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ABSTRACT

The Japanese school administrator's job currently is little affected by demands from the legal system. However, 10 years from now the Japanese principal will likely be much more concerned with legal requirements. This paper describes education law within the culture of Japan and the status of various types of legislation. Data were derived from: (1) visits to a total of 17 Japanese schools (8 secondary, 4 elementary, 3 special education, 1 private, and 1 private preschool); (2) interviews with 17 principals, 15 vice-principals, 3 state education officials, and various head teachers and teachers; and (3) conversations with members of the Osaka Lawyers' Association. A conclusion is that political, social, and economic changes will bring about an increase in litigation involving schools. Parents are less willing to defer to educators, less trusting of the value of relentless academic pursuit, and less respectful of the teaching profession. Other changes include less dedicated teachers, media attention on excessive punishment in schools, and some lawyers' increased willingness to take on student rights cases. (LMI)

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(Summary of Preliminary Findings)

The Impact of Education Law
on the Role of the Japanese Principal:
Now and in the Future

National Organization on Legal Problems in Education
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The Japanese school administrator's job currently is little affected by demands from the legal system. Except for detailed government regulations governing schools and infrequent litigation over injuries to students, a principal in Japan has little concern for the courts or litigious students, parents, and teachers. Except for government regulations, many administrators have not even felt the need to be familiar with anything of a legal nature.

This tranquil aspect of the principal's role is in the process of change, however. Ten years from now the Japanese principal will likely be much more concerned with legal requirements, including those imposed by courts. This change will be brought about by parents and students who are more willing to challenge school authority, and by distinctive changes in Japan, itself, especially its political, social, and economic structures.

This report attempts to highlight the initial findings of a study conducted by its authors during six weeks in April and May of 1993. During that time period, the authors visited eight secondary schools (four academic, three vocational, one alternative), four elementary schools; three special education schools; one private elementary school; and one private pre-school

integrated with special needs students. In addition to interviews with 17 principals, 15 vice principals, and various head teachers and teachers, the authors also interviewed three officials from the prefecture (state) education office, including the chief of the legal section. While in Osaka for a brief time, (three days) the authors were the guests of, and met with, members of the Osaka Lawyer's Association, Youth Rights Committee. In addition, there were numerous informal conversations with teachers, parents, and others when the subject of discussion occasionally strayed to law.

A number of important limitations must be noted. The authors do not speak the Japanese language and were largely dependent upon translators for communication. Most of those translators were English teachers or American, Canadian, and British young persons in the JET program (a program supported by the Japanese government to bring about 1,000 English-speaking persons to Japan to assist in the teaching of English in the schools). About 30% of the administrators interviewed were former English teachers and no translation was required. The authors frequently were under the impression that interviewees understood more of the conversations in English than they were willing to acknowledge.

The authors are also limited in their knowledge and experience with Japanese culture. What is said and written may not necessarily be the reality. Homogeneous cultural traits established over many centuries still exist in varying degrees and exercise unseen results.

Interviews with vice principals, head teachers, and teachers in the presence of a superior would always be suspect for reliability. Supervisees always deferred to the supervisor even when the supervisor told them they

could agree or not. Supervisees interviewed outside the presence of their supervisors always appeared more open and willing to express their opinions.

Except for visits to one special education school and one private pre-school in Osaka, school visits and interviews with educators took place in Shizuoka Prefecture. Shizuoka Prefecture is located about half-way between Tokyo and Osaka, and is the home of Mt. Fuji. (One of the high schools visited was built near the foot of Mt. Fuji.) Shizuoka Prefecture was initially chosen for the location of the study because it was represented as being agricultural and quite similar to the authors' geographic area of the upper mid-west. (It was represented by many Japanese as being backward, with nice people.)

In reality, similarities to the upper midwest were only relative. Shizuoka City had a population exceeding 500,000, and the Prefecture contained an international port (Shimizu) and considerable manufacturing. Humamatsu, a little larger than Shizuoka City, is the headquarters for Yamaha music instruments. The agricultural base was green tea, large sweet strawberries, and extra sweet oranges grown on ultra dwarf trees. Like the rest of Japan, approximately 90% of the land consists of mountains and foothills which are the source of lumber and some mining.

It took approximately nine months to make arrangements for the visit, beginning with the Prefectural Superintendent and working down the chain of authority. Had the English teachers and some of the principals not been so supportive, the visit may not have occurred. Each school visited had a complete dossier, about two inches thick, on the two visiting professors.

