depriving him of additional instruction in reading and other academic skills." [60 Cal.App. 3d 814] (80:p. 856)

In 1974, another case was introduced into the court system. William

R. Hazard said:

The case of *Ianiello v. University of Bridgeport* (1974), although based on breach of contract and fraud, raises the issues of educational malpractice at the college level. The plaintiff, preparing to qualify as a teacher, enrolled in a required course at the defendant University, completed the course (with an "A" grade) and thereupon sued to recover damages against the defendant for its alleged breach of contract and fraudulent misrepresentation. The complaint alleged that the course as given was substantially different from the course described in the college bulletin and, further, the course received was worthless and of no benefit to the plaintiff. Specific allegations about the instructional mode, the absence of tests and evaluation, and the nature of the breach of contract

were included in the complaint. The gist of the complaint focused on the alleged promise by the university concerning the course description, the performance breach, the misrepresentations by the defendant upon which Mrs. Ianiello relied, to her injury. She sought, as damages, an amount equal to tuition, fees, books, lost income, and attorney fees. The University's defense amounted to a denial of breach of contract or misrepresentation plus several "special defenses" . . . (52:p. 323)

Beryl Baer, a staff writer for the *Nevadan*, on January 30, 1977,

listed the next in this series of educational malpractices:

The U.S. headlines were made recently by the New York boy whose parents filed a multi-million dollar lawsuit against the school system because he graduated without being able to read or write beyond a fifth grade level and can't get anything but menial jobs. (84:p. 26)

Edward B. Fiske, reporting for the New York Times, cites the following:

When 18-year-old Edward Donohue walked through the door of the Lindenhurst Diner on Long Island one day recently he had already decided that he would order a cheeseburger.

"When you can't read a menu," the unemployed carpenter said, "you have to know what you want."

Mr. Donohue is not alone in having a serious reading problem. The United States Office of Education estimates that there are 23 million American adults who are unable to perform basic coping skills, such as reading a train schedule.

Mr. Donohue's case is notable, though, in one important respect: last month it was announced that he and his family were suing the Copiague Union Free Schools for \$5 million on the ground of "educational malpractice."

In a notice of claim, which is the first step in a civil suit against a government body, the 1976 graduate of Copiague High School charged that the school system had failed to educate him properly and had left him "unable to cope properly with the affairs of the world." (sic) (90:pp. 1,56)

The reaction to the suit filed in New York has been mixed. Citizens of the community are concerned that property values will be lowered; students at the school are concerned that the value placed upon their diplomas will be

reduced; school officials are remaining relatively quiet on the issue until it comes to court with only the statement that, when all the facts are produced, they are sure of vindication. Edward Donohue's parents are equally concerned as they respond to these matters; however, they have the immediate problem of a functionally illiterate son who cannot cope with the present society and with the prospects that his life will not markedly improve unless he receives training in the basic literacy skills.

When such actions are brought before the courts, it may be possible to assume that cases such as Brown v. Board of Education will again be heard.

In 1954, the majority opinion stated:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (15:p. 1)

Nancy Bergstein records:

Although aspects of each of these suits may seem frivolous or implausible, (Columbia University and Peter W. Doe specifically) these cases raise the issue whether a student can recover from a teacher, an administrator, a school, or school district for his failure to learn because of teacher negligence or incompetence. (parantheses added, 35:p. 756)

As described by William R. Hazard (1976), the threat of tort liability for negligent instruction probably will encourage schools to take whatever steps are necessary to cause pupils to learn. (53: p. 321)

What has been presented, from the earliest reported case involving educational malpractice to the modern day judicial actions which definitely address the reported negligence of educators, there is a record of increased

court actions by citizens in the area of educator malpractice within the past decade. The cases cited give testimony to the fact that there has not been one single isolated case or, for that matter, such a few cases that the topic should not deserve attention. If it could be assumed that there is a trend toward more cases of this nature, and if we believe, as does John C. Hogan (1974), that one case found in favor of the plaintiff will not involve just "reading ability" but could involve all of the courses in the school curriculum and the subsequent management of the schools in general, then the question may properly be asked: What research has been done on this important topic to modify the consequences of the potential force of malpractice? (10:p. 133)

Such a question would impose some unique conditions on those individuals who would be working in this area. These might include: First, has the topic existed for such a period of time as to allow for researchers to properly investigate the variables associated with the accountability concept; second, is data available for analysis; and, third, has some need or anticipated need for the research been specifically identified? Given these three variables, there would have been only a limited amount of research literature on this theme. A review of the reference sources has identified some notable exceptions to this consideration.

As early as 1950, Albert Lynd had invited research on the topic of educational output when he wrote Quackery in the Public Schools. He observed:

Since I became interested in the problem which is the subject of this book, I have had a large correspondence and have talked with many people. (17:p. vii)

From his interest and correspondence, he remarked:

The bare intellectual backsides of many public school children have been remarked by parents, employers, and college instructors. Their complaint is that, while new-pedagogues palaver more and more about the "real needs" of youngsters, the pupils are learning less and less about the arts of word and number, the history and the literature, the science and the esthetics, and the rest of the painfully accumulated culture of this harassed civilization. (17:p. 14)

Don Stewart, in 1971, published a work entitled Educational Malpractices, The Big Gamble in our Schools. With this work, Stewart provided a substantial volume of data related to the topic of malpractice and supported his position with objective research reports on the nature of some school failures. From this work, the author outlined what he considered to be the educational malpractices that exist in the schools today. These included:

1. When a teacher requires a student to learn from certain materials, particularly textbooks, knowing that the student is not able to learn from these materials because the student reads at a level which is below the actual reading level of the textbook . . .
2. When schools, school districts, colleges, and universities enroll students from the so-called "disadvantaged" group in regular classes, knowing that these students have sufficient cumulative ignorance that they cannot learn in the regular classes (sic) and are destined for failure.
3. When a teacher allows a student to leave a course or grade level knowing that the student has not achieved the knowledge and understanding, skills, etc., which are necessary to enable the student to succeed in a subsequent course . . .
4. When teachers design or school districts, colleges or universities require their teachers to design a teacher-learning situation in which a certain number or percentage of the students have to fail, regardless of the level of learning.
5. When students who are taking a course over for a second time because of a low grade are required to take the entire course over again . . .

6. When a teacher purposely misleads the student as to what he or she is to study, or is vague and ambiguous about the learning requirements of the course . . .
7. When a teacher or administrator disciplines a student who is caught with a copy of a test (without answers) before it is given .
8. When a teacher fails a student for not answering test items which the student's classmates who answered the test items correctly at the time of the test will forget and not be able to answer correctly at a later date . . .
9. When a teacher starts a course at the beginning of a textbook, knowing that some of the students already know part of the course . . .
10. When teachers teach students certain facts, how to deal with facts, how to interpolate certain facts, how to diagnose situations based on certain facts, etc.; then they test the students' knowledge with multiple-choice test items . . . (28:p. 67-68)

These ten examples constitute only a fraction of the identified malpractices against students at all levels of education. Mr. Stewart provided 41 such activities which he suggests are present in today's schools.

From this work, it may be important to look next at a recent publication which has been cited previously in this review, Avoiding Teacher Malpractice (Rennard Strickland, Janet F. and William R. Phillips, 1976). This work discusses some of the current judicial actions and provides a checklist for educators to follow in attempting to avoid malpractice actions.

One final author should be mentioned for his discussion on the ramifications that such malpractice actions might have on the entire educational system. William R. Hazard's work "The Law and Schooling, Some Observations and Questions" (1976) and his article on "Schooling and the Law, Reflections on Social Change" (1976) project possibilities and probabilities for the

educational community when malpractice actions are considered. (53:pp. 307-332; 54:pp. 417-440)

Some applied research has been identified, and there's no doubt other works exist that could be counted in this partial list; however, evidence is provided that the original variable which could have created a void for this area, and could have restricted research or investigators, has been overcome. In addition, from a remarkably early period, it would appear that the subject has been reviewed with interest and concern, with a causal relationship having been developed between the movement of accountability and the punitive action of malpractice.

### Summary

The review of the related literature has offered a body of data related to the area of educational malpractice. What might have been considered as an area relatively void of information has yielded some results. This in no way implies that the topic of educational malpractice has had the degree of treatment of reports, research and investigations that can be observed for such issues as school finance, integration, or even the human and civil rights of school age children. What has been observed is an apparently growing body of published works which is initiating a complete discussion of a potential future problem for education . . . malpractice.

## CHAPTER III

### RESEARCH DESIGN AND PROCEDURE

#### Introduction

Educational accountability is now recognized as a viable force affecting the educative process. This relatively new evaluative system has emerged with such an impact that time has not permitted an identification for all the components for this system. However, one feature of the accountability movement which has received national attention and reported interest across the nation is educational malpractice.

During 1972, this term was used to describe the consequences of the efforts of certain educators associated with the San Francisco Unified School District. Peter W. Doe, a recent graduate of this school system, alleged that these educators were guilty of misrepresentation, breach of contract, and a series of other professional misconducts which had left him functionally illiterate.

The introduction of one such court action probably would not have prompted many persons to be seriously interested or concerned with this topic. The Peter W. Doe case was followed by a similar action in the state of New York. These court proceedings were then supported by the statements of an elected national representative who contended that educators should be held accountable for the "outcomes" of their work. Add to this concept the mounting

evidence that a number of secondary school students throughout the nation were not achieving at a rate equal to past generations and there is, at present, a basis for such legal positions.

Based upon this brief introduction of the subject, it may be appropriate to inquire: What is educational malpractice, and what is the present status of this issue within the nation at this time?

### Design of the Study

In order to determine the present status of the concept of malpractice, it was discovered that three possible investigative avenues were available: (1) the present status of educational malpractice in terms of the general professional literature that discussed this topic; (2) the present status in terms of the research literature in education; and, (3) the present status in terms of the actual existence of the term in state statutes or codes.

The gathering of data from these three sources necessitated some means of classifying and categorizing the data so that a statement as to the current status of the topic could be established. To accomplish this, five basic questions served to guide the investigation: (1) To what extent do minimum competency requirements needed to obtain a high school diploma now exist? (2) To what extent do official statements and descriptions of educational accountability exist? (3) To what extent do statements, statutes, or codes exist describing malpractice and educational tort liability? (4) To what extent does interest exist in the topic as defined among educators, lay persons, and public officials? (5) To what extent does this topic appear to be a concern for the

present or immediate future among those in education?

A preliminary review of the literature related to this topic had suggested this investigative research outline and had, additionally, provided some positive rationale for their inclusion in the study. When the first question was listed: Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?, evidence could be obtained from the Colorado Project, and from initial research by a number of investigators who had suggested the same question on this feature of educational accountability; however, the term ranged in definition from fiscal management to instructional competency. Due to the wide variety of responses provided this question, it was felt that the idea of required educational expectancy for students should be provided further attention. The preliminary review of literature also suggested that, if educational malpractice was to assume a dominant role in the structure of the educational system, then the process must be quantified. It was apparent that this area, labeled as minimum competency, had been suggested as a possible method to partially quantify the educational process; thus, educational malpractice could derive its origin from the enactment of such state directives.

The next question addressed the companion idea to minimum competency--educational liability. It had been hypothesized that, if there was a thrust by state judicial or legislative groups to provide direction to schools on the expected output for these institutions, then there quite probably would be directives which could enforce any minimum educational expectancy. The

questions from this area were: Has your state enacted any State Statutes or Codes describing: (a) educational malpractice? and (b) educational tort liability? Considerable attention had been found in the literature on the feature of tort liability for all persons in our society, including educators. This primarily entertained the position of physical injury or personal harm; however, it was again hypothesized that such a statute or code could easily be applied to cases involving reported professional negligence, constitutional deprivation of human rights, and breach of state statutory obligations. It was believed that if the educative process was being seriously considered with respect to the expected output, and a thrust had been initiated to hold professionals in the field accountable, there must be some description for this accountability movement.

The third question requested information on the interest level that could be ascertained from a specific region. This question asked: Has there been any demonstrated interest in your locality on this topic (educational malpractice) by educators, lay citizens, or public officials? It was stated that this interest could have been provided by news releases, professional articles, speeches, or the like. From a response to this inquiry, inferences could be made on two central elements of this topic. First, the interest level that the general public was presently displaying toward the schools; and second, the relative degree of satisfaction or dissatisfaction that could be observed from the various states. It had been projected that the entire educational accountability movement was of a very recent origin. In less than one decade, this force had altered some features of the educational process. Public interest and reaction had been

identified as one force which had created the accountability movement. Public interest, it was felt, could also propel educational malpractice legislation into existence.

The fourth inquiry proposed to investigate another profile feature of educational malpractice. This question asked: Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? The position that had been taken was again hypothetical in nature. Restraining forces, in the form of group intervention, may be present to restrict the enactment of any provisions governing educational malpractice. It was believed important to investigate the possibility that this force in American education existed and, if it did, then the dimensions for this activity must be investigated. If there was a movement to prevent the establishment of malpractice legislation, then this needed to be identified. If no activity existed, and educators and other interested citizens were not providing this information to their colleagues and other citizens, then the restraining forces to limit or curtail this movement were nonfunctional.

The fifth question directed to the survey respondents requested an impression on the possible future for educational malpractice state-enacted statutes or codes. This question asked: Do you consider this topic of educational malpractice a concern for educators for the present or immediate future? From all the theoretical assumptions that had been made, and for the work that had been completed to identify a relationship between the accountability movement and the punitive forces for this activity, there remained one central

question: Have others drawn some or all of the same conclusions and, if so, can these conclusions, in the form of opinions, be obtained from a survey group. This review could suggest the status of educational malpractice for 1977, and this question could provide information on a possible changing status for the future.

A procedure had then been determined for the purpose of classifying and categorizing the information of the study. This procedure offered a method for utilizing the three research procedures which had been selected; namely, an extensive review of the literature, a national survey effort, and a review of any related investigations which had been completed for this new concept area.

Before entering into a description for each of these research efforts, the philosophy which has managed the design of this study should be briefly explained. Educational malpractice is a new concept and an idea that most citizens would discuss with some reservations and caution. Although very much a reality, educational malpractice is in an embryonic state. The nature of the newness and uniqueness of this subject has produced a need to research the topic in an unconventional manner. The complexion of the topic is altering rapidly, and what may be a common feature at one moment will be absent the next. A traditional study would have required that some features of the subject remain constant for a period of time to allow for stabilization; the philosophy governing this research project has suggested that the issue should be investigated prior to such stabilization. Investigating a topic with a set of fluid parameters will create investigative dilemmas and limited research findings; however, to fail to

attempt such an effort, because of the apparent hardships involved, may deny the need to review any social change agent until the topic has concrete boundaries and accepted definition and scope. The philosophical position assumed in this study is designed around the mobile nature of the topic and, where changes occur during the study, these will be reported. Where constants can be identified, these will be described. This investigation offers a profile for educational malpractice for the present with its changing structure. For this reason, a degree of latitude has been taken with the study design and reporting of the results secured from all preliminary investigative work. Deviations in more formally accepted study designs and data reporting can then be attributed to this fact. The belief that this topic has the potential for creating such educational change that it should be reviewed at this time, even under these conditions, has been the thrust directing this research outline.

#### Review of General Educational Literature

The first investigative avenue employed for this study utilized the general educational literature that was related to this topic. When the idea was first visualized, there was an effort made to discover the origin and limits for the topic. A preliminary review of the topic produced a limited amount of available literature which specifically discussed educational malpractice. This early review did, however, suggest a number of relationships which existed between educational malpractice and other related concepts within the educational process. An outline was then constructed on these relationships, and a

review of the current literature was conducted within this framework.

