Torts and Liability: An Educator's Short Guide

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by

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Introduction

In our litigious society, people are prone to engage in litigation whenever there is a dispute, an opportunity to receive monetary damages, or just a chance to "get even." Schools, school districts, and educators are not immune from this propensity to litigate.

Visit a teachers' lounge and the conversation is often centered on the question: "Can I be sued?" The answer is always "yes." But the real issue is: "If I am sued, who will win?" It is the debate that follows, and the possible answers, that worry teachers, leading some to desert the profession. Unfortunately, the lounge is the source of most teachers' information concerning the law and their profession, a case of "the blind leading the blind."

Tort cases are the most common form of legal action brought against educators. A tort is defined as a civil or a private wrong other than breach of contract. The four main types of education tort cases are corporal punishment, search and seizure, defamation of character, and negligence. Negligence suits outnumber the other three types put together. This fastback is designed to provide important and often misunderstood information to teachers and to convey a basic understanding of their legal rights, duties, and obligations.
Torts

Torts related to schools are wrongful acts committed by school personnel that result in injury to another person’s property, person, or reputation. These suits usually are brought by parents on behalf of their children. The most common tort action in the education arena is that of negligence, which is defined as an unintentional tort. Torts usually are classified as “intentional,” “reckless/grossly negligent,” or “negligent.”

Torts may be thought of in terms of a “personal injury” action, in which one party harms another due to negligence or intentional conduct. Assault, battery, damage to property, and defamation are some common torts. Central to the definition of tort is the standard of reasonableness in actions toward others. An unreasonable interference with the interests of others that causes injury is a tort.

Intentional Torts

Intentional torts are exactly that, where wrongs are knowingly committed toward another. The courts have referred to intentional torts as “willful or wanton misconduct.” Calling a student by an inappropriate name
is an example of an intentional tort. However, the courts always require that the student prove that they have suffered some damage as a result of the name-calling (Phillips v. Lincoln County School District, 1999).

Battery and assault are intentional torts that result when a student or teacher physically impose himself or herself on another or causes the other party to believe that they are going to do so. Educators are permitted to use the force necessary to restrain a student in the child’s interest of safety or to intervene if another child’s safety is endangered; and, of course, teachers can defend themselves.

A student who was assaulted at school by classmates brought personal injury action against students, their parents, and the school district. The school district was held to be immune from action under the doctrine of sovereign immunity (Taylor v. Klund, 1987). Generally, the intentional tort cannot be attributed to a third party unless a hostile environment is proven.

False imprisonment cases usually are brought when an educator isolates a child in a study carrel over long periods of time, puts them in a closet, or denies them freedom to move about as the other children do. A school district was denied summary judgment in a false imprisonment case where a child with both mental and physical disabilities was locked in the school bathroom for three hours by her teacher for creating a “mess” on the floor (Gerks v. Deathe, 1993).

The plaintiff may have intangible injuries, such as pain and suffering or emotional distress, which in some situations can be sufficient for recovery. If proven, monetary compensation may be awarded for intangible injuries.
Many courts are reluctant to grant damages for mental distress unless it is tied to another type of tort. Battery is frequently a prerequisite for mental distress claims. A tort claim of intentional infliction of mental distress now is available to individuals who have experienced extreme mental anguish.

Unreasonable behavior is not enough to claim infliction of mental distress. The act must be extreme and outrageous. Outrageous conduct is that which is considered intolerable in a civilized society and exceeds all boundaries of decency. ("Infliction of Mental Distress in Tort Law" 2004)

For conduct to reach that level, it must be such that no reasonable person should be expected to endure it (severe and extreme acts of stalking, harassment, and assault). Moreover, in most instances the conduct must prove to be prolonged and recurring, because single acts seldom meet the necessary threshold.

Lesser claims, such as a memo accusing a counselor of moral turpitude (Vergara v. Lopez-Vasquez, 1993), the involuntary transfer of a faculty member (Wagoner v. Elkin City Sch. Bd. of Educ., 1994), the assignment of a teacher to after-school and weekend duty (Wagoner), the ridiculing of a speech impediment (Shipman v. Glenn, 1994), the removal of a student teacher based on her unacceptable performance (Banks v. Dominican College, 1995), and accusations that a teacher made racially offensive remarks (Elstrom v. Independent Sch. Dist. No. 270, 1995) have not supported liability for emotional distress.
Defamation

When a person believes their dignity or character is being harmed, they may bring a suit for defamation of character. A claim for defamation requires the complaining party to show four conditions: 1) a defamatory communication, which may be stated or written about the party; 2) the defamatory statement was communicated to another person; 3) the party's reputation has suffered damage; and 4) what was communicated is false. Because teachers are considered "public figures," they must further show that the communication about them was made with reckless disregard for its truth or it was known to be false by the complaining party. This is the "actual malice" standard, which is so high that defamation claims by teachers are typically dismissed prior to any trial.