The primary research questions for this study involved the effect of education law on the role of the Japanese principal and ways that is likely to change.

Education Law and the Culture of Japan

School-home problems that quickly become legal issues in America are handled much differently in Japan. Cultural reasons are obviously at the center of the lack of great numbers of challenges to school administrator authority. Historically, parents and schools have worked almost as one to educate students, and at all times the parents yield to the schools in determining what is best for the children. Schools are more important in the life of Japanese students than they are to their American counterparts. The Japanese student's world is smaller. ("School is the center of the student's life." "Life is to be a student." "Education is Japan's religion.")

Students attend school over 220 days a year, with some classes held at the secondary schools on Saturdays. Many student activities are held on the weekends and holidays. All secondary students are expected to be in at least one club each term which meets daily and often on weekends. (Clubs cover a variety of interests, i.e. baseball, Judo, flower arranging, tea ceremony.)

Secondary students must wear school uniforms when at school or when attending school activities whether or not academic classes are in session. Secondary students are governed by school rules every hour of the day and parents often use the force of school rules to control their children. Students are commonly not allowed to drink, smoke tobacco, or drive a car even when they are with their parents. Part-time jobs are prohibited except when the family is poor. Then, permission must be sought from the principal as well as the parents. Dating and dances at school are not allowed. When

entering most schools, students must remove their shoes and wear slippers as they would in their own homes and the homes of their friends. The only exception was an elite academic high school where allowing the students to wear street shoes in the school was part of the reward for highest scores on exams.

Educators spend much more time with parents than would occur at the typical American school. Many parent events are scheduled throughout the year, with the most important being the opening and closing ceremonies. One hundred percent parent participation is the norm (at least mothers). Many parent conferences are scheduled and the home-room teacher becomes an important unifying fixture pulling parents and school together. Many homerooms meet early in the day and again at the end of the day. A strong emphasis is placed on unifying the students and teaching them to "pull together." The same home-room teacher is assigned to a student for the entire time the student attends the school. Virtually all communication between home and school occurs through the home-room teachers. Sometimes, especially when problems are identified, home-room teachers invite individual students to their own home for the weekend to "become part of their family."

Teachers, especially home-room teachers, try to learn as much as they can about their students and try to solve problems as soon as they appear. They detect when their students have "not slept well, have been scolded and when they have had no breakfast."

When problems arise at school, including discipline, the home-room teacher conducts the initial investigation and communicates with the student and home. Confrontation does not occur at any level. It is not part of the Japanese lifestyle. Only if the issue is not resolved are the head teacher

(department head at the secondary schools), vice principal and principal progressively involved. At every stage, there is a concentrated effort to develop trust on the part of the parent and to encourage acceptance of the school's position and authority. Seldom is authority exercised outright. One principal discussed with the authors a very stubborn parent and a problem with regular attendance. The parent, and sometimes the student, were involved in school conferences and finally, once the principal was involved, numerous conferences were held in the principal's office (the authors were told 16) until the parent came to "see and accept the school's viewpoint." While secondary principals may expel students (no hearing required), the current prevailing philosophy is to work with the student, parents, and teachers to "remodel" the student. Discipline is generally progressive or escalating as the problem remains unresolved. Expulsions are never challenged by parents. The expelled student will normally get a menial job and go on with life. (Compulsory attendance is through the ninth grade.)

At one elementary school, the question came up about students with disabilities attending the neighborhood school as allowed by statute. The response was that parents are "counseled" by the educators and they "understand" that integration would not be in their child's best interest. A principal of a vocational high school responded to a question about students with disabilities in the building. He said that such students are "counseled" to go to special schools.

It should be noted that each principal's office visited by the authors was very large and well decorated with stuffed furniture (often leather) and a large conference table with 8-15 comfortable chairs. Many had rich looking wood wainscoting and bookshelves on the walls. There was never a doubt that

an important, wise, and respected man (the authors were told that women do not want to become principals) operated within those walls. There was no doubt that considerable "friendly persuasion" could be asserted over students and parents in such settings.

A highly regarded professor at a prestigious university, who specialized in education law, said that parents acquiesce to school authority. Even though it is against the country's statutes for a teacher to corporally punish a student, even he understood that it was "natural" for his second-grade daughter's teacher to use corporal punishment on the students. Once his daughter was struck "softly" by the teacher, and he made no objection. He recognized the use of physical punishment as part of a teacher's role, even though it was against the law. He said that if physical punishment was excessive, he would take the matter up with the principal, but he would not challenge the school's authority in court.