The associations that existed between educational malpractice and the concepts of educational accountability, minimum educational expectancy for secondary students, educator liability, and related responsibility factors of other professional fields were reviewed. Each of these topics had a number of subsections, and these divisional elements were also surveyed. When a major body of data had been collected from these associated areas, it was apparent that specific dates could be established as bench marks. The year 1969 is one such example for the origin of the accountability movement. Based upon these bench marks, the review of related general educational literature then concentrated on developing a chapter which could demonstrate the rise of educational malpractice as a force in the educational process. Again, relying upon the identification of common relationships that existed between the idea of educational malpractice and parent ideas, an extensive review of the literature was conducted for the purpose of developing a data base which could partially profile the current status of this topic for the educational process.

To accomplish this task, literature was secured from a number of individual searches: (1) general literature that could be obtained from a library source; (2) literature that could be obtained from a national clearinghouse file; (3) literature that could be obtained from a legal library source; and, (4) literature that could be secured from private sources. When these data were collected, and analyzed according to the categories and classifications that had been established, the reporting followed the original format that had been

developed around three concept elements: (a) the emergence of the concept of educational accountability; (b) personal accountability for educators; and (c) educational malpractice .

### National Survey Data Collection

When this project had been completed, there was an obvious need to obtain information which could not be obtained through the previous procedure . There was a need to isolate the variables which this process had left unresolved . Six distinct source areas could be identified that needed additional investigation . These areas included: (1) a current status position statement on the number of states that had enacted state statutes or codes describing the minimum educational expectancy needed to obtain a high school diploma or graduate certificate; (2) a current assessment of the current status for any codes or statutes describing educational malpractice or provisions of tort liability with educational malpractice features; (3) an appraisal of the communication method existing in each region of the nation which was explaining educational malpractice to the citizens of that region; (4) an evaluation of the apparent interest that this topic was receiving from members of each individual state; (5) a forecast of the importance that each state's citizens were ascribing to this dimension of educational accountability; and, (6) the identification of state statutes or codes that could govern malpractice . This last area would attempt to obtain information on legislation that was in a formative stage, or measures that had been presented to state governing agencies and met with preliminary success or rejection .

To secure this type of new information, a survey instrument was developed which specifically addressed each of these informational needs. After the survey instrument had been prepared, the next step was to select a survey group that would provide the information which would aid in this investigation. The educational system of this nation is controlled by each of the individual states; therefore, this governance alignment produced the first divisional arrangement for selecting group respondents. The next matter to be determined was the number and identification of the citizens from each state who could provide input on the questions employed in the survey instrument. Careful consideration was provided this final selection of individual respondents. It was determined that the jury which was finally selected must meet the following criteria: (1) each respondent must be familiar with the educational system of the individual state; (2) each respondent must have had an opportunity to discuss educational issues with a sufficiently large number of other individuals from within the state so that some opinion could be derived from a reasonably large segment of the state's population of educators or lay citizens; and, (3) each respondent must be in a position that could be affected in some manner by the enactment of educational malpractice state statutes or codes.

The educational community was one unit of society where persons could be found who could meet all the listed criteria; however, this group was of such a size that it would be necessary to select a specialized random sample of persons from the educational professions if the investigation was to approach manageability. Individual teachers and administrators, as well as

other specialized groups within any school system, may have a limited association with individuals outside their immediate locality. Because of this variable, it was then decided to survey a group of educators who could meet the second identified criterion. With this determination, it was possible to isolate two such groups of individuals: first, the executive director or secretary for the state affiliates to the National Education Association; and, second, the executive director, secretary, or coordinator of the state affiliates to the National Association of Secondary School Principals. It could be observed that, with the selection of these groups, the geographic division of the country had again been broken down by state level. Such a division not only provided a manageable arrangement, it also provided a method in which this issue could be reviewed within each individual governing unit, the state.

This survey group could provide some significant information; yet, this information would come from only one highly specialized group of individuals. Therefore, to secure additional data from still another source, a third survey group was needed. The states had been selected as the geographical divisional arrangement, so it was felt that, if the report was to have consistency, this same arrangement should be maintained. With this variable in mind, and a need to have data from a source that could meet the established standards, it was decided to survey the Attorneys General from the 50 states. The courts had been asked to rule on the merits of the charges brought against certain school employees, and the idea that states might be in a posture to enact state statutes or codes describing the expectancy for schools contributed to the support for

selecting this group.

One hundred and fifty potential respondents were then identified who would be requested to supply information related to the six source areas needing further clarification. These three different respondent groups could offer the distinct possibility that three individuals would be surveyed from three different sections of each geographical region of the state, thus providing an opportunity for the survey to canvas a major portion of the entire nation.

#### Review of Educational Research

The final investigative procedure to be employed was an attempt to identify applied research that had been conducted on this topic. Applied research, in this instance, would amount to any study which had been undertaken to identify any of the following features: (1) definition and analysis of educational malpractice which could demonstrate the existence of such conduct within the educative process; (2) research which demonstrated the possible consequences of malpractice state statute or code enactment as produced by a comparison of related professional activity where there is supportive evidence; and, (3) any research which had been conducted on the effect that malpractice legal actions or statute enactment had produced for any given region or state.

In attempting to isolate this type of data, it was determined that the uniqueness of the study must permit some latitude in identifying this social research. This latitude would then legalize any attempt by other investigators to apply any research procedures to this topic, whether by statistical measure or inferential analysis. The only limiting parameter placed upon this search

was time. It was considered essential that the information from this area be produced within the same general time period as that reviewed in the general professional literature--1969 to 1977.

#### Data Treatment

For the purposes of this study, descriptive data regarding the dimension of the current status of the concept of educational malpractice were obtained from three sources: (1) related general professional literature; (2) responses to the questions from three identified survey groups; and, (3) related research findings.

The data obtained from the examination of the professional literature was reported. This was followed by the data from the three sample groups responding to the questions supplied on the survey instrument. The completion of the data collection was made with a review of the available research devoted to this topic.

Once the available data had been obtained, this information was subjected to an analysis based upon each of the suggested component features for the concept of educational malpractice. These elements included: (1) negligence; (2) constitutional deprivation; and, (3) breach of state statutory responsibility or duty. This required that each of the investigative searches review each of these elements and report the information which had been obtained in relationship to each of the identified features of educational malpractice, negligence, constitutional deprivation, and breach of statutory responsibility or duty.

Conclusions, recommendations and predictions based upon these comparisons were then reported in Chapter V of this study.

### Summary

This chapter has described the development of the investigative model and the manner in which the data has been reported. It should be noted that, throughout this design of the study, there has been the need to make subjective inferences and to draw theoretical conclusions regarding the information that was available for review. The foregoing description has described, in some detail, the method employed for obtaining information related to this subject of educational malpractice. Such information will be used to answer the questions posed originally as a statement of the problem. These same responses will be used to suggest possible consequences if educational malpractice interest and possible legislative enactment continues at its current pace. The design of this study is not traditional, for such a formal procedure would restrict the full utilization of inferences and the reporting of possible social events without supportive objective data. Yet, social educational consequences predicted for the future can have no such objective basis of fact and, if we wait for such a time, then we cannot alter events, merely report history.

## CHAPTER IV

### ANALYSIS AND FINDINGS OF THE STUDY

#### Introduction

The data that will be analyzed in this chapter have been collected from a variety of independent sources. A brief description of these source areas, and the type of information secured from each investigative search, may provide a degree of clarification in discussing the analyses and findings for this study.

The original study question to be answered was: Given the projected possibility of educational malpractice legislation applicable to the contractual and statutory obligations for certificated educational personnel, what is the current status of educational malpractice legislation presently affecting the nation's secondary schools? In an effort to compose a response for this inquiry, there existed a need to first determine the definition and parameters surrounding this relatively new educational concept.

When an analysis was undertaken to determine the specific areas of agreement on the definition and scope for this subject, the authors cited in the chapter on related literature offered the following ideas.

#### Definition of the Term--Educational Malpractice

1. The Accountability Movement for the nation's educational system

has been the force which has brought the idea of educational productivity to the attention of the American educational consumer .

2. A factor of responsibility (for providing an educational service) has been an understood assumption by the citizens of this nation who support the educational agencies .
3. With the idea of responsibility of educational service, there originated, in the late 1960s, a new dimension for this factor . This component of responsibility was labeled educational output or consequence .
4. When the element of educational output or consequence was identified for educational productivity, there was a second factor that became obvious to individuals offering a definition of educational malpractice . This emphasized the idea that, if the output or consequence of education was not met, parties to the educative process might be liable for their conduct .
5. With the interjection of this feature, those defining the term invited the public to consider a punitive action which could enforce the component of liability .
6. Educational malpractice, by considering these important principles, would be addressed by other governmental agencies who were in a position to judge the results of the educational enterprise . This would occur with respect to individual consumers .

7. The Accountability Movement within the educational system has caused the general public to question the results of educational progress when these outcomes are balanced against the costs required to maintain the institution.

The consistency with which these ideas recur through the work of those individuals that were seeking a definition to this new term would suggest that the definition offered by Stephen J. Knezevich (as cited in Chapter II) might properly summarize these concept segments into a workable definition. In essence, what the researchers had found agreement on was: The secondary schools of this nation, through a period extending for over a decade, had been requesting increased revenue to cover the spiraling costs of maintaining the public secondary schools. These costs had, in part, been provided; however, during this same time interval, there had been a decline in the output or consequence of the education process for secondary students. This decline in achievement had caused some citizens to question the work of professional educators. These parents and students were convinced that these educators were responsible for the apparent lack of educational skill attainment, and thus libelous for this nonproductive state. It was further concluded, by some citizens, that if individuals are liable for their conduct and apparently fail to be responsible in a manner expected by either law or tradition, these persons must stand to account for such misconduct. It was then deduced that if a person had been harmed or injured as a result of the actions of any responsible party, that responsible individual could be held to pay for any damages caused to another person. Educational agency failure to

achieve an expected standard of output was then attributed to those who worked in the profession; thus, these educators could be held accountable for their conduct and should be required to correct the harm they had purportedly caused.

#### Scope for the Term--Educational Malpractice

The scope of this new accountability factor was more difficult for many investigators to describe. For this reason, only slight agreement could be identified for this factor. Although the idea of literacy has some accepted meaning, and only varies with the connotation placed on the term by any writer, there was some agreement on the standard of proficiency which would be required of youth who were exiting the public secondary schools for the purpose of obtaining employment or continuing their educational pursuits at a post-secondary institution. When researchers discussed these two variables, there was some agreement on the level of proficiency that must be obtained for each of these desired interests. Some authors cited in the section devoted to related literature suggested, as did George Weber, that the ability to successfully perform eighth grade verbal and numerical tasks could constitute basic literacy. For any student who would be entering the employment market, or wishing to continue training in a specialized area, the academic achievement level would begin with this minimum and continue through proficiency levels in verbal, numeric, and subject skill mastery through grade levels of 10, 12, or more years of schooling.

The parameters for discussing the new educational malpractice issue

were considered within the features of two elements: First, a literacy standard that would permit any person who had gained skills necessary to enter an industrial society without a disability in coping with routine living requirements; second, for those graduates of any public secondary school who wanted to seek immediate employment, or continue their formal training into a post-secondary institution, their academic achievement would permit such a move without any hardship or difficulty. Agreement for these features could be observed in the statements presented in the second chapter of this study.

A general author agreement was then discovered on the manner of stating educational accomplishment. This was signified through the awarding of a high school diploma which would attest to basic skill attainment in not only the verbal and numeric academic areas but, in some instances, this document would purport to demonstrate the level of proficiency that the graduate had attained in vocational or occupational training. Now in question, the diploma had held this meaning during the past.

There was some further agreement among the authors on this topic for the classification of special (handicapped or disadvantaged) students. The general theme presented in these discussions of educational malpractice showed consistency on the type of student being considered. This was the person who had demonstrated some measure of ability to comprehend those activities that were being presented in a formal learning environment and, further, it considered only those students who had not necessarily objected to the educational system by any observable acts.

There was some additional agreement by the authors reviewed that not only was citizen literacy a proficiency standard which schools should meet, citizen literacy was, in fact, the purpose for establishing the public school systems. This agreement produced a statement by a number of authors that purpose and expected educational success were identical in nature.

When the limits of the scope of educational malpractice were reduced to definable terms, and agency failure was discussed in terms of purpose or outcomes, review of the literature provided the following general areas of consistency, especially when the educational agency or educators had apparently failed to meet the standard of expectancy required in the performance of their duties. This reported failure was most often listed as:

1. Negligence--this was a reported failure on the part of educators to properly discharge their responsibilities as outlined by the theory of the "duty of care" doctrine and as stipulated in contractual provisions. This negligence was further delineated into the following areas:
  - a. Malfeasance--Any action taken by educators during the performance of their duties which could be considered wrong or unlawful in nature. Such an act might be providing improper learning materials and incorrectly reporting the progress of pupils' academic achievement.
  - b. Misfeasance--Any unlawful act conducted under the guise of proper conduct supported by implied law. Such an act

might be described as presenting educational materials to any student that would be above the expected educational proficiency level for that individual student .

- c. Nonfeasance--The willful neglect in performing a specific contractual obligation or duty specified by standards of moral or ethical conduct . Such an act might involve the "social" promotion of any student to a higher grade level , or from school without the required achievement level .
  - d. Misrepresentation--A false or fraudulent impression provided by any individual for the purpose of personal gain . Such an act could easily be interpreted as the reporting of grades for an individual or a group of individuals which were inconsistent with the "true" academic progress of these individuals in an effort for the educator to demonstrate employment success , thus deriving some gain , either financial or academic , from the exercise .
2. Constitutional Deprivation--This is a restraint which will inhibit any individual from enjoying the individual and human freedoms and rights guaranteed by the Federal and State Constitutions . This doctrine was partially described by the ruling in Brown v. Board of Education (1954) and , although this case was directed toward educational opportunity , an analogy was quickly developed for this doctrine and the apparent failure of schools and their agents

and employees to properly educate some students, thus causing an educational restraint of "life opportunities."

3. Breach of Statutory Duties--This idea created the concept that, as some states had enacted minimum competency standards which students must meet before they would be granted a diploma, it was considered by some educational researchers and legalists that such laws constituted a duty required for the proper discharge of a professional contract.

Once a list of limits had been defined for the specific study question, there was an apparent need to conduct an intensive search for new data on the topic. Through the attempt to identify the definition and scope for this concept, it was discovered that a review of the current published and unpublished work on this topic could not provide any summary statements on the legislative enactment status for this new feature for educational accountability. Nor could any information be collected which might suggest the interest that citizen groups, state legislators, or educators were directing to this rapidly expanding educational condition. Evidence existed that the parent concept, educational accountability, was being addressed by a number of state governmental agencies. These facts then contributed to the demand to gain information on this phase of the educational malpractice question. A survey was developed which could be provided to a random sampling of persons in this nation who might provide reliable information related to the topic. This survey instrument (Appendix A) has been described, in some specific detail, in the section devoted to a description of

the procedures; however, to again provide clarity for this chapter, a brief recapitulation will be made .

### Survey Design

The survey instrument was designed to obtain a professional opinion on the legislative status for educational malpractice . To secure a response to this single question, it was necessary to describe, in part, the new concept and to request responses to a number of related questions . These questions were: (1) *What is the present enactment status of state statutes or codes describing minimum educational competency for students within each state?* (2) *What is the interest level that this topic is generating within each surveyed state?* and, (3) *What are the predictions for future implications for education if malpractice statutes or codes are enacted?*

### Survey Data on Related Inquiries

An analysis of the responses received for the companion inquiries related to the study question provided the following information . The state affiliates of the National Education Association, the state affiliates of the National Association of Secondary School Principals, and the Attorneys General for the 50 states clearly agreed (by their responses) that there had been little attention provided to the specific topic of describing minimum competency standards required for obtaining high school graduation status . While there was consistency of agreement on the status of legislative enactment within each state for this area, there was an indication that a small percent of state governments

had specifically addressed this question. Supportive evidence for this assertion can be found in Appendix D.