While truth is an absolute defense in most defamation cases, it may not be for an educator or student. Because of the serious responsibility educators have, they generally are held to a higher standard than are noneducators.

A Louisiana parent was liable to a teacher for defamation after he falsely accused her of injuring his son. However, a state appellate court refused to disturb the modest $250 damage award as there was little evidence that the accusations reduced her status or caused her serious emotional harm.

A teacher, who served for 31 years without being disciplined or reprimanded prior to the incident, confiscated a student's book bag after telling him not to rest
his head on it. The student’s mother came to pick him up because he was feeling ill. The teacher and mother disagreed about the book bag, and the student told his mother that his arm hurt where the teacher grabbed him. The mother reported this to her husband.

The father called the school and told a parent volunteer and a school counselor that the teacher had grabbed his son, hit him, and screamed at his wife before the whole class. He reported that his son suffered bruises from the incident. The father then sent a letter to the school principal calling the teacher’s actions “verbal and physical abuse.” The teacher filed suit against the parents in state court for defamation and intentional infliction of emotional distress. The court held that the father had defamed the teacher and awarded her $250 in damages. The parents appealed the finding of defamation, and the teacher appealed the amount of damages to the Louisiana Court of Appeal.

The court noted that the father accused the teacher of criminal acts against his son to three different individuals, both verbally and in writing. The boy’s classmates testified that the teacher had not grabbed or hit the student, indicating that the accusations were false. Evidence to the contrary was not presented. There was no medical evidence that the student was treated for an injury. The father could not show that his statements were made in good faith.

Although the teacher had satisfied all the elements for a defamation claim, she was not entitled to additional damages because there was no showing that her ability to teach was damaged. Colleagues did not think
any less of her after the incident, and she may have worsened the situation by telling others about the incident herself. The court affirmed the trial court judgment (Huxen v. Villasenor, 2001).

Another case occurred when a Washington school district tried to dismiss a teacher after his students found sexually explicit drawings in a class storage room and alleged that he sexually harassed them. Using information that a state court had ordered released, a local newspaper published the district’s investigation. The teacher sued the district for personal injury. The court granted summary judgment to the district.

He appealed to the court of appeals. There was no merit to the teacher’s defamation claim. The teacher was considered a public official because he was performing his duties pursuant to a public contract. Under the public official standard, the teacher needed to show that the release of information was made maliciously. There was no such showing in this case (Corbally v. Kennewick School Dist., 1999).

Protecting everyone’s name should be a priority for school officials. Educators should not gossip or make derogatory remarks about each other or students, even in the teachers’ lounge. They should be as factual as possible in official documents and should refrain from “editorial” comments. Whatever is communicated should meet the following three criteria: it should be specific, it should be behaviorally oriented, and it should be verifiable. It is better to say that a student has 20 absences, 10 tardies, and five disciplinary referrals to the principal’s office than it is to write, “This student is
a real problem, absent all the time and always in trouble” (Shaughnessy 1991, p. 76).

Similarly, comments in teacher records should be factual. Vagueness is not looked on favorably by the courts. Any item noted in a teacher’s file should be seen by the teacher and should be signed, indicating that the teacher has seen it.

No one has an absolute right to a reference or recommendation. Letters verifying employment or enrollment and factual statements about employment duties or education credits earned may be made. School officials should strive to be fair and respectful of others in all communications and to say only what can be shown to have some valid relationship to the professional situation. If they do so, they may protect themselves against lawsuits alleging defamation or invasion of privacy.

Just as it is imperative that educators tell the truth about each other and students, it is also necessary to communicate the truth whenever it is essential for the welfare of children. The next case is a good example of liability if this is not done.