Several administrators interviewed stressed that when teachers become administrators, not a self-selecting process, they remain teachers at heart and do not become managers. They don't see themselves as managers, but continue to view students from a role as an educator.

Japanese society tends to look down upon troublemakers. When parents or students cause problems at school, such as through lawsuits, they are shunned by family, colleagues and friends. The Japanese home and society begin teaching children at an early age that they must "be a good citizen." Before a child begins school, he or she is well on the way to understanding the concept of the better good for all.

Courts do not like to get involved in educational disputes. Judges and court administrators are often appointed on the basis of political philosophy,

and for about 35 years, the prevailing political philosophy has been very conservative. As a result, courts generally yield to school official discretionary authority.

Lawyers go into a case against a school assuming they will lose. It normally takes many years to get a result through litigation. The researchers met one attorney who was the hero of his colleagues because it had taken only two years for him to get a student with disabilities into her neighborhood school as is required by statute after school officials would not enroll her ("refusal"). There is nothing like legal aide assistance or attorney fees for prevailing parties. Most lawyers can't afford to take many pro bono cases and even child advocates feel limited in the number of cases they take. Child advocates must be selective in the cases they take, and many prefer a case involving more immediate needs, such as child abuse by parents. (Most school officials downplayed child abuse, but child advocacy attorneys expressed great concern.)

Status of various types of litigation

1. Student injury (negligence). Most persons interviewed readily talked about student injuries at a school. Shizuoka Prefecture officials indicated that the issue arose two to three times a year in their Prefecture. Often, injuries involved students in swimming pools or vocational schools being hurt on power equipment. All elementary schools in Shizuoka Prefecture, including special education schools, have a swimming pool. While looking over a rooftop pool at one elementary school (land values made a ground level pool cost prohibitive), the principal recounted a student receiving a broken neck as a result of diving into the shallow end. He reported that a settlement was reached,

but the student did not get much money because, "he was largely responsible for his own injury."

When a student suffers an injury at school, school officials attempt to determine school responsibility and negotiate a settlement before attorneys become involved. Often, school officials point out student fault in an effort to lower settlement demands.

2. Corporal punishment. Although corporal punishment of students is outlawed by national statute, it remains very commonplace. Occasionally, severe injury or death results and the school will apologize publicly and pay damages. In less severe situations, it is commonplace for the teacher to apologize to the family and the matter is dropped.
3. Personnel issues. Personnel issues are covered in detail in national and prefectural rules. There is little principal discretion to be exercised. Once or twice a year a teacher in Shizuoka Prefecture contests a decision, usually based on rules, and will take the issue to the Prefecture Board and Superintendent. This occurs only after many attempts at problem resolution at a lower level.
4. Curriculum issues. The issue of control of the curriculum, particularly textbook censorship, has been a point of major litigation at the national level. One noteworthy case, a depiction involving World War II, has been litigated for over 20 years. Usually, the litigation involves censorship of textbooks submitted to the government for approval. The rejected or censored authors become the plaintiffs. Seldom, if ever, are local challenges to materials made. The principal has the final choice on all materials. However, all textbooks must be approved by the national

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government, and teacher committees make recommendations to lead teachers and department chairs, who make recommendations to the principal.

5. Student records access. In recent years, several cases on records have achieved national notoriety. The authors met and interviewed one student (now a college student) who was allowed access to his school records after unsuccessful litigation. The local school board decided to allow access, and has since incurred the wrath of national education officials. Generally, educators interviewed opposed student and parent access on the ground that teachers would be reluctant to write the truth when negative information was warranted.

Student records, especially anecdotal comments by home-room teachers are crucial in determining what type of school will admit a student. When students move from elementary to junior high, from junior high to senior high, and from senior high to college, they do so through a system of tests. While the colleges and universities allow multiple testing days, secondary schools do not. All high schools in a particular area test the same day. If a student has not been well advised as to his or her capabilities (as determined by the home-room teacher) and given good advice by the home-room teacher about which school to test for, the student could fail the test and be in educational limbo. Of course, the unspoken issue is the nature of the information the home-room teacher has relayed through the records to secondary school officials about a student's personality, behavior, and traits. Police and prospective employers can have access to information in a student record provided orally by a school official, even though they are not available to students or parents.