Table 1 is provided to summarize the responses received for the first question of the national survey. This question, directed to three members from each state, demonstrated a high degree of consistency between these three state survey respondents, plus an additionally high degree of agreement among the three different survey respondent groups.

TABLE 1

ANALYSIS OF GROUP RESPONSES FOR THE QUESTION:  
HAS YOUR STATE ENACTED STATE STATUTES OR CODES  
DESCRIBING MINIMUM COMPETENCY REQUIREMENTS  
NEEDED TO OBTAIN A HIGH SCHOOL DIPLOMA?

RESPONDING GROUP IDENTIFICATION	SURVEY RETURN IN	ITEM RESPONSE			ITEM RESPONSE PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
STATE AFFILIATE OF NEA	40	8	32	0	20	80	0
STATE AFFILIATE OF NASSP	39	6	33	0	15.4	84.6	0
STATE ATTORNEYS GENERAL	34	8	25	1	23.5	73.5	2.9

In an attempt to discover related information on the possibility that educational malpractice legislation might be enacted by the various states, the national survey held a question directed specifically to this topic.

This inquiry requested the respondent to provide an opinion on the

interest level that might be observed from within the respondent's home state on the issue of educational malpractice. It had been observed that a number of malpractice cases involving educators had been, or were presently being, presented to the judiciary for review and action. Table 2 describes the total responses obtained for this inquiry.

TABLE 2

ANALYSIS OF GROUP RESPONSES FOR THE QUESTION:  
HAS THERE BEEN ANY DEMONSTRATED INTEREST IN YOUR  
STATE ON THIS TOPIC BY EDUCATORS, CITIZENS, OR  
PUBLIC OFFICIALS? (THIS INTEREST COULD HAVE BEEN  
PROVIDED BY NEWS RELEASES, PROFESSIONAL ARTICLES,  
SPEECHES, ETC.)

RESPONDING GROUP IDENTIFICATION	SURVEY RETURN IN	ITEM RESPONSE			ITEM RESPONSE PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
STATE AFFILIATE OF NEA	40	20	19	1	50	47.5	2.5
STATE AFFILIATE OF NASSP	39	22	17	0	56.4	43.6	0
STATE ATTORNEYS GENERAL	34	21	11	2	61.8	32.4	5.9

Where there had been a negative response for the first inquiry, this did not hold true for this question of the survey. Of the responding groups, the highest interest rate had been observed by the respondents representing the Attorneys General. This 61.8% response figure was closely followed by a 56.4%

figure of the respondents from the National Association of Secondary School Principals who indicated that there was, in their opinion, a high interest level in this topic among the citizens of their respective states. The respondents from the National Education Association provided a close percentage (50%) interest on this matter. Table 3 provides a summary analysis of the findings for this question.

TABLE 3

ANALYSIS OF TOTAL GROUP RESPONSES FOR THE QUESTION: HAS THERE BEEN ANY DEMONSTRATED INTEREST IN YOUR STATE ON THE TOPIC BY EDUCATORS, CITIZENS, OR PUBLIC OFFICIALS? (THIS INTEREST COULD HAVE BEEN PROVIDED BY NEWS RELEASES, PROFESSIONAL ARTICLES, SPEECHES, ETC.)

SURVEY ITEM	TOTAL RETURN IN	SURVEY ITEM RESPONSE			SURVEY ITEM PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
NUMBER THREE	113	63	47	3	55.8	41.6	2.7

When a geographic analysis was conducted on these returns, no regional trends could be observed where one section of the nation may be experiencing more interest than another. The respondents reporting from the 50 states demonstrated a degree of agreement on this topic. When the results were analyzed for a composite response from three individual states, the three respondents from California, Massachusetts, and Texas all demonstrated uniform agreement on the interest level that was being displayed in their states. Such agreement was

important to observe in the respect that these individuals had apparently been exposed to some active interest by citizen groups, news reports, speeches, or similar public announcements. This interest could then offer predictive possibilities for these three states.

Question number four of the survey instrument was designed to obtain information on the degree to which information regarding educational malpractice was being transmitted from one state or locality to another. An attempt was being made in this inquiry to ascertain if there was: (1) any national dissemination of information from a local point to all states on the issue of educational malpractice; and, (2) to determine, if possible, if news releases, syndicated columns, or speeches from prominent persons had brought this topic to the attention of several individual states.

This question once again asked for an opinion, and no distinction was attempted to define the manner in which this information would have been presented or whether the local state had requested such data.

An analysis of these data indicated that a very low percentage of the respondents could answer the inquiry in a positive manner. Twenty-four of the total 113 responses indicated that there had been some information provided by an individual(s) from outside their state.

Each of the responding groups demonstrated a high degree of agreement on this question. Some of the comments published on the survey form, or provided through a separate letter, however, indicated that the vagueness of the inquiry had caused some respondents to omit the answer. Other comments stated

that this question was too suggestive and no proper response could be offered.

Table 4 provides a general summary of the responses obtained for this question.

TABLE 4

ANALYSIS OF GROUP RESPONSES FOR THE QUESTION:  
HAVE ANY INDIVIDUALS FROM OUTSIDE OF YOUR  
STATE BROUGHT INFORMATION TO YOUR COMMUNITY  
ON THE ISSUE OF EDUCATIONAL MALPRACTICE?

RESPONDING GROUP IDENTIFICATION	SURVEY RETURN IN	ITEM RESPONSE			ITEM RESPONSE PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
STATE AFFILIATE OF NEA	40	5	34	1	12.5	85	2.5
STATE AFFILIATE OF NASSP	39	10	26	3	25.6	66.7	7.7
STATE ATTORNEYS GENERAL	34	9	16	9	26.5	47.1	26.5

When a composite analysis is made for all respondents who reported on this question, the results provided a consistent agreement. It could be determined, from this composite analysis, that information on educational malpractice was not being generated from outside the boundaries of most states. It could further be suggested that there was no national effort by a special interest group to publicize the educational malpractice issue. This can be seen by 66% of the respondents indicating that little or no information had been brought to their community by persons from outside their respective states. Table 5 will provide

evidence to support these statements and will, additionally, indicate that 21% of all survey respondents suggested that information from some other source was being provided citizens within their region.

TABLE 5

ANALYSIS OF TOTAL GROUP RESPONSES FOR THE QUESTION:  
HAVE ANY INDIVIDUALS FROM OUTSIDE OF YOUR STATE  
BROUGHT INFORMATION TO YOUR COMMUNITY ON THE  
ISSUE OF EDUCATIONAL MALPRACTICE?

SURVEY ITEM	TOTAL RETURN IN	SURVEY ITEM RESPONSE			SURVEY ITEM PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
NUMBER FOUR	113	24	76	13	21.2	67.3	11.5

The final related question posed to the survey groups asked for an opinion on the future importance of the issue of educational malpractice. An opinion was sought from representatives from three divergent groups who could assess the present and future importance that this topic may have for the total educational system within any given state. A majority of the respondents from each survey group indicated that this was a concern for the present or for the immediate future. Seventy-seven percent (77%) of the respondents associated with the National Education Association saw this as a concern that educators must address in the present or next few years. The National Association of Secondary School Principals' respondents had a 66% agreement on this matter. In reviewing the respondents for the State Attorneys General, 58% believed this to be a concern for educators.

The results for this survey question are depicted in Table 6.

TABLE 6

ANALYSIS OF GROUP RESPONSES FOR THE QUESTION:  
DO YOU CONSIDER THIS TOPIC OF EDUCATIONAL  
MALPRACTICE A CONCERN FOR EDUCATORS WITHIN  
YOUR STATE FOR THE PRESENT OR IMMEDIATE FUTURE?

RESPONDING GROUP IDENTIFICATION	SURVEY RETURN IN	ITEM RESPONSE			ITEM RESPONSE PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
STATE AFFILIATE OF NEA	40	31	9	0	77.5	22.5	0
STATE AFFILIATE OF NASSP	39	26	12	1	66.7	30.8	2.6
STATE ATTORNEYS GENERAL	34	20	9	5	58.8	26.5	14.7

When all respondents are considered as a composite group, Table 7 demonstrates that a high level of agreement exists between the three groups surveyed. This level of agreement was demonstrated by the 68% of the total respondents considering this an educational concern. Only 27% of the respondents felt that this would not be any problem for educators, and 5% of the composite group failed to provide an answer.

From the evidence obtained for this related inquiry, there existed a majority opinion that this issue would be a problem for education and educators within the immediate future. This majority opinion, found with all three survey groups, implied that the concept of educational malpractice could have an

important impact on the educational process, as depicted in Table 7.

TABLE 7

ANALYSIS OF TOTAL GROUP RESPONSES FOR THE QUESTION: DO YOU CONSIDER THIS TOPIC OF EDUCATIONAL MALPRACTICE A CONCERN FOR EDUCATORS WITHIN YOUR STATE FOR THE PRESENT OR IMMEDIATE FUTURE?

SURVEY ITEM	TOTAL RETURN IN	SURVEY ITEM RESPONSE			SURVEY ITEM PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
NUMBER FIVE	113	77	30	6	68.1	26.5	5.5

When the survey results had been evaluated, and there appeared to be a possibility that this dimension of the educational accountability movement was creating a concern for a number of survey respondents, the next phase of the investigation commenced.

An opportunity was extended to each survey participant to make any comment that the individual considered relevant to the topic of educational malpractice. Such an opportunity permitted the respondent to develop a relationship between this accountability feature and other phases of the educative process. Illustrative of these relationships for the educative process are the following:

1. Supervision and evaluation of agency employees (NEA Response, Minnesota; NASSP Response, Michigan).
2. Supervision for the educational process (NASSP Response, Maryland).

3. Change in curriculum structure with mandatory special education for all exceptional students (NEA Response, Kansas; Attorney General Response, Connecticut).
4. Total structure change for educational process (NEA Response, Oklahoma).

When these factors were subjected to a comparison which had been made by researchers investigating this topic (William R. Hazard and Don Stewart), there was an agreement on the possible future consequences for education if malpractice actions continued and the judiciary ruled in favor of the plaintiff or parent. A summary statement from William R. Hazard will epitomize this fact. He quotes:

Recent "consumer" cases, seeking to hold teachers and schools liable in damages for their failure to cause children to learn, open up interesting consequences for schools at all levels. The notion behind such suits (Peter Doe v. San Francisco Unified School District [1973] and Ianiello v. The University of Bridgeport [1974] are the two best known cases to date) is that the schools have a legal duty to cause students to learn and if the student fails to learn, the teachers, schools, et al. are negligent. If the courts should decide that the duty to teach is breached by a plaintiff child's failure to learn, the judiciary can be credited with a breakthrough in knowledge of teaching/learning cause and effect--a relationship that has eluded serious researchers for years. The possibilities for extension of the negligence theory are nearly endless. (54:p. 439)

The limited research applied to this area of education, and the highly subjective nature required for this last phase of the investigation, produced only limited results. Some general comparison could be developed for what "might" occur; however, there existed such a large number of variables that specific consequences could be reviewed only as plausible considerations.

### Study Data Analysis and Evaluation

From this introduction, it can be observed that the concept of educational malpractice has three definable parameters. These elements can be labeled as: professional negligence; student constitutional deprivation; and, professional educator breach of statutory duties. The introduction offered a reference to the interest level that these three elements are receiving within the various states. Two additional ideas that have been advanced in the previous section included the notion that educational accountability is the parent concept for educational malpractice, and the information and interest that is being generated within each state has come from within that state and not from outside sources.

This outline now permits an analysis and evaluation of the specific study data which could describe the current status of state legislative enactments governing educational malpractice. To complete this division of the study, each of the features of educational malpractice (namely; negligence, constitutional deprivation, and breach of statutory duties) will be analyzed and evaluated within each of the three phases of the study.

### General Literature on Professional Negligence

Susanne Martinez and Peter B. Sandmann, attorneys for the plaintiff in the Peter Doe v. San Francisco Unified School District, may have been the first individuals to openly state the charges of negligence associated with the specific productivity of a school. (75:pp. 1-3)

Gary Saretsky (1973), reporting on this case, stated that officers and

employees of the San Francisco Unified School District were charged with negligence, misrepresentation, breach of statutory duties, and constitutional deprivation of the right to an education. (72:p. 589)

John C. Hogan (1974) followed with the same announcement:

From a white, middle-class family background, Peter had no physical problems or disciplinary problems while in school, and he had a normal attendance record. Now working with a private tutor, within six months his reading ability is alleged to have jumped two years, which "establishes his ability to learn." The suit contends that Peter N. Doe graduated "unqualified for employment other than the most demeaning, unskilled, low-paid manual labor" and that under California law the school district was required to ensure that he met certain minimum requirements before receiving a high school diploma. The case "derives its legal basis from questions of negligence, misrepresentation, and several statutory claims." (10:p. 132)

George M. Johnson (1969) continues this identification:

Thus, the problems of negligence in the field of education can be considered in connection with the different relationships involved in the education process. (13:p. 132)

From these sources, the idea of professional educational negligence has been identified. Evidence from the review of related literature clearly identifies the concept. There is no question in the works cited above that this concept has a realistic position in the educative process. Those who have discussed the term; i.e., Gary Saretsky, George M. Johnson, and John C. Hogan, have clearly labeled the idea.

The specific limits of this term, and the degree to which the idea may be applied to any individual educator, were not so clearly stated. Some association was developed between this idea of professional negligence and a tort liability which could be described as a personal injury. In this situation,

Howard C. Leibel (1965) described the law regarding negligence as:

Essentially, the law of negligence deals with conduct--either action or inaction--which, it is claimed by the injured person, does not measure up to the standard of behavior required by the law of all persons in society . . .

The historical development of the law of negligence has resulted in the development of a group of elements necessary to the successful maintenance of a suit based on negligence. These elements are, generally, as follows:

1. Duty to conform to a standard of behavior which will not subject others to an unreasonable risk of injury.
  2. Breach of that duty--failure to exercise due care.
  3. A sufficiently close causal connection between the conduct or behavior and the resulting injury.
  4. Damage or injury resulting to the rights or interests of another.
- (14:pp. 8-9)

Laurence W. Knowles (1972) extended this definition as it might be applied to educators when he stated:

The standard of care that educators must exercise over their students is more easily stated than applied. It recently has been defined as that of "a person of ordinary prudence." But "person" is a generic term, and the courts do not consider a teacher an ordinary person. A Federal Appellate Court in Tennessee adopted the following standard:

Negligence is the failure to exercise due care, and this means due care under the circumstances of particular situations. A teacher's superiority in knowledge and experience imposes responsibilities in his dealing with students which become an inherent element in measuring his compliance with the due care which is required of him.

It is clear from the words of the court that an educator will be held to a high standard of care; much higher than an "average" individual.

(21:p. 29)

From these works, it can be demonstrated that the concept was succinctly stated and had, as its foundation, the idea that educators have a "duty of care" principle to perform.

### General Literature on Constitutional Deprivation

When the current literature is analyzed, and evaluated on the component feature of constitutional deprivation, there is a question on the validity of this concept. What Susanne Martinez and Peter B. Sandmann first suggested as a segment of their court proceeding for Peter W. Doe was questioned by John C. Hogan when he noted:

Teachers have little voice in financing, equipping, or organizing schools. There is no constitutional right of literacy, and the child himself might be guilty of contributory negligence. (10:p. 132)

As can be seen by this statement from John C. Hogan, there is no constitutional right to an education which produces literacy.

Even with the provisions outlined in the Brown v. Board of Education (1954), this theme has not been adequately addressed in the literature which was reviewed. The Brown Decision stated:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (15:p. 1)

The idea of constitutional deprivation, although listed as an element in educational malpractice, has not had an extensive review or treatment by any of the authors reviewed.