As more parents make the connection between school records and success or failure in enrolling in preferred schools, the importance of education records will be realized, and challenges for access will become commonplace. Already, some prefectures are conducting workshops for teachers on how to write appropriate anecdotal comments about students for their records.

6. Special education. Very few cases have been litigated, about 10 in 10 years nationally. Schools tend to ignore many aspects of special education law, (for example, attendance at the neighborhood school at parent request) because cultural norms and the culture of the education system prevail. Parents of many students with disabilities are ashamed and take personal responsibility for their child's disability. (The Japanese are not generally accepting of individual differences in people.)

There was no doubt in the authors' minds that students with disabilities were treated with sincere love, kindness, and respect at the segregated schools. Generally, the average physically handicapped student generated three times, and the mentally handicapped student five times, the revenue for the schools as the typical student. The authors wondered to themselves about the economics of inclusion and whether the principals favoring segregation had really thought about it.

Hidden handicaps, specific learning disabilities, attention deficits, and emotional disabilities were "being considered," but not currently recognized in law or practice. The authors were asked many questions about IEPs, group homes, and transition.

7. Student speech and expression. These are unheard of in Japanese schools. A number of times the authors asked questions about student expressive speech in schools and were met with puzzled stares. After awhile, the authors reminded the principal of the many university students seen on campuses with huge posters and bullhorns protesting all manner of issues. The responses were typified by responses such as "those happenings are unbelievable here," and "our students do not get into those issues."
8. School rules. With school rules for student conduct covering so much of a student's life at school and away, one common question asked by the authors was about the future of challenges to student rules of conduct. Most principals indicated that student and parent demands for changes in some rule areas were likely. Changes in rules covering uniforms, slippers in school, jewelry for girls, and haircuts were expected.

At one academic high school, the authors noticed a vice principal repeatedly looking at his watch. In response to our inquiry, he said he had to prepare for a student convocation where he was going to give students good news about hair length. He said that in the future students could wear their hair longer, as long as it was, neat, clean, and controlled in some fashion. The vice principal was shocked by our response that the boys would be pleased to hear his news. "No! No!" he said, "the change was only for the girls."

He is the same vice principal who took glee in telling about a winter dress code inspection. On the coldest day of the year, teachers were stationed at the school house gates, and punished any students who wore a hat, ear muffs, coats, or gloves. None of those things are sanctioned as part of the official uniform.

9. Gender issues. Frequently, the authors asked about a general lack of women administrators. (There were very few). They were usually told matter-of-factly that women did not want jobs with responsibility and authority. Many subtle gender issues were apparent, such as boys lining up first and girls second and boys dominating class discussions and teacher attention. When the authors asked why the elementary boys all had black book bags and the girls all had red book bags, they were told it was that way because that was what the parents wanted. When pushed with the question of what the school would do if a boy came with a red book bag, the principal responded, "Those students don't go here."
10. School finance. While some principals expressed a desire for more money for their schools, and often gave budget constraints as justification for many actions, such as refusing to integrate students with disabilities, none mentioned unfairness. One university professor told the authors he was researching inequities in finance and felt that many existed. He said that about 75% of school revenues come from the national government and 25% are raised locally. He suspects that the local education revenues are not distributed equally and result in great unfairness.

What does the future hold?

The response was unanimous. Every school administrator and attorney who was asked the question responded that the next decade would see a tremendous explosion in legal challenges to school authority in Japan. A number of different explanations were provided, but they all point to basic changes in the Japanese social, political, and economic fabric.

Parents are described as having changed in a number of ways. First, parents are not as willing as in the past to defer important decisions

impacting their children's lives to educators. There are fewer children in families and the parents thus focus more on the future happiness of fewer children. As a result of Japan's economic growth, two income families are becoming more of a necessity and the expense of numerous children cannot be absorbed, even in the extended family. (Japan is a very expensive place to live or to visit.)

Parents are becoming less trusting that schools know what is best for their children. A few years ago, happiness was social and economic status brought about through education and success on exams. Happiness for itself is replacing status as the desired end-product of an education. Now, many parents who were successful under the current system are realizing that happiness is something inside them and not a result of mere status. Many successful parents are not happy in their lives and want their children to be truly happy. As one secondary principal said, "Parents are realizing that dreams can become real." The level of parent education is rising. About 95% of Japanese students graduate from high school. Thirty to fifty percent of senior high graduates go to a 4-year college.