The complex substance of this topic may have contributed to this apparent void, or it might be attributed to the degree of difficulty of theory construction which will support the concept. In either instance, the topic has had only limited attention. A further lack of support for this element can be

discovered in the Peter W. Doe case when it was referred to the California Court of Appeal. This element of the civil suit was not specifically mentioned.

#### General Literature on Breach of Statutory Duties

The review of the related literature which could provide information on the element of educational malpractice, listed as breach of statutory duties, is lacking in the general literature. It should be mentioned that the right to establish, maintain, and control the education process within each state has come through legal proceedings. These landmark cases would not need identification due to their established prominence. Such legal actions have contributed to 50 separate educational structures. There is variation in the manner in which school-age children are admitted to individual state school systems. There are variations in the methods that these state school systems finance and maintain these social agencies. There are identifiable differences in the manner in which state school agencies have organized the materials which are to be learned by the student populations.

With respect to these individual state educational differences, no literature could be discovered which discussed how any educational employee or official might be held accountable for state statutory provisions except in the area of a contractual status or tort liability.

Gary M. Little (1974) attested to this fact:

It was only a short time ago that the legal problems of education were almost exclusively business matters and perhaps complying with the general mandates of the State Board of Education. Seldom, if ever, was the professional educator personally confronted with legal problems other than

those that might surround his contractual status. His role and that of the courts were well defined and seldom overlapped. Within the school community there existed a clear, supposedly natural, order with which the courts and others in the general society hesitated to interfere. Students had few, if any, rights other than those defined by educators. Teachers were held to a strict pattern of conformity, and each building administrator was the "law" in his particular domain.

Clearly, the days when the professional educator could be unconcerned with precepts of the law are gone forever. Court rulings expanding the rights and freedoms of students and educators, delicate school-community relations, and increased bureaucratization of education have all contributed to a closer relationship of law and education.

The concept of in loco parentis, which permitted the school to assume as much power over the student as that exercised by the child's parents, is dwindling in force. While the school is still responsible for the care, safety and welfare of its students, the school's parental power to discipline and control students has diminished in scope. The community, through the law, is redefining the role of the school in the educational process. (16:p. 1)

What is being suggested by Gary Little in this statement has support from a number of other authors cited in Chapter II (i.e., Richard Strahan, Joe Huber, John I. Goodlad). The courts had addressed this topic, and the structure of the school operation had been challenged; however, where the courts had mentioned specifically the rights of both students and educators, there had been no mention made, by either this governmental entity or the legislative branch, on the limited topic of what would constitute a breach of statutory duty on the part of an educator with respect to educational productivity.

A summary for this section of the investigation had produced the following results:

1. Professional educational negligence was an idea that had received some serious attention by those who discussed this topic in the

current literature.

2. The term negligence had a number of identifiable components, and each of these features was being associated with the "duty of care" principle that had its origin in common law doctrine.
3. Professional negligence was the most serious charge within the concept of educational malpractice that was being brought against educators, for this allegation suggested that educators had performed in a manner contrary to the standard expected for an ordinary prudent person.
4. The issue of constitutional deprivation had not received serious attention from those authors that were studied. What may have been an open invitation for some writers to explore had not been undertaken. The association that could exist between past court rulings and the natural birthright for each school-age child had not been developed.
5. When the area of breach of statutory duties was investigated, there was a void with respect to the area of educational malpractice. Considerable attention had been paid to this topic as it attempted to describe the relationship that existed between the educators' contractual status and employment responsibilities that would be required of an educator with respect to the care, safety, and general welfare of any student.

Once this part of the study had been completed, it was then necessary

to provide attention to the collection of data which had been obtained from a survey of professionals employed in the field of education and a group of legal experts serving as the Attorneys General for each of the 50 states of this nation who had provided information on these same divisional topics of educational malpractice. The analysis and evaluation of these data produced the following results.

#### Survey Responses on Professional Negligence

The second question posed to the survey groups had two related variables. The first variable asked if any state had enacted any provision for describing educational malpractice. Table 8 summarizes the findings for this question.

TABLE 8

ANALYSIS OF GROUP RESPONSES FOR THE QUESTION:  
HAS YOUR STATE ENACTED ANY STATE STATUTES OR  
CODES DESCRIBING EDUCATIONAL MALPRACTICE?

RESPONDING GROUP IDENTIFICATION	SURVEY RETURN IN	ITEM RESPONSE			ITEM RESPONSE PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
STATE AFFILIATE OF NEA	40	1	39	0	2.5	97.5	0
STATE AFFILIATE OF NASSP	39	0	38	1	0	97.4	2.6
STATE ATTORNEYS GENERAL	34	0	33	1	0	97.1	2.9

There was consistency of agreement by the respondents within each of the survey groups on the nonexistence of governing statements covering the area of possible educational malpractice. This was achieved after each respondent had been provided a communique explaining the new definition which was being applied to this term.

It could be observed that, where there had been some attention paid to the area of minimum competency within some states, this position (educational malpractice) had not become a consideration of strong interest. One notable exception exists within these results: A respondent from the State of Florida indicated that a legal provision had been established for this state on the issue of educational malpractice. A concerted effort to identify this apparently new statute was fruitless. This lack of data support will create a serious doubt on the validity of this information.

The second phase of the question seeking information on the state statutes or codes which might cover the area of educational negligence was addressed to the feature of tort liability. It had been observed, in the review of related literature, that the immunity doctrine for educational agencies had fallen in some states. With the loss of this barrier, it was then considered vital to review this question with the responding groups to determine if any state or groups of states had enacted governing statements to cover this newly created void.

The results for this inquiry were somewhat more revealing. Whether by the loss of immunity barrier against legal actions, or by other established needs, the survey demonstrated that approximately 20% of the states' responses (NEA)

identified some provision for describing "tort-liability" conditions which could exist for state educators. A partial review of these statutes (ones returned by the survey) showed that these state statutes or codes were designed primarily to cover physical injury of students while such students were under the care of the local school system. An example to such a provision can be found in the statute provided by the state of Connecticut which outlines, in some specific detail, the "blameless" feature of tort-claims on educational employees when they are conducting their assigned duties.

Table 9 presents the data recovered on this question and exemplifies the high degree of consistency with which the responding state officials have reported on the nonexistence of provisions covering this area.

TABLE 9

ANALYSIS OF GROUP RESPONSES FOR THE QUESTION:  
HAS YOUR STATE ENACTED ANY STATE STATUTE OR CODES  
DESCRIBING EDUCATIONAL TORT LIABILITY?

RESPONDING GROUP IDENTIFICATION	SURVEY RETURN IN	ITEM RESPONSE			ITEM RESPONSE PERCENTAGE		
		YES	NO	NO REPLY	YES	NO	NO REPLY
STATE AFFILIATE OF NEA	40	8	31	1	20	77.5	2.5
STATE AFFILIATE OF NASSP	39	2	36	1	5.1	92.3	2.6
STATE ATTORNEYS GENERAL	34	4	29	1	11.8	85.3	2.9

It should be noted that there was not only agreement among the individual responding groups, there was also a high degree of consistency between individual respondents from the same state. This can be observed by the response percentages, ranging from 77% to a high of 92%. There was a high indication that few states had enacted state statutes or codes describing educational "tort-liability"--there was some indication that this was being changed.

#### Survey Responses on Constitutional Deprivation

Although no questions were devised which would ask for specific data related to this topic, an opportunity was provided for each of the respondents to offer comments relative to constitutional deprivation at the end of the survey instrument. Whether by design of the instrument, or for other reasons, no relationship was made by the respondents and, even more important, there was no response from the survey groups which would provide any new information on the possibility that educators could be charged with depriving a student of a constitutional right which could be labeled as learning. This idea, which had been presented to educators through legal actions of the stature of Brown v. Board of Education, did not provide substance for initiating a relationship between educational malpractice and a guaranteed constitutional right.

#### Survey Responses on Breach of Statutory Duties

When the survey results were reviewed with respect to this concept, there was a repeat of the material that had been discovered with the review of related literature. Breach of statutory duties was considered within the realm of

contractual and tort claims. An analysis of the data obtained from the responses of the Attorneys General will attest to the accuracy of this statement.

The Honorable Robert W. Garvey, Assistant Attorney General for the State of Connecticut, provided a copy of the Connecticut statute which Mr. Garvey suggested might provide indemnification for individual educators in educational malpractice cases where tort claims are requested. In this statute, Section 10-235 states:

Indemnification of teachers, board and commission members and employees in damage suits; expenses of litigation. (a) Each board of education shall protect and save harmless any member of such board or any teacher or other employee thereof or any member of its supervisory or administrative staff, and the state board of education, the commission for higher education, the board of trustees of each state institution and each state agency which employs any teacher, and the managing board of any public school, as defined in section 10-161, shall protect and save harmless any member of such board or commission, or any teacher or other employee thereof or any member of its supervisory or administrative staff employed by it, from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgement by reason of alleged negligence or other act resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property within or without the school building, or any other act, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not wanton, reckless or malicious, provided such teacher, member or employee, at the time of the acts resulting in such injury, damage or destruction, was acting in the discharge of his duties or within the scope of his employment or under the direction of such board of education, the commission for higher education, board of trustees, state agency, department or managing board. (Appendix E)

The Honorable William G. Mundy, Deputy Attorney General for the State of Indiana, offered the following citation in conjunction with the survey instrument on this topic:

While Indiana has not enacted any statutes dealing with educational malpractice per se, we have enacted a general Tort Claims Act. Indiana Code 34-4-16.5-1 et seq. This act would apply to a Tort Claim alleging educational malpractice against a school corporation. (Appendix E)

The Honorable Michael J. Bradley, Special Assistant Attorney General for the State of Minnesota, stated:

Minnesota has a tort liability act. Whether that act also covers the type of action you describe has never been determined. (Appendix E)

The breach of statutory duties provision has remained within the area of tort claims for personal injury cases.

A summary for this second phase of the investigation had produced the following results:

1. It was determined that no state had enacted any state statute or code which described educational malpractice.
2. State statutes or codes had existed for a period of time which described "tort liability" provisions that included educational agents, employees, and/or governing boards. Such laws did not specifically include the subject under investigation.
3. The survey responses did not provide any new information on the concept that educators could be charged with a malpractice provision listed as a constitutional deprivation of individual rights.
4. An analysis of the survey instruments which were returned provided a duplication of the data that was discovered from a review of the general professional literature. Provisions describing "tort liability" for educators were obtained from Connecticut, Indiana,

and Minnesota which can serve as examples to this fact .

The third phase of the investigation involved a search for any applied research which had employed these features of educational malpractice . An intensive review of the sources available could produce only a limited number of authors who had applied any of these features to a predictive analysis . In each of these instances , the term of negligence was used in the work or effort to demonstrate a predictive consequence outline rather than a test for specific outcomes directed toward an existing educational agency or system .

#### Educational Research on Professional Negligence

Don Stewart (1971), in his work Educational Malpractices, the Big Gamble in our Schools, identified 41 malpractice activities that he believed would be listed as professional negligence . Rennard Strickland, Janet Phillips, and William Phillips, in their published work Avoiding Teacher Malpractice, presented negligence as the dimension of the concept of educational malpractice that would have the greatest importance . These authors describe the parameters of professional negligence in its various forms:

1. Discipline and corporal punishment;
2. Student care and safety;
3. Learning or student achievement;
4. Libel , slander , and privacy;
5. Student civil and personal rights and freedoms;
6. Professional conduct before and after regular teaching hours; and,

## 7. Administration and supervision .

In the work of William Hazard, this author offered predictive consequences for the educational community if malpractice actions were found in favor of the plaintiff; however, again the emphasis was on the area of negligent behavior of professional educators . To consider these works as applied research may invite criticism . By employing the most liberal standards associated with research , one might consider these findings appropriate . More strict adherence to identified research would suggest that no applied research could be found for this area .

### Educational Research on Constitutional Deprivation

No research could be identified which discussed this component of educational malpractice .

### Educational Research on Breach of Statutory Duties

With the exceptions which have been noted in the previous sections of this investigation; namely, the existence of judicial actions specifically describing tort liability as a breach of statutory duty and the existence of claims involving the contractual status of an educator, no research could be identified which would describe this issue with respect to professional output of student academic achievement .

When a summary is produced for this segment of the study, the following can be observed:

1. Limited research has been completed for this area which could be

applied directly to the concept of educational malpractice .

2. Where there has been some research activity, the authors have confined their research efforts to the single component of educational malpractice, negligence .
3. Those authors surveyed suggested that the consequences of malpractice actions could be of paramount importance to the total educational system .
4. These same writers further suggested that there was ample evidence to suggest malpractice actions against educators, and the most positive actions that could be generated by the professional in this field would be a description of the specific purpose and scope of the learning activities for each school agency .

### Findings

The findings for this study will be presented in two sections: First, a number of general findings will be presented . These items will provide a historical background for the study question . The second set will offer the findings of the study which can be gained from a comparison of the data obtained through the three phases of the investigation .

### Historical Analysis of the Background for the Study Question

1. The review of related literature has provided a wide range of definitions for the educational term, accountability .
2. The emphasis, or impact, that this concept has had on the

educational system began in the decade of the sixties and has continued unabated to the present day.

3. Leon Lessinger has been credited with developing the concept and applying this activity to the educational process. While taken initially from an industrial/business setting, the educational definition now possesses many of the same characteristics that could have been observed for the activity in the business community.
4. The accountability movement within the educational system has had three propelling forces: These include:
  - a. Increased school maintenance costs;
  - b. Decreased student achievement levels; and
  - c. Consumer dissatisfaction with agency operation.
5. The "immunity barrier" which has protected governmental agencies, including schools, from most legal actions that might be initiated by dissatisfied consumers of the educational process has been falling in some states.
6. With the loss of the immunity standard in some states, the consequences of the actions for educators have been questioned. The concept has been advanced that educators (teachers, administrators, educational specialists, and governing boards) are responsible for all conditions under their direct supervision. This includes the proper and legal management of agency revenue, as well as the consequences of the educative act--learning.

7. The reported academic failure of two recent graduates from high schools in the states of California and New York has caused the parents of these students to ask the judicial system to declare some educators in these two states guilty of educational misconduct, labeled malpractice.
8. Such action by citizens is not without comparison in other professional fields of endeavor. The medical profession is now experiencing an increase in the number of legal actions brought against members of this group for reported professional misconduct, which again is listed as malpractice.
9. Researchers who have investigated these increased legal actions against both doctors and lawyers cite three reasons for this rise in court cases. These include:
  - a. High cost of both medical and legal services;
  - b. Consumer dissatisfaction with the immediate results of the rendered professional service;
  - c. The incompetency for a small percentage of the persons who are practicing the profession. This small percentage is, however, apparently allowed to continue to work in this field of endeavor without serious threat from their professional associations.
10. Some educational researchers have drawn an analogy between the variables which are present in the related professions of medicine

- and law. The same compelling forces causing concerns for the fields of medicine and law are present in the educational system.
11. Differences exist between these three professions; however, some similarities are present, and such similarities are used to suggest the rationale for legal actions against educators for professional malpractice.
  12. One of the similarities, often quoted by researchers in this field, is the "duty of care" doctrine which is described as the degree of service that should be provided any client by a professional agent.
  13. This doctrine requires that the actions taken by any doctor, lawyer, or educator should be "reasonable and prudent."
  14. When reasonable or prudent conduct is questioned for an educator, a basis for this question can be discovered in the achievement failure of individuals within the educational system.
  15. There has been a marked decline in student academic achievement, as demonstrated by scores derived from nationally standardized tests since 1965.
  16. In an effort to reverse this decline, a number of state agencies have described levels of proficiency that each school system should establish for their student populations.
  17. Within the area of established minimum competency requirements needed to obtain a high school diploma, it was found that only a limited number (8) of the states had completed work on this subject.

Subsequently, few statutes or codes exist which describe the required minimum achievement level needed by secondary students to obtain this certificate denoting some literacy standard.

18. Fifty-five percent of the individuals who returned the survey form indicated that there was a measurable amount of interest being displayed on the topic of educational malpractice. In comments related to this area, the survey recipients who provided a positive response offered a possibility that a relationship existed between the interest in malpractice and the competency questions that had been projected within these states by citizen groups.
19. Few of the respondents could identify individuals from outside their state who had brought information to their respective communities on the topic of educational malpractice.
20. A majority of the respondents within each of the three surveyed groups considered educational malpractice to be a legitimate concern for educators for the present and for the immediate future. There was consistent agreement on the matter within each individual group as well.
21. No regional pattern could be established to demonstrate that the concern with educational malpractice was being more strongly considered in one section of the country over another.

### Comparison of the Findings

A comparison of the findings will be presented for each of the

components of educational malpractice as defined: negligence, constitutional deprivation, and breach of statutory duties. This comparison will be made between the findings for the three phases of the investigation.

1. Educational malpractice governance statements, specifically developed by state legislatures to describe the area of student achievement, are nonexistent at this time as is demonstrated from a comparison of all sources investigated in this study.
2. When each of the elements which can be utilized to describe educational malpractice within the educational enterprise are reviewed, there exists a different profile pattern. This pattern can be observed in the following analysis.
  - a. Negligence--When a comparison is made between the phases of the investigation for this element of educational malpractice, it can be noted that all three investigative searches produced information related to this topic. The review of related literature discussed at length the area of tort liability for educators. The national survey produced similar results. Fourteen of the respondents indicated, from the national survey, that there were provisions within their state which addressed this issue of educational malpractice. It should be mentioned that these state statutes or codes do not detail the limits for tort claims and, as was noted with the state of Connecticut, a blameless feature may be built into the statute.

The search for applied research, which would address this component of educational malpractice, was productive. Judicial decisions constituted the major force which had employed liability state statutes and rendered deciding statements on questions that were brought before the court by two or more parties.

When a careful analysis is conducted on this element of the malpractice question, it is obvious that greater attention has been paid to this topic by writers of published works than for either of the other two areas (legislation or research).

Although information had been secured from all areas (related literature, survey results, and applied research) the majority of the information was obtained from reports, journals, and articles which addressed this particular subject. The reasons which have been suggested for such a fact may be found in the past held doctrine that the government, with its many agencies, has enjoyed an immunity from many types of civil actions brought by citizens of the country. Because the schools were a subdivision of the state government, this same immunity barrier has protected them and has restricted the number of court cases filed and the need to apply independent research to a moot legal point.

- b. Constitutional Deprivation--This segment of the educational malpractice issue has not been extensively discussed by the courts, educational researchers, or writers who may be describing either the individual rights and freedoms of students or the possible malpractice cases that are currently facing the educational community. When a comparison is conducted between the three phases of this study, this fact becomes apparent. Where once this element had been discovered in the research of related literature, a more detailed investigation of companion works could not support this position. As a counter thesis, there were some authors who took exception to this notion and reported that there is no constitutional guarantee to an education.

When the two other phases of the study are reviewed, a similar pattern emerges. The idea of constitutional deprivation, from the national survey and from the applied research, produced a void of meaningful information which could be reviewed on this topic.

The idea, then, that educators could be sued for educational malpractice, labeled as a constitutional deprivation, could not be proven.

- c. Statutory Duty Failure--When a comparison of the findings for

this element of educational malpractice is conducted, there once again was a void in the data that could be secured from any of the three investigative procedures. Neither the related literature, national survey, nor the search of applied testing could produce important information on this area as it affected educational productivity. The notable exceptions discovered for the component of Statutory Duty came in the areas of tort activities and professional contractual obligations that were concerned with the personal conduct of the individual educator through the performance of required duties. No evidence could be obtained from any of the investigative searches that the idea of productivity had ever been seriously discussed as a part of the contractual obligations of an educator.

Where there was ample data from all three sources suggesting that educators could be sued for failing to properly perform duties associated with the care, safety, and welfare of students, and there was information which could demonstrate that educators could be dismissed from their employment if specific state and national laws were violated, this idea had not carried over to the area of productive accountability.

When an effort was made to investigate the possibility that

such a law may be passed by state governments through a minimum educational competency provision, the study could not provide any relationship at this time.

Considerable information could not be secured on this topic as demonstrated by the review of the literature, the responses obtained from the survey instrument, and from those few researchers who had attempted to apply predictive consequences to future educational events based upon past histories of this social agency.

3. State statutes, and codes presently enacted which covered the area of tort liability for educators, have remained untested for the area of productive educational malpractice actions. Those state laws which presently govern educational officials and employees have, until this date, exclusively covered those areas of contractual and duty of care principles, as is evidenced by all investigative searches.
4. A high interest level is presently being demonstrated toward the topic of educational malpractice. A review of the current literature provided a major number of works which specifically discussed this new concept. When the national survey instrument was provided to three different individuals from each of the 50 states, there was a high return of these survey forms within a span of less

than eight weeks. One hundred and thirteen reports or responses were recovered for a 75% return. A high percentage of these respondents considered the issue of educational malpractice a concern for educators for the present and the immediate future.

When an effort was initiated which could produce information that would be classified as research, there was some limited evidence that such data was available at this time. The works of Strickland, Hazard, and Stewart serve as examples to support this contention. Educational malpractice, as it related to productive accountability, was a new concept, but by no means an idea that could be dismissed by professionals in this field of endeavor.

## CHAPTER V

### SUMMARY, SUMMARY OF THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

#### Introduction

The final chapter of this study will be devoted to a presentation of a brief summary regarding the purpose of the investigation, the procedures employed to collect and analyze the data, and a compilation of the findings. Based upon this format, conclusions will then be drawn from the findings and extended to recommendations where appropriate.

#### Summary

##### The Problem and Purpose of the Study

It has been established that individual state governments have received, by implied federal constitutional authority, the right to organize, maintain, and control the schools within their respective regions. To accomplish this task of school governance, the states have enacted legislation to regulate the separate functions of the educative process.

A new regulatory enactment has been established by some state legislatures which describes, in part, the minimum educational expectancy which will be required of students if they are to receive secondary school graduate status. Where these mandates have been established, there arises the question:

What happens when a student, or students, do not meet the minimum standard? Will these students be provided some additional legislated recourse for obtaining the required career literacy skills, or will they have some redress, through law, if time and other variables will prevent such competency attainment? If the students should have an appeal to the judiciary for help in obtaining the required literacy standard, will there be any person associated with the educative process blamed for the failure of the student to acquire the necessary skills; and, in particular, will the question of reported educational failure be openly stated?

Based upon these questions, the purpose for this study has been to seek an answer to the educational question: Given the projected possibility of educational malpractice legislation applicable to the contractual and statutory obligations for certificated educational personnel, what is the current status of educational malpractice presently affecting the nation's secondary schools?

More specifically, the study was designed to investigate:

1. Any relationship that existed between the educational accountability movement and the suggested punitive force for such an evaluative system.
2. The enactment of state statutes or codes describing educational agency expectancy with respect to student achievement and any companion acts describing performance standards required for professionals.
3. Any state legislation that specifically discussed educational malpractice.

4. A rationale for the emergency of the issue of educational malpractice and the development of comparisons between the professional consequence of employment for education and other professional groups.
5. An opinion held by a selected sampling of citizens on the interest level that this topic was receiving from the general public.
6. The consequences that educational malpractice legislation might have on the conduct of the educative process.

#### The Procedure

This study was a descriptive survey. An extensive review of the literature was made which confirmed the need for the study and provided a basis for structuring the design of the study. Data was secured from a number of related sources. These included: a review of the related professional literature; a national opinion survey; and, an analysis of similar research conducted on this topic. With respect to the opinion survey, 150 individuals were identified who could provide some information on the enactment of educational malpractice statutes or codes within the various states. These same persons could additionally provide an opinion on the interest level that was being demonstrated by citizens within this same region. The surveys were distributed to three persons within each of the 50 states. These individuals included the Attorney General for the state, the Executive Director of Secretary for each state affiliate to the National Education Association, and the Secretary/Director

for the state affiliate of the National Association of Secondary School Principals.

The survey was conducted during the months of March and April of 1977, with a time span of approximately eight weeks allowed for the completion of the survey instrument. Within this time frame, 113 responses were obtained for a 75% ratio. No follow-up effort was instituted due to the prompt recovery of a high percentage of the survey forms. The quick survey answers provided a speculative assumption that this issue was of some primary importance to the survey respondents.

When the answers were received, the data were tabulated and statistical calculations were made of the results. The nature of the inquiries permitted only an elementary analyses of the data; therefore, data summaries were presented in table format for clarity purposes.

From the results obtained through the administration of the survey instrument, an extensive review of the related literature, and a review of applied research (devoted to this topic), the study question was answered. The answer to this question, and the findings of the investigation, then permitted conclusions to be made and recommendations suggested.

#### Summary of the Findings

1. The review of related literature had provided a direct relationship between the educational accountability movement and the displayed citizen interest and action in the area of educational malpractice.

2. Evidence discovered from malpractice legal actions within the professions of medicine and law were based upon factors that could also be traced to the educative process .
3. Legal actions against educators have had a very brief history . During this short time span , there have been no cases found in favor of the plaintiff , yet this has not deterred other students and parents from initiating similar actions . The entry of the last court action charging educational malpractice was initiated during the first months of 1977 .
4. A lack of academic skill attainment by youth enrolled in two secondary school districts has caused parents to charge the schools and , specifically , the employees and agents of these agencies with professional misconduct .
5. The immunity barrier which has prevented some citizens from engaging in legal action against governmental bodies has been declared void in some states . This modification in state statutes now permits citizens to sue governmental agencies , departments , or their individual employees for the consequences of their actions .
6. A national survey , conducted during the months of March and April of 1977 , demonstrated that a high percentage of those surveyed considered educational malpractice a concern for educators for the present and immediate future .
7. This same survey indicated that some state governing agencies

were developing statutes or codes which would describe, in part, a standard of proficiency that must be obtained before any student could be awarded a high school diploma. The enactment of minimum competency standards for student academic performance has a relationship to educational accountability and, thus, to educational malpractice.

8. To date, as determined by the survey results, there have been no state statutes or codes enacted which describe any feature of educational malpractice.
9. Interest on the issue of malpractice has principally been produced from within each state. There has been no noticeable movement engineered by an individual or group of individuals to disseminate information on this topic on a national basis.
10. The effect that the passage of any educational malpractice legislation might have upon the total educative process cannot be accurately predicted from the present study or from the literature related to this subject.

### Conclusions

1. Educational malpractice legal actions are a reality. Such actions have not been abated by decisions being rendered in favor of the defendant. It could be concluded, from this fact, that malpractice actions against educators will continue into the immediate

future without interruption .

2. The similarities of the forces which have propelled the increased number of malpractice court cases in medicine are apparently contributing to the problems encountered in education . These forces have not been lessened for the area of medicine by temporary problem solutions; therefore , it could be concluded that there will not be a sudden diminishing of these forces for the area of education by the same procedure . The problems for both of these professions were not immediate , nor can the solutions be likewise .
3. State governing bodies may continue to address the issue of declining student academic achievement . When this occurs , it is concluded that the responsibility factor for educational agency employees will be available for discussion with the possibility that the components of this factor ( evaluation , productivity , and malpractice ) will also be debated .
4. The increased cost being required to maintain the educational system will expand the limits of the accountability movement . This expansion may ultimately include a personal accountability feature for those individuals working in the field of education .
5. Continued court actions brought by dissatisfied consumers will require that this issue be addressed by the legislative branches of each state government . The differences which exist will require that laws governing the dimensions of educational malpractice be

defined for all state citizens.

6. Once provisions have been developed which may discuss the parameters of educational malpractice, the frequency of court actions may diminish; however, the emphasis to improve student academic performance will continue. Educators will then seek other solutions to the problems associated with student achievement. It can be concluded, from this idea, that educational malpractice legal actions, and the possible enactment of state laws governing this issue, are by symptoms depicting reported agency failure. Such symptoms can partially identify the cause for a number of the problems presently encountered by individual schools and school districts. Once the cause has been identified, solution can be identified and a change model instituted which will eliminate the concern expressed by many citizens. It is then concluded that the educational system within this nation has been remarkably adaptive and successful in modifying its structure to meet the demands of a changing society. This demand will also be met.

#### Recommendations

1. The issue of educational malpractice is in its infancy. A limited amount of research has been directed to this topic, and a lesser amount of interest has been demonstrated on the possible consequences that malpractice actions, and subsequent legislative

enactment, might have on the total educational system. Research should be instituted which could provide valid data related to these areas.

2. This study has developed the concept of educational malpractice derived from the premise of the theory and doctrine of "duty of care." Additional investigations should be undertaken to establish any other principles which could have produced this new concept.
3. Based upon the interest demonstrated by the survey group, an effort should be made by educational leaders to present this issue to elected officials for the purpose of providing vital input on any future legislative enactments.
4. A subsequent study should be made to determine the relative future importance of this topic and for the purpose of establishing support for continuing these recommendations or devising new directions for investigative research.

#### Predictive Consequences of Educational Malpractice

An investigation has now been conducted on the status of educational malpractice within the nation at this present time. From the study question, specific data have been secured; a method has been developed for reporting the findings of the study which has produced a summary of the factual data. Conclusions and recommendations have been made from these data. Most researchers would logically conclude on this note; however, as reported earlier, this has not

been a traditional investigation; therefore, the study must consider one final section. If this work can be classified as inferential in design and outcome, then what are the inferences that could be made for this new concept affecting the educational community?

Educational malpractice is a reality that cannot be ignored or rationalized away. This is not a concept that can be dismissed as an implausible event where some citizens may attempt to exploit the schools for a short period of time. As described earlier, the idea has been tested not once but several times, and there is reason to believe that this idea will be tested until governance statements are issued by federal or state governments which prohibit such actions. There appears a logical, or at least understandable, series of events which has propelled this issue into national prominence and, when a survey was conducted across the nation, a representative sample of educators and legalists believed that this subject would be a concern for educators for the immediate present and future years. Based upon these conditions, what, then, might be projected for all of education as it deals with this new and unique variable related to the social process of acculturation?

A look at some of the possible predictive consequences may produce an interesting and debatable list of effects that educational malpractice may have on the process devoted to producing literate citizens for an industrial and democratic society.

First, from past evidence, it could be projected that, until the federal or state governments regulate the legal actions of citizens with respect to

educational malpractice action, there is likely to be an uninterrupted frequency in the number of suits brought against educators from many school systems. It may be further projected that no educator will stand immune. Elementary teachers may be sued when any student fails to reach expected grade level achievement. Intermediate teachers may be sued when a student or entire class does not reach the expected national norm within a given area on an examination prepared by a national testing company or the state or local school agency. Secondary teachers may be sued when a literacy standard has not been met by those students who graduate from secondary schools. Educational specialists, supervisors, administrators, governing boards, and state department officials would all share in these legal actions as either direct or indirect participants in malpractice activities. Such an occurrence would certainly affect the human factor that must be displayed in education. If the product becomes the most important consideration, as such suits may contend, then the factory model of education would well be a new model for the school systems of America.

If malpractice actions continue at their present rate, then there will be an immediate request by educators for insurance protection. To be protected against loss of employment, or possible damage claims of a substantial amount, educators would be forced to purchase protection against such an event. Now, what of the insurance carriers? Will they respond immediately with low cost protection, or will educators' premiums be comparable to malpractice insurance fees for related professions? Will the companies provide insurance to every educator and school official, or will they be selective and not only govern the

number but type of teacher and administrator that is protected? Assuming this to be a highly remote possibility, because of the public need to have a well organized and staffed school, it may be more reasonable to assume that, if the governmental immunity barrier against legal actions continues to fall, then individual states may provide some measure of protection against such malpractice legal actions for employed educators and school officials. Again, if this should happen, then there is certain to be greater state control over certification, evaluation of personnel, administrative appointments, and training of teachers in state supported institutions. Couple this with increased control over the course of study, selection of textbooks, media materials to be used, minimum expectancy for student achievement, and you can visualize a stronger state-directed school operation. Such a control factor would be produced by a need to regulate schools in a manner described by possible malpractice legal actions.