A partial reason that parents don't trust educators to know what is best for their children is a decline in respect for the teaching profession. Many parents now think of teaching as a job and not as a special calling as before. Teachers' relative salaries are going down (but they remain high by American standards).

Many administrators interviewed expressed concern that teachers are changing and won't maintain the quality of care and concern for students as teachers formerly exhibited. Many times it was expressed that young teachers are not as dedicated and don't try to understand students. Teachers don't

consider themselves "guides" in the student's life as much as providers of academic success (testing).

Some of the persons interviewed stated that parent challenges to physical punishment are increasing, and the news media is increasingly giving coverage to school punishment excesses. Almost everyone interviewed had read about the tragic death of a middle school student whose head was crushed by the school's iron gates. The gates were closed by a teacher who wanted the student to learn the importance of promptness. The teacher was convicted of manslaughter, but received a suspended sentence because, at the time, "he was doing his job." One secondary principal related the "old days" when a teacher who hit a student was thanked by the parent before the parent went home to hit the child again. (This remind the authors of stories told by their parents of school discipline in the 1930's.)

Some persons interviewed were concerned that parents' vision of their role in society is changing. The hardships of war and its aftermath brought a sense of responsibility to children and need to work together cooperatively in a financial and cultural sense. (This might remind many Americans of the impact of the depression on our own parents.) As a principal of a vocational high school stated it, the problem is that Japan's "financial success has brought distractions. The Japanese people are richer in the pocket, but poorer in the heart and mind."

Many attorneys are wondering whether current political changes will result in a less conservative veil over the legal system. They expressed surprise that one of the authors had a conceptual grasp of the situation when he said he didn't understand why the Japanese constitution and statutes

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clearly say one thing, but the actual practice as affirmed by the courts can be totally different.

At an American style potluck dinner, the authors were asked by a physician whether it was possible to have a democracy when one political party has been in control of the government for 30 years. Warned about the Japanese desire for lack of confrontation, and not wanting to start an international incident, we were slow in answering. The physician didn't wait long for a response. He said, "Of course not." (Since the authors left Japan in May 1993, considerable changes have occurred and continue to occur in the political system. The party in control has been replaced by an opposition coalition.)

More attorneys, although greatly constricted in their freedom to take on unpopular cases, are taking on student cases as a matter of "heart." When a recently successful attorney in a special education integration case ("refusal") was asked why he had become involved in education issues, he replied "distortions in a society come out in its weakest areas, for example, how it treats children."

The students, along with society, are changing. Most administrators of secondary schools expect future challenges to rules involving such things as uniforms, hair length, make-up, and pierced ears.

In the last few years, the stated emphasis at all stages of the education curriculum from the national level is to incorporate creativity, the value of individualism, acceptance of others, and consideration of values. The authors doubt that these changes will come easily, especially in the academic secondary schools. (Few teachers at the academic schools appear trained in or philosophically disposed to implement these changes.)

Status of Attorneys

There are no lawyer jokes in Japan. Among the persons the authors interviewed, there was a deep respect for the legal profession. One principal said, "it is the lawyers who hold our society together." The national bar exam is considered to be the most difficult professional exam in the country. Only about 50% of attorneys are admitted to the national bar each year. One of the authors' translators was aghast to learn that one of the attorneys we visited in Osaka had successfully passed the bar exam with only one year's preparation after law school. The translator stated, with his jaw hanging open, "He is one smart fellow."

Members of the bar all wear lapel pins depicting the chrysanthemum blossom, similar to the symbol of the emperor, but one petal lost out of respect.

Conclusion

Japanese principals have not yet experienced an onslaught of challenges, or even the threat of challenges, from students, parents, and staff. The threat of litigation has been, and remains, remote. The country's culture and the political, social, and economic structures have combined to place education and educational authorities above reproach.

Political, social, and economic changes are in process in Japan, and its cultural heritage is being pushed and constricted as a result. As these changes come about, it is likely that Japan will see an ever increasing amount of litigation involving schools.

While the cultures and times are vastly different, one is tempted to view current Japanese education law as being in a similar position to that in the United States of about 30 years ago. What vast changes in American political,

social, and economic outlooks were taking place and have taken place since? (Vietnam, trickle-down economics, break up of the family structure, immigration, corruption, etc.)? The United States has experienced an explosion on school litigation in those 30 years, accompanied by interference with the role and intimidation of the actions of public school principals. A similar fate appears to be in the future for Japanese principals.