Under this type of regulatory control, there are a number of implied possibilities if the state assumes the responsibility of managing from a posture of possible educational malpractice actions. School communities may then be affected. Property values could be reduced if a school or a specific district was subjected to a high number of educational malpractice lawsuits. This same fear, and possible property value loss, has already been reported in the New York Times (90:pp. 1, 56) as a result of the malpractice lawsuit in that state. If property values are reduced in such an instance, the ability of the district to support itself to the degree presently enjoyed may be harmed.

Diplomas provided graduates of districts or schools with a high degree

of malpractice suits may be questioned by prospective employers and post-secondary institutions. For this reason, parents may demand changes in school personnel, operational procedures, or just move their students to another location where malpractice has not been a problem. Should malpractice actions continue against any school or district, a staffing problem may be created which will require that some additional incentive be provided any person who would volunteer to work in this system.

What, then, might happen to any school system regardless of its malpractice rating? If there is the threat that such actions are a real possibility, then actions taken by educators at all levels, including the governing boards, would be guarded and decisions would be made with respect to the consequences that may take place in malpractice lawsuits. Services could be reduced. Any area that was the least bit questionable would be eliminated. Instruction would be reduced to an exact and definable position. It is possible that experimental and exploratory programs would be regulated completely, or eliminated altogether. As expressed by one author: Education may have just experienced its golden age.

Add to these dismal predictions the possibility that the advent of educational malpractice actions might produce a "teacher-proof" educational system. In this instance, the weight of costly malpractice legal actions will continue to the creation of an educational program that will be mechanical in nature and void of the human factor. The factory concept for the entire enterprise would then be complete. Educators would be required by a pressure force

to provide only those services and activities which could be defended in a court or legislative halls. Prescriptive instruction would be the theme of the educative act and a determined style of education mandated. The employee morale of the educational community would surely be depressed to a point beyond the realm of consideration of the present day. The creative teacher, the innovative administrator, the courageous governing board would be eliminated.

These are some of the possible effects of malpractice that may be viewed as negative. What of the consequences that may be reviewed as positive?

Accountability has been identified as the parent concept which has produced the idea of educational malpractice. If malpractice for educators was eliminated in the immediate future, the forces which have initiated this activity would still remain. The citizen interest in declining student achievement would not be reduced by the issuance of a state-enacted mandate to discredit malpractice lawsuits against educators. Should such a governance statement be made, it may well be accompanied by stronger state demands for minimum standards of expectancy for each school and district. There could easily be produced minimum expectancies for educators who work in this professional endeavor. An attempt may be made to quantify education and to establish limits upon what will be realistically expected from any such social agency. The purpose of the schools will be redefined, and it would then take legislative mandate to alter the more specific role and function of these social agencies. Society would not be permitted to place the full responsibility of socializing the young on the doorstep of the schools, nor could any special interest group suddenly require

that the school structure and program be altered to accommodate their desire.

A review of schools and districts in this respect would then contribute to the establishment of quality elements which should be present in every institution. Teachers, administrators, governing boards, and the lay public would then have a profile to evaluate the school. Evaluation would then be provided on an understood and recognized standard, and not on the perception of each individual who may have an occasion to judge the school and its work. Expectancies would then be communicated to the school community, and when these expectancies were not met, there could be rationale provided the citizens of the school community. There may no longer be an announcement that there is a need for more revenue if the school is to provide a more comprehensive course of study. Under these conditions, there would simply be an announcement that the present revenue will produce this educational result.

These are only a minor fraction of the predictive consequences that could be offered. Many others exist which could have the same impact upon the educational system. Evidence exists to suggest the validity for each of the consequences cited. What remains, now, is a need to test these considerations in some depth and to decide upon the course of action that would be most desirable for the total educational enterprise of this nation. This study was designed to answer one question: Given the projected possibility of educational malpractice legislation applicable to the contractual and statutory obligations for certificated educational personnel, what is the current status of educational malpractice presently affecting the nation's secondary schools? The answer:

Educational malpractice, as such, does not yet exist, for neither laws nor court rulings have created it. With this question answered, a second and possibly important inquiry has been produced by this study. What remains, now, is the question: Should educational malpractice be permitted to assume a course unaffected by those who practice this profession?

APPENDIXES

APPENDIX A  
SURVEY INSTRUMENT

SAMPLE

March 25, 1977

Honorable Bruce E. Babbitt  
Attorney General of Arizona  
159 State Capitol Building  
Phoenix, Arizona 85007

Dear Colleague:

During the past two years, an interest has been maintained on the status of the Peter Doe v. San Francisco Unified School District malpractice action. As you are aware, parents representing this student initiated legal action against school district officers and employees on the ground that the school district had failed to meet its contractual obligation in educating the student.

Following quickly was a similar case now in the courts of New York, again identifying malpractice activities by educators. It would seem, from these cases, that the issue will continue to confront educators and courts for some time to come. I believe that a part of the rationale for the interest and action taken by parents can be attributed to the much publicized accountability movement presently at a high interest level for all school agencies.

In an effort to determine the current status of malpractice interest in this nation as it relates to education, I have selected this topic for a doctoral investigation. In conjunction with this formal research project, a special interest has been shown through officers of the Clark County School District, Las Vegas, Nevada. Dr. Clifford J. Lawrence, Deputy Superintendent, is equally concerned about such actions and the ramifications that such judicial action may have on education.

I would hope that you would share in the investigation of this concern by completing the attached survey form. It should take only a few moments of your time and, when the results are tabulated, we may have some reliable data on the matter of educational malpractice.

Thank you for your support of this project, and if you should like a copy of the results, these will be forwarded to you by requesting this information on the survey form.

Sincerely,

---

Marshall C. Darnell, Doctoral Candidate  
University of Nevada, Las Vegas

---

Jack R. Dettre, Major Advisor  
University of Nevada, Las Vegas

MCD/llc

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

### EDUCATIONAL MALPRACTICE SURVEY

1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_\_ No \_\_\_\_
2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_\_ No \_\_\_\_
  - b. educational tort liability? Yes \_\_\_\_ No \_\_\_\_
3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes \_\_\_\_ No \_\_\_\_
4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_\_ No \_\_\_\_
5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes \_\_\_\_ No \_\_\_\_
6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

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Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results \_\_\_\_.

Signature	Position
City	State

APPENDIX B  
SURVEY GROUP RESPONDENT IDENTIFICATION

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APPENDIX C

STATE ANALYSIS OF SURVEY INSTRUMENT RETURNS

## STATE ANALYSIS OF SURVEY INSTRUMENT RETURNS

STATE	NEA	NASSP	ATTORNEYS GENERAL	STATE COMPLETE
Alabama	X	X		
Alaska	X	X	X	X
Arizona	X	X	X	X
Arkansas	X		X	
California	X		X (1)	
Colorado	X	X	X	X
Connecticut		X	X	
Delaware		X	X	
Florida	X	X		
Georgia	X	X	X (2)	X
Hawaii	X			
Idaho	X	X	X	X
Illinois		X	X (3)	
Indiana	X	X	X	X
Iowa	X			
Kansas	X	X	X	X
Kentucky	X	X	X	X
Louisiana		X		
Maine	X	X		
Maryland	X	X		
Massachusetts	X	X	X	X
Michigan		X	X	
Minnesota	X	X	X	X
Mississippi	X	X		
Missouri	X	X	X (4)	X
Montana		X		
Nebraska	X	X	X	X
Nevada	X	X		
New Hampshire	X	X		
New Jersey	X		X	
New Mexico	X		X	
New York	X	X		
North Carolina	X			
North Dakota	X	X	X	X
Ohio	X	X	X	X
Oklahoma	X	X	X	X
Oregon			X	
Pennsylvania		X	X (5)	
Rhode Island		X		
South Carolina	X			
South Dakota	X	X	X	X
Tennessee	X	X		

STATE	NEA	NASSP	ATTORNEYS GENERAL	STATE COMPLETE
Texas	X	X	X	X
Utah	X	X	X	X
Vermont	X	X	X (6)	X
Virginia	X		X	
Washington	X	X	X	X
West Virginia	X	X	X (7)	X
Wisconsin			X	
Wyoming	X	X	X	X
TOTAL RESPONSE	40	39	34	22
PERCENTAGE RETURN	80%	78%	68%	44%

- (1) Forwarded to Chief Counsel, State Department of Education.
- (2) Answered by Deputy State Superintendent.
- (3) Response indicated a second survey should be sent to the State Superintendent.
- (4) Answered by Deputy Commissioner of Education.
- (5) Forwarded to Chief Counsel, State Department of Education.
- (6) Completed by Counsel, State Department of Education.
- (7) Forwarded to State Superintendent of Schools.

APPENDIX D  
ITEM ANALYSIS OF THE RESPONSES OBTAINED BY STATE  
FROM THE THREE SURVEY GROUPS

EDUCATIONAL MALPRACTICE SURVEY  
STATE NEA AFFILIATE

Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X			
2. Alaska		X			
3. Arizona		X			
4. Arkansas		X			
5. California	X				
6. Colorado		X			
7. Connecticut					
8. Delaware					
9. Florida	X				
10. Georgia					
11. Hawaii					
12. Idaho					
13. Illinois					
14. Indiana					
15. Iowa					
16. Kansas					
17. Kentucky					
18. Louisiana					
19. Maine					
20. Maryland	X				
21. Massachusetts					
22. Michigan					
23. Minnesota					
24. Mississippi					
25. Missouri	X				
26. Montana					
27. Nebraska					
28. Nevada					
29. New Hampshire					
30. New Jersey					
31. New Mexico					
32. New York			X		
33. North Carolina					
34. North Dakota					
35. Ohio					
36. Oklahoma					
37. Oregon					
38. Pennsylvania					
39. Rhode Island					
40. South Carolina					
41. South Dakota					
42. Tennessee					
43. Texas					
44. Utah					
45. Vermont			X		
46. Virginia			X		
47. Washington			X		
48. West Virginia					
49. Wisconsin					
50. Wyoming					

TOTAL RESPONSE	8	32	0	( 40)
TOTAL PERCENTAGE RESPONSE	20	80	0	(100)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NASSP AFFILIATE

Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X	26. Montana		X
2. Alaska		X	27. Nebraska		X
3. Arizona	X		28. Nevada		X
4. Arkansas			29. New Hampshire		X
5. California		X	30. New Jersey		
6. Colorado		X	31. New Mexico		
7. Connecticut		X	32. New York	X	
8. Delaware	X		33. North Carolina		
9. Florida	X		34. North Dakota		X
10. Georgia		X	35. Ohio		X
11. Hawaii			36. Oklahoma		X
12. Idaho		X	37. Oregon		
13. Illinois		X	38. Pennsylvania		X
14. Indiana		X	39. Rhode Island		X
15. Iowa			40. South Carolina		
16. Kansas	X		41. South Dakota		X
17. Kentucky		X	42. Tennessee		X
18. Louisiana		X	43. Texas		X
19. Maine		X	44. Utah		X
20. Maryland		X	45. Vermont	X	
21. Massachusetts		X	46. Virginia		
22. Michigan		X	47. Washington		X
23. Minnesota		X	48. West Virginia		X
24. Mississippi		X	49. Wisconsin		
25. Missouri		X	50. Wyoming		X

TOTAL RESPONSE 6 33 0 (39)  
TOTAL PERCENTAGE RESPONSE 15.4 84.6 0 (100)

EDUCATIONAL MALPRACTICE SURVEY  
ATTORNEYS GENERAL

Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama					
2. Alaska	X				
3. Arizona		X			
4. Arkansas	X				
5. California	X				
6. Colorado	X				
7. Connecticut	X				
8. Delaware	X				
9. Florida	X				
10. Georgia					
11. Hawaii					
12. Idaho	X				
13. Illinois					
14. Indiana					
15. Iowa					
16. Kansas					
17. Kentucky					
18. Louisiana					
19. Maine					
20. Maryland					
21. Massachusetts	X				
22. Michigan					
23. Minnesota					
24. Mississippi					
25. Missouri					
26. Montana					
27. Nebraska					
28. Nevada					
29. New Hampshire					
30. New Jersey					
31. New Mexico					
32. New York					
33. North Carolina					
34. North Dakota					
35. Ohio					
36. Oklahoma					
37. Oregon					
38. Pennsylvania					
39. Rhode Island					
40. South Carolina					
41. South Dakota					
42. Tennessee					
43. Texas					
44. Utah					
45. Vermont					
46. Virginia					
47. Washington					
48. West Virginia					
49. Wisconsin					
50. Wyoming					

TOTAL RESPONSE	8	25	1	( 34)
TOTAL PERCENTAGE RESPONSE	23.5	73.5	2.9	(99.9)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NEA AFFILIATE

Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials?  
(This interest could have been provided by news releases, professional articles, speeches, etc.)

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama	X				
2. Alaska	X				
3. Arizona		X			
4. Arkansas		X			
5. California	X				
6. Colorado		X			
7. Connecticut					
8. Delaware					
9. Florida		X			
10. Georgia	X				
11. Hawaii	X				
12. Idaho	X				
13. Illinois					
14. Indiana					
15. Iowa					
16. Kansas					
17. Kentucky	X				
18. Louisiana					
19. Maine					
20. Maryland					
21. Massachusetts	X				
22. Michigan					
23. Minnesota	X				
24. Mississippi					
25. Missouri	X				
26. Montana					
27. Nebraska					
28. Nevada	X				
29. New Hampshire					
30. New Jersey	X				
31. New Mexico	X				
32. New York	X				
33. North Carolina	X				
34. North Dakota	X				
35. Ohio					
36. Oklahoma					
37. Oregon					
38. Pennsylvania					
39. Rhode Island					
40. South Carolina					
41. South Dakota					
42. Tennessee					
43. Texas					
44. Utah					
45. Vermont					
46. Virginia					
47. Washington					
48. West Virginia					
49. Wisconsin					
50. Wyoming					
TOTAL RESPONSE					
		20	20	19	1
TOTAL PERCENTAGE RESPONSE					
		50	50	47.5	2.5
					(40)
					(100)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NASSP AFFILIATE

Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials?  
(This interest could have been provided by news releases, professional articles, speeches, etc.)

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama	X		26. Montana		X
2. Alaska	X		27. Nebraska	X	
3. Arizona	X		28. Nevada	X	
4. Arkansas			29. New Hampshire	X	
5. California	X		30. New Jersey		
6. Colorado	X		31. New Mexico		
7. Connecticut	X		32. New York	X	
8. Delaware			33. North Carolina	X	
9. Florida		X	34. North Dakota	X	
10. Georgia	X		35. Ohio		X
11. Hawaii			36. Oklahoma	X	
12. Idaho		X	37. Oregon		
13. Illinois		X	38. Pennsylvania		X
14. Indiana		X	39. Rhode Island	X	
15. Iowa			40. South Carolina		
16. Kansas		X	41. South Dakota		X
17. Kentucky	X		42. Tennessee	X	
18. Louisiana		X	43. Texas	X	
19. Maine	X		44. Utah	X	
20. Maryland		X	45. Vermont		X
21. Massachusetts	X		46. Virginia		
22. Michigan	X		47. Washington	X	
23. Minnesota		X	48. West Virginia	X	
24. Mississippi	X		49. Wisconsin		
25. Missouri	X		50. Wyoming		X
			TOTAL RESPONSE		
			22	17	0 (39)
			TOTAL PERCENTAGE RESPONSE		
			56.4	43.6	0 (100)

EDUCATIONAL MALPRACTICE SURVEY  
ATTORNEYS GENERAL

Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials?  
(This interest could have been provided by news releases, professional articles, speeches, etc.)

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE		
	YES	NO		YES	NO	
1. Alabama						
2. Alaska		X				
3. Arizona	X					
4. Arkansas		X				
5. California	X					
6. Colorado	X					
7. Connecticut	X					
8. Delaware	X					
9. Florida						
10. Georgia	X					
11. Hawaii						
12. Idaho		X				
13. Illinois						
14. Indiana		X				
15. Iowa						
16. Kansas						
17. Kentucky	X					
18. Louisiana						
19. Maine						
20. Maryland						
21. Massachusetts	X					
22. Michigan	X					
23. Minnesota	X					
24. Mississippi						
25. Missouri		X				
26. Montana						
27. Nebraska						
28. Nevada						
29. New Hampshire						
30. New Jersey						
31. New Mexico						
32. New York						
33. North Carolina						
34. North Dakota						
35. Ohio						
36. Oklahoma						
37. Oregon						
38. Pennsylvania						
39. Rhode Island						
40. South Carolina						
41. South Dakota						
42. Tennessee						
43. Texas						
44. Utah						
45. Vermont						
46. Virginia						
47. Washington						
48. West Virginia						
49. Wisconsin						
50. Wyoming						
TOTAL RESPONSE						
TOTAL PERCENTAGE RESPONSE						
				21	11	2
				61.8	32.4	5.9 (100.1)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NEA AFFILIATE

Have any individuals from outside of your state brought information to your community on the issue of educational malpractice?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X	Montana		
2. Alaska		X	26. Nebraska	X	
3. Arizona	X		27. Nevada		
4. Arkansas		X	28. New Hampshire	X	
5. California	X		29. New Jersey		X
6. Colorado		X	30. New Mexico	X	
7. Connecticut			31. New York	X	
8. Delaware			32. North Carolina	X	
9. Florida		X	33. North Carolina	X	
10. Georgia		X	34. North Dakota	X	
11. Hawaii	X		35. Ohio	X	
12. Idaho		X	36. Oklahoma	X	
13. Illinois			37. Oregon		
14. Indiana		X	38. Pennsylvania		
15. Iowa		X	39. Rhode Island		
16. Kansas		X	40. South Carolina	X	
17. Kentucky		X	41. South Dakota	X	
18. Louisiana		X	42. Tennessee	X	
19. Maine		X	43. Texas	X	
20. Maryland		X	44. Utah	X	
21. Massachusetts	X		45. Vermont	X	
22. Michigan			46. Virginia	X	
23. Minnesota		X	47. Washington	X	
24. Mississippi		X	48. West Virginia	X	
25. Missouri		X	49. Wisconsin		
			50. Wyoming	X	

TOTAL RESPONSE 5 34 1 (40)  
TOTAL PERCENTAGE RESPONSE 12.5 85 2.5 (100)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NASSP AFFILIATE

Have any individuals from outside of your state brought information to your community  
on the issue of educational malpractice?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X	26. Montana		X
2. Alaska	X		27. Nebraska	X	
3. Arizona		X	28. Nevada		X
4. Arkansas			29. New Hampshire		X
5. California		X	30. New Jersey		
6. Colorado		X	31. New Mexico		
7. Connecticut		X	32. New York	X	
8. Delaware		X	33. North Carolina		
9. Florida		X	34. North Dakota	X	
10. Georgia		X	35. Ohio	X	
11. Hawaii			36. Oklahoma	X	
12. Idaho		X	37. Oregon		
13. Illinois		X	38. Pennsylvania	X	
14. Indiana	X		39. Rhode Island	X	
15. Iowa			40. South Carolina		
16. Kansas		X	41. South Dakota	X	
17. Kentucky	X		42. Tennessee	X	
18. Louisiana		X	43. Texas	X	
19. Maine	X		44. Utah	X	
20. Maryland		X	45. Vermont	X	
21. Massachusetts			46. Virginia		
22. Michigan	X		47. Washington	X	
23. Minnesota	X		48. West Virginia	X	
24. Mississippi		X	49. Wisconsin		
25. Missouri		X	50. Wyoming	X	

TOTAL RESPONSE 10 26 3 (39)  
TOTAL PERCENTAGE RESPONSE 25.6 66.7 7.7 (101)



EDUCATIONAL MALPRACTICE SURVEY  
STATE NEA AFFILIATE

Do you consider this topic of educational malpractice (to be) a concern for educators  
within your state for the present or immediate future?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama	X		26. Montana		
2. Alaska	X		27. Nebraska	X	
3. Arizona		X	28. Nevada	X	
4. Arkansas		X	29. New Hampshire	X	
5. California	X		30. New Jersey	X	
6. Colorado	X		31. New Mexico	X	
7. Connecticut			32. New York	X	
8. Delaware			33. North Carolina	X	
9. Florida		X	34. North Dakota	X	
10. Georgia	X		35. Ohio	X	
11. Hawaii	X		36. Oklahoma	X	
12. Idaho	X		37. Oregon		
13. Illinois			38. Pennsylvania		
14. Indiana	X		39. Rhode Island		
15. Iowa	X		40. South Carolina	X	
16. Kansas		X	41. South Dakota	X	
17. Kentucky		X	42. Tennessee	X	
18. Louisiana			43. Texas		
19. Maine	X		44. Utah	X	
20. Maryland	X		45. Vermont	X	
21. Massachusetts	X		46. Virginia	X	
22. Michigan			47. Washington	X	
23. Minnesota	X		48. West Virginia	X	
24. Mississippi	X		49. Wisconsin		
25. Missouri	X		50. Wyoming	X	
			TOTAL RESPONSE		
			31	9	0 (40)
			TOTAL PERCENTAGE RESPONSE		0 (100)
			77.5	22.5	

EDUCATIONAL MALPRACTICE SURVEY  
STATE NASSP AFFILIATE

Do you consider this topic of educational malpractice (to be) a concern for educators within your state for the present or immediate future?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X	26. Montana		X
2. Alaska	X		27. Nebraska	X	
3. Arizona	X		28. Nevada	X	
4. Arkansas			29. New Hampshire	X	
5. California	X		30. New Jersey		
6. Colorado	X		31. New Mexico	X	
7. Connecticut	X		32. New York		
8. Delaware		X	33. North Carolina		
9. Florida		X	34. North Dakota	X	
10. Georgia	X		35. Ohio	X	
11. Hawaii			36. Oklahoma	X	
12. Idaho		X	37. Oregon		
13. Illinois	X		38. Pennsylvania	X	
14. Indiana	X		39. Rhode Island	X	
15. Iowa			40. South Carolina		
16. Kansas		X	41. South Dakota	X	
17. Kentucky	X		42. Tennessee	X	
18. Louisiana		X	43. Texas	X	
19. Maine	X		44. Utah	X	
20. Maryland	X		45. Vermont		
21. Massachusetts	X		46. Virginia	X	
22. Michigan		X	47. Washington	X	
23. Minnesota	X		48. West Virginia	X	
24. Mississippi	X		49. Wisconsin		
25. Missouri	X		50. Wyoming	X	
			TOTAL RESPONSE		
			26	12	1 (39)
			TOTAL PERCENTAGE RESPONSE		2.6 (100.1)
			66.7	30.8	

EDUCATIONAL MALPRACTICE SURVEY  
ATTORNEYS GENERAL

Do you consider this topic of educational malpractice (to be) a concern for educators  
within your state for the present or immediate future?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama					
2. Alaska		X			
3. Arizona	X			X	
4. Arkansas	X				
5. California	X				
6. Colorado		X			
7. Connecticut	X				
8. Delaware	X				
9. Florida					X
10. Georgia		X			
11. Hawaii					
12. Idaho					
13. Illinois				X	
14. Indiana		X			
15. Iowa					
16. Kansas					
17. Kentucky	X				
18. Louisiana					
19. Maine					
20. Maryland					
21. Massachusetts	X				
22. Michigan	X				
23. Minnesota	X				
24. Mississippi					
25. Missouri		X			
26. Montana					
27. Nebraska				X	
28. Nevada					
29. New Hampshire					
30. New Jersey				X	
31. New Mexico				X	
32. New York					
33. North Carolina					
34. North Dakota					X
35. Ohio					X
36. Oklahoma				X	
37. Oregon				X	
38. Pennsylvania				X	
39. Rhode Island					
40. South Carolina					
41. South Dakota					X
42. Tennessee					
43. Texas				X	
44. Utah				X	
45. Vermont				X	
46. Virginia				X	
47. Washington				X	
48. West Virginia					X
49. Wisconsin					X
50. Wyoming				X	

TOTAL RESPONSE  
TOTAL PERCENTAGE RESPONSE

20 9 5 ( 34)  
58.8 26.5 14.7 (100)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NEA AFFILIATE

Has your state enacted any State Statutes or Codes describing educational malpractice?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		INCOMPLETE	INCOMPLETE
1. Alabama		X			
2. Alaska		X			
3. Arizona		X			
4. Arkansas		X			
5. California		X			
6. Colorado		X			
7. Connecticut					
8. Delaware					
9. Florida	X				
10. Georgia		X			
11. Hawaii		X			
12. Idaho		X			
13. Illinois					
14. Indiana		X			
15. Iowa		X			
16. Kansas		X			
17. Kentucky					
18. Louisiana					
19. Maine					
20. Maryland		X			
21. Massachusetts		X			
22. Michigan					
23. Minnesota		X			
24. Mississippi		X			
25. Missouri		X			
26. Montana					
27. Nebraska					
28. Nevada					
29. New Hampshire					
30. New Jersey					
31. New Mexico					
32. New York					
33. North Carolina					
34. North Dakota					
35. Ohio					
36. Oklahoma					
37. Oregon					
38. Pennsylvania					
39. Rhode Island					
40. South Carolina					
41. South Dakota					
42. Tennessee					
43. Texas					
44. Utah					
45. Vermont					
46. Virginia					
47. Washington					
48. West Virginia					
49. Wisconsin					
50. Wyoming					

TOTAL RESPONSE 1 39 0 (40)  
TOTAL PERCENTAGE RESPONSE 2.5 97.5 0 (100)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NASSP AFFILIATE

Has your state enacted any State Statutes or Codes describing educational malpractice?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X	26. Montana		X
2. Alaska		X	27. Nebraska		X
3. Arizona		X	28. Nevada		X
4. Arkansas			29. New Hampshire		X
5. California		X	30. New Jersey		
6. Colorado		X	31. New Mexico		
7. Connecticut		X	32. New York		X
8. Delaware		X	33. North Carolina		X
9. Florida		X	34. North Dakota		X
10. Georgia		X	35. Ohio		X
11. Hawaii			36. Oklahoma		X
12. Idaho		X	37. Oregon		
13. Illinois		X	38. Pennsylvania		X
14. Indiana		X	39. Rhode Island		X
15. Iowa			40. South Carolina		
16. Kansas		X	41. South Dakota		X
17. Kentucky		X	42. Tennessee		X
18. Louisiana		X	43. Texas		X
19. Maine		X	44. Utah		X
20. Maryland		X	45. Vermont		X
21. Massachusetts		X	46. Virginia		X
22. Michigan		X	47. Washington		X
23. Minnesota		X	48. West Virginia		X
24. Mississippi		X	49. Wisconsin		
25. Missouri		X	50. Wyoming		X

TOTAL RESPONSE 0 38 1 ( 39)  
TOTAL PERCENTAGE RESPONSE 0 97.4 2.6 (100)



EDUCATIONAL MALPRACTICE SURVEY  
STATE NEA AFFILIATE

Has your state enacted any State Statutes or Codes describing educational tort liability?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X	26. Montana		
2. Alaska		X	27. Nebraska	X	
3. Arizona		X	28. Nevada		X
4. Arkansas		X	29. New Hampshire	X	
5. California		X	30. New Jersey	X	
6. Colorado		X	31. New Mexico	X	
7. Connecticut			32. New York	X	
8. Delaware			33. North Carolina	X	
9. Florida	X		34. North Dakota	X	
10. Georgia			35. Ohio	X	
11. Hawaii	X		36. Oklahoma	X	
12. Idaho		X	37. Oregon		
13. Illinois		X	38. Pennsylvania		
14. Indiana		X	39. Rhode Island		
15. Iowa	X		40. South Carolina	X	
16. Kansas		X	41. South Dakota	X	
17. Kentucky		X	42. Tennessee	X	
18. Louisiana		X	43. Texas	X	
19. Maine		X	44. Utah	X	
20. Maryland		X	45. Vermont	X	
21. Massachusetts	X		46. Virginia	X	
22. Michigan			47. Washington		
23. Minnesota		X	48. West Virginia	X	
24. Mississippi		X	49. Wisconsin		
25. Missouri		X	50. Wyoming	X	
			TOTAL RESPONSE		8
			TOTAL PERCENTAGE RESPONSE		20
					31
					77.5
					1
					2.5
					(40)
					(100)

EDUCATIONAL MALPRACTICE SURVEY  
STATE NASSP AFFILIATE

Has your state enacted any State Statutes or Codes describing educational tort liability?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama		X			
2. Alaska		X			
3. Arizona		X			
4. Arkansas					
5. California		X			
6. Colorado		X			
7. Connecticut		X			
8. Delaware		X			
9. Florida		X			
10. Georgia		X			
11. Hawaii					
12. Idaho		X			
13. Illinois		X			
14. Indiana		X			
15. Iowa					
16. Kansas		X			
17. Kentucky		X			
18. Louisiana		X			
19. Maine		X			
20. Maryland		X			
21. Massachusetts		X			
22. Michigan		X			
23. Minnesota	X				
24. Mississippi		X			
25. Missouri		X			
26. Montana				X	
27. Nebraska				X	
28. Nevada				X	
29. New Hampshire					X
30. New Jersey					
31. New Mexico					
32. New York				X	
33. North Carolina					
34. North Dakota				X	
35. Ohio				X	
36. Oklahoma				X	
37. Oregon					
38. Pennsylvania				X	
39. Rhode Island				X	
40. South Carolina					
41. South Dakota				X	
42. Tennessee				X	
43. Texas				X	
44. Utah				X	
45. Vermont				X	
46. Virginia					
47. Washington				X	
48. West Virginia				X	
49. Wisconsin					
50. Wyoming				X	

TOTAL RESPONSE 2 36 1 (39)  
TOTAL PERCENTAGE RESPONSE 5.1 92.3 2.6 (100)

EDUCATIONAL MALPRACTICE SURVEY  
ATTORNEYS GENERAL

Has your state enacted any State Statutes or Codes describing educational tort liability?

STATE	ITEM RESPONSE		STATE	ITEM RESPONSE	
	YES	NO		YES	NO
1. Alabama					
2. Alaska		X			
3. Arizona		X		X	
4. Arkansas		X			
5. California		X			
6. Colorado		X			
7. Connecticut	X				
8. Delaware					
9. Florida		X			
10. Georgia		X			
11. Hawaii					
12. Idaho	X				
13. Illinois					
14. Indiana		X			
15. Iowa					
16. Kansas		X			
17. Kentucky		X			
18. Louisiana					
19. Maine					
20. Maryland					
21. Massachusetts		X			
22. Michigan		X			
23. Minnesota					
24. Mississippi	X				
25. Missouri		X			
26. Montana					
27. Nebraska				X	
28. Nevada					
29. New Hampshire					
30. New Jersey				X	
31. New Mexico				X	
32. New York					
33. North Carolina					
34. North Dakota				X	
35. Ohio				X	
36. Oklahoma				X	
37. Oregon				X	
38. Pennsylvania				X	
39. Rhode Island					
40. South Carolina					
41. South Dakota				X	
42. Tennessee					
43. Texas				X	
44. Utah				X	
45. Vermont				X	
46. Virginia				X	
47. Washington				X	
48. West Virginia				X	
49. Wisconsin				X	
50. Wyoming				X	

TOTAL RESPONSE	4	29	1	(34)
TOTAL PERCENTAGE RESPONSE	11.8	85.3	2.9	(100)

APPENDIX E

SELECTED INDIVIDUAL RESPONSES FROM THE NATIONAL SURVEY

## State of Connecticut

CARL R. AJELLO  
ATTORNEY GENERAL



Tel: 566-4990

Office of The Attorney General  
30 TRINITY STREET  
HARTFORD 06115

April 6, 1977

Mr. Marshall C. Darnell  
Mr. Jack R. Dettre  
University of Nevada  
3013 Colanthe Avenue  
Las Vegas, Nevada 89102

Re: Educational Malpractice Survey

Dear Sirs:

The survey which you recently sent to Attorney General Carl R. Ajello was forwarded to me for completion, since I am the attorney who represents the Connecticut State Board of Education.

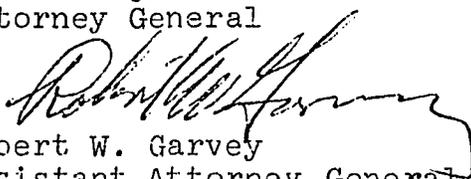
The Board would appreciate receiving a copy of the survey results, since it is a matter of concern to all educators.

I have enclosed a copy of the Connecticut statute which may well provide indemnification for individual educators, although there has not been any decision concerning educational malpractice in this state.

Very truly yours,

Carl R. Ajello  
Attorney General

By

  
Robert W. Garvey  
Assistant Attorney General

RWG:R

Enclosure

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_ No X
2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No X
  - b. educational tort liability? Yes X No \_\_\_
3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes X No \_\_\_
4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes X No \_\_\_
5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes X No \_\_\_
6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

Primarily in Special Education

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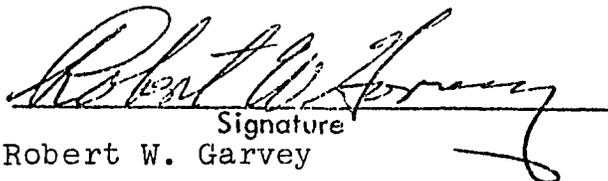
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Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results YES.

  
Signature

Robert W. Garvey

Position  
Assistant Attorney General

Hartford

City

Connecticut

State

are informed, at least annually, of the board policies governing student conduct. Each board shall further provide an effective means of notifying the parents or guardian of any minor pupil against whom the disciplinary action authorized by the provisions of this section and sections 10-233a to 10-233d, inclusive, has been taken. Such notice shall be given within twenty-four hours of the time such pupil has been excluded.

(P.A. 75-609, S. 5.)

**Sec. 10-234. Expulsion of pupils.** Section 10-234 is repealed.

(1949, S. 960d; 1957, P.A. 92; P.A. 75-609, S. 6.)

**Sec. 10-235. Indemnification of teachers, board and commission members and employees in damage suits; expenses of litigation.** (a) Each board of education shall protect and save harmless any member of such board or any teacher or other employee thereof or any member of its supervisory or administrative staff, and the state board of education, the commission for higher education, the board of trustees of each state institution and each state agency which employs any teacher, and the managing board of any public school, as defined in section 10-161, shall protect and save harmless any member of such board or commission, or any teacher or other employee thereof or any member of its supervisory or administrative staff employed by it, from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property, within or without the school building, or any other acts, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not wanton, reckless or malicious, provided such teacher, member or employee, at the time of the acts resulting in such injury, damage or destruction, was acting in the discharge of his duties or within the scope of his employment or under the direction of such board of education, the commission for higher education, board of trustees, state agency, department or managing board. For the purposes of this section, the terms "teacher" and "other employee" shall include any student teacher doing practice teaching under the direction of a teacher employed by a town board of education or by the state board of education or commission for higher education, any volunteer approved by a board of education to carry out a duty prescribed by said board and under the direction of a certificated staff member, and any member of the faculty or staff or any student employed by The University of Connecticut Health Center or health services.

(b) Legal fees and costs incurred as a result of the retention, by a member of the state board of education, the commission for higher education or the board of trustees of any state institution or by a teacher or other employee of any of them or any member of the supervisory or administrative staff of any of them, or by a teacher employed by any other state agency, of an attorney to represent his interests shall be borne by said state board of education, commission for higher education, board of trustees of such state institution or such state agency employing such teacher, other employee or supervisory or administrative staff member, as the case may be, only in those cases wherein the attorney general, in writing, has stated that the interests of said board, commission, board of trustees or state agency differ from the interests of such member, teacher or employee and has recommended that such member, teacher, other

employee or staff member obtain the services of an attorney to represent his interests and such member, teacher or other employee is thereafter found not to have acted wantonly, recklessly or maliciously.

(1949 Rev., S. 1494; 1949, 1951, 1955, S. 951d; 1959, P.A. 521, S. 1; February, 1965, P.A. 330, S. 43; 1971, P.A. 344; 1972, P.A. 201, S. 1; P.A. 73-651.)

See Sec. 10-212a.

Statute provides teacher with indemnification from loss, not indemnification from liability; board of education not deprived of defense of governmental immunity. 19 CS 396. Board of education could not interpose defense of governmental immunity to action by student against teacher which joined board as defendant as well as teacher. 27 CS 337. Demurrer to count of complaint for injuries sustained in school track meet which joined board of education in suit against school coaches was proper as this statute provides for indemnification from loss of coaches who may ultimately have cause of action against board for reimbursement. 28 CS 198.

**Sec. 10-236. Liability insurance.** Each such board of education, board of trustees, state agency or managing board may insure against the liability imposed upon it by section 10-235 in any insurance company organized in this state or in any insurance company of another state authorized by law to write such insurance in this state, or may elect to act as self-insurer of such liability.

(1949 Rev., S. 1495; 1949, S. 952d.)

**Sec. 10-236a. Indemnification of educational personnel assaulted in the line of duty.** (a) Each board of education shall protect and save harmless any member of such board or any teacher or other employee thereof or any member of its supervisory or administrative staff, and the state board of education, the commission for higher education, the board of trustees of each state institution and each state agency which employs any teacher, and the managing board of any public school, as defined in section 10-161, shall protect and save harmless any member of such board or commission, or any teacher or other employee thereof or any member of its supervisory or administrative staff employed by it, from financial loss and expense, including payment of expenses reasonably incurred for medical or other service necessary as a result of an assault upon such teacher or other employee while such person was acting in the discharge of his duties within the scope of his employment or under the direction of such board of education, commission for higher education, board of trustees, state agency, department or managing board, which expenses are not paid by the individual teacher's or employee's insurance, workmen's compensation or any other source not involving an expenditure by such teacher or employee.

(b) Any teacher or employee absent from his employment as a result of injury sustained during an assault or for a court appearance in connection with such assault shall continue to receive his full salary, while so absent, except that the amount of any workmen's compensation award may be deducted from his salary payments during such absence. The time of such absence shall not be charged against such teacher or employee's sick leave, vacation time or personal leave days.

(c) For the purposes of this section, the terms "teacher" and "other employee" shall include any student teacher doing practice teaching under the direction of a teacher employed by a town board of education or by the state board of education or commission for higher education, and any member of the faculty or staff or any student employed by The University of Connecticut Health Center or health services.

(P.A. 73-492.)

**Sec. 10-237. School activity funds.** (1) Any town board of education may

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_ No X (But see attached page)
2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No X
  - b. educational tort liability? Yes \_\_\_ No X (But see attached page)
3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes \_\_\_ No X
4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_ No X
5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes \_\_\_ No X
6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

(see attached page)

Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results X.

William B. Mundy  
Signature  
219 State House

Indianapolis  
City

Deputy Attorney General  
Position

Indiana 46204  
State

ADDITIONAL COMMENTS

1. While Indiana does not have minimum competency requirements needed to obtain a high school diploma, we do have required courses that a student must pass in order to obtain his diploma. Proficiency in these and other courses though are adjudged by the local school systems.

2. While Indiana has not enacted any statutes dealing with educational malpractice per se, we have enacted a general Tort Claims Act. Indiana Code 34-4-16.5-1 et seq. This act would apply to a Tort Claim alleging educational malpractice against a school corporation.

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

- 1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_ No X
- 2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No X
  - b. educational tort liability? Yes \_\_\_ No X
- 3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes \_\_\_ No X
- 4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_ No X
- 5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes \_\_\_ No X
- 6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

Mandatory special education for all exceptional students will dilute the issue raised in DOE v SFUSD, in my opinion.

Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results

Margaret Cartwood  
Signature

Staff attorney  
Position

Topeka  
City

Kansas NEA  
State

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

- EDUCATIONAL MALPRACTICE SURVEY

1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_ No X but will hold hearings in April which may provide this.
2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No X
  - b. educational tort liability? Yes \_\_\_ No X
3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes \_\_\_ No X
4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_ No X
5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes X No \_\_\_
6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

In discussing this with the State Superintendent of Schools, his expressed feeling was that this is a matter with which the State will have to deal, and the reason for accountability programs and a closer supervision of the educational process in the State.

Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results X.

Selma Sewell  
Signature

Executive Secretary, MASSP  
Position

Maryland Association of Secondary School Principals

Baltimore  
City

Maryland  
State

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

- 1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_ No
- 2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No
  - b. educational tort liability? Yes \_\_\_ No
- 3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes  No \_\_\_
- 4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes  No \_\_\_
- 5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes \_\_\_ No
- 6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

Court 7 appeals in Mich has ruled that a teacher cannot be declared incompetent if two classes using a similar test prove little deviation

Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results

David E. Hill Exec. Director  
Signature Position

Ann Arbor 401 S. Forest St. Michigan  
City State

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

1. \* Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma? Yes \_\_\_ No X

2. Has your state enacted any State Statutes or Codes describing:

a. educational malpractice? Yes \_\_\_ No X

\*\* b. educational tort liability? Yes X No \_\_\_

3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.) Yes X No \_\_\_

4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_ No X

5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future? Yes X No \_\_\_

6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

\* THE MINNESOTA DEPARTMENT OF EDUCATION IS STRONGLY CONTEMPLATING THE ESTABLISHMENT OF MINIMAL COMPETENCY REQUIREMENTS

\*\* MINNESOTA HAS A TORT LIABILITY ACT. WHETHER THAT ACT ALSO COVERS THE TYPE OF ACTION YOU DESCRIBE HAS

Thank you for your time and input on this current educational issue. NEVER BEEN DETERMINED.

Check here if you would like a copy of the survey results \_\_\_.

Michael J. Bradley  
Signature

Special Assistant Attorney General  
Position

St. Paul  
City

Minnesota 55419  
State

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
Yes \_\_\_ No
2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No
  - b. educational tort liability? Yes \_\_\_ No
3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
Yes  No \_\_\_
4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_ No
5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
Yes  No \_\_\_
6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

*Accountability legislation is now in its infancy. We are concerned that future programs insure that all district employees are held accountable, and that a workable & reliable*

Thank you for your time and input on this current educational issue.

Check here if you would like a copy of the survey results . *definition of "accountability" is established and legislated.*

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature

*Exec Dir - MEA*  
\_\_\_\_\_  
Position

*St. Paul*  
\_\_\_\_\_  
City

*Minnesota*  
\_\_\_\_\_  
State

Would you please take a few moments to complete this survey pertaining to educational malpractice? Your responses should reflect the information which is currently available to you on this topic.

EDUCATIONAL MALPRACTICE SURVEY

1. Has your state enacted State Statutes or Codes describing minimum competency requirements needed to obtain a high school diploma?  
 Yes \_\_\_ No X *However, Interim Legislative Comm. will consider (1977-78)*
2. Has your state enacted any State Statutes or Codes describing:
  - a. educational malpractice? Yes \_\_\_ No X
  - b. educational tort liability? Yes \_\_\_ No X
3. Has there been any demonstrated interest in your state on this topic by educators, lay citizens, or public officials? (This interest could have been provided by news releases, professional articles, speeches, etc.)  
 Yes \_\_\_ No X
4. Have any individuals from outside of your state brought information to your community on the issue of educational malpractice? Yes \_\_\_ No X
5. Do you consider this topic of educational malpractice a concern for educators within your state for the present or immediate future?  
 Yes X No \_\_\_
6. Please add any additional comments you feel appropriate to the topic. If State Statutes are currently available concerning educational malpractice within your locality, would you list the title and number code.

*New York case, resolved favorably toward ed., may abate issue. If unfavorable, God only knows end result - "Bad" is mild understatement.*

Thank you for your time and input on this current educational issue.

*mild understatement*

Check here if you would like a copy of the survey results X.

Richard L Morgan Ex. Dir. OEA  
 Signature Position

OKla City \_\_\_\_\_  
 City State

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## BIBLIOGRAPHY

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## DISSERTATION ABSTRACT

### A STUDY DESIGNED TO INVESTIGATE A NEW DIMENSION FOR EDUCATIONAL ACCOUNTABILITY. . . MALPRACTICE

Marshall C. Darnell  
University of Nevada, Las Vegas, 1977

Problem Individual state governments have received, by implied federal constitutional authority, the right to organize, maintain, and control the schools within their respective territories. To accomplish this task of school governance, the states have enacted legislation to regulate the separate functions of the educative process. In specific instances, where these regulations were developed to establish entrance age, employee certification, and subject content to be taught, such enactments have become minimum standards. Minimum educational expectancy for students appears to be the next regulatory enactment by some state agencies. Should a state develop the student literacy skill standards necessary to achieve graduate status, the question would then arise: What happens when a student, or students, do not meet the minimum standard? Will these students be provided some other legislated recourse for attaining the required career literacy skills, or will they have some redress through law if time or some other factor will prevent such competency attainment? Will educators be held accountable for the lack of student academic accomplishment? Based upon these questions, the specific purpose for this study has been to seek an answer to

the educational question: Given the projected possibility of educational malpractice legislation applicable to the contractual and statutory obligations for certificated educational personnel, what is the current status of educational malpractice presently affecting the nation's secondary schools?

Procedure This study was a descriptive survey. A review of the professional literature surrounding this topic confirmed the need for the study and provided a basis for structuring the design of the investigation. Data was secured from three primary sources: (1) a review of the related professional literature which discussed this topic; (2) the administration of a national data survey; and, (3) a review of research conducted on the subject of educational malpractice. With respect to the national survey, 150 individuals were identified who could provide information on the enactment of educational malpractice statutes or codes within the various states. These persons surveyed included the Attorney General of each state, the Executive Secretary for each state affiliate to the National Association of Secondary School Principals, and the Executive Secretary for each state affiliate to the National Education Association.

Findings An analysis of the data obtained during this study indicated the following major findings: (1) A lack of academic skill attainment by youth enrolled in two school districts has caused parents to charge these school districts and, specifically, the employees and officials of these agencies with professional misconduct, labeled malpractice; (2) These legal actions have been prompted, in part, by the failure of the plaintiffs to master literacy skills, and such failure has been attributed to those who are employed by the school agencies; (3) Educational

achievement levels for secondary students have successively dropped during the past decade; (4) There are no states, at this date, which have enacted any state statute or code which addresses the topic of educational malpractice; (5) State legislatures have considered tort liability features for educational employees; (6) The national survey respondents indicated, by a majority opinion, that educational malpractice was a problem for educators at this time and would likely be a concern for the future.

Conclusions Educational malpractice legal actions are a reality.

Based upon this fact, the following conclusions could be offered: (1) Due to a lack of legislated mandate for the area of educational malpractice, actions of this type will continue against educators for the immediate future; (2) The social forces which have propelled medical and legal malpractice legal actions are apparently the same forces which are contributing to the malpractice issue within the educational field; (3) State governing bodies may continue to address the issue of declining student academic achievement: If this continues for any length of time, then the question of educational malpractice will be raised within state legislatures; (4) Once state or federal guidelines are established for the control of educational malpractice legal actions, then the frequency of such judicial review will be reduced.