In California two school administrators gave favorable employment references to a teacher formerly employed by their school district without mentioning his history of sexual misconduct with students. Another district hired the teacher to be a vice principal, in part based on their references. As vice principal, he sexually assaulted a 13-year-old student, who filed a lawsuit against him, naming his former employing school district and the two administrators for negligently or fraudulently giving the favorable references. The court
dismissed the claims against the former school district and administrators, but the California Court of Appeals reversed the decision concerning negligent misrepresentation and fraud. The district and administrators appealed to the California Supreme Court.

The supreme court agreed with the court of appeals that the former district and administrators should have reasonably foreseen that their references would lead to the hiring and would create an opportunity for the sexual assault. Those who write letters of recommendation have a duty to prospective employers and third parties not to misrepresent the qualifications and character of an employee where that misrepresentation could present a foreseeable risk of physical injury. Because the reference letters contained very high praise for the vice principal despite the administrators’ knowledge of his repeated sexual improprieties, the referring district and administrators could be held liable for misrepresentation and fraud (Randi W. v. Muroc Joint Unif. School Dist., 1997).

**Negligence**

Negligence is the most widespread of all lawsuits filed against teachers and administrators. Even though negligence is the “fault” against which administrators must constantly guard, it is also the most difficult type in which to predict an accurate judicial outcome. What one court may consider negligence, another may not. Therefore, it is better to avoid being accused of negligence than to take chances on a lawsuit (Shaughnessy 1991, p. 78).
Negligence is an unintentional act or omission that results in injury; therefore a person charged with negligence generally does not face criminal charges. Persons who are successful in negligence suits usually are awarded monetary damages to compensate for the injury suffered. It is possible, but not probable, that a court would award punitive or exemplary damages, but only if the court was shocked by the negligent behavior. A commonly used standard to determine negligence is whether a reasonable and prudent degree of care has been exercised. "Reasonable" is whatever the jury or judge decides it is.

There are four elements that must be present before negligence is found: duty, violation of duty, proximate cause, and injury. First, the person charged with negligence must have had a duty of care in the situation. Students have a right to safety, and teachers and administrators have a responsibility to protect that safety. Teachers have a duty to provide reasonable supervision of their students. Administrators are expected to have developed rules and regulations that guide teachers in providing for student safety. Teachers generally will not be held responsible for injuries occurring at a place or time for which they had no responsibility. If a student is injured on the way to school, it will not be possible to demonstrate that a teacher or administrator had a duty to protect the student.

How these four elements may arise in a case is best illustrated by Beshears v. Unif. School Dist. No. 305 (1997). Two Kansas students arranged to meet after school to fight. After school, they fought in a rural area. One of
the students had an extensive disciplinary record that did not involve fighting. He caused serious injury to the other student, who filed a state court lawsuit against the student and his parents, as well as the school district, alleging negligent supervision. The court granted the district’s summary judgment motion, and the victim appealed to the Kansas Supreme Court. He argued that certain school district officials had knowledge of the other student’s disruptive nature but failed to take action to protect him. He asserted that a special relationship existed between himself and the district — giving rise to a duty to protect him from harm — and claimed that his injury was foreseeable. The supreme court observed that the students had taken great care to avoid any detection by school authorities when they planned the off-campus fight. The school district owed the student no legal duty to prevent an off-campus injury, even though the fight had been arranged at school. The district had no special relationship that created a duty to protect students from unknown off-campus fights, and the injuries were not foreseeable. The district was not required to expel or otherwise discipline the other student and had the discretion to refrain from doing so. The court affirmed the summary judgment order for the district.

A school staff member has a duty to protect students from harm while they are at school. It is this standard of care that comes into question when a student is injured. The standard of care is that which a reasonable, prudent person would have exercised under similar circumstances. That is, would the average teacher have done
the same thing? The reasonable person is a hypothetical individual who has the physical attributes of the defendant; normal intelligence, problem-solving ability, and temperament; normal perception and memory with a minimum level of information and experience common to the community; and such superior skill and knowledge as the defendant has or purports to have (McCarthy, Cambron-McCabe, and Thomas 1998).

The younger the child, the greater the duty of care. Senior high students do not need adult supervision when crossing busy streets, but elementary children do. Also, the nature of the activity within the school comes into question. A science teacher, a physical education instructor, and an industrial arts teacher must exercise a greater standard of care than an English or mathematics teacher because there is a greater chance of potential danger and injury. In Miller v. Griesel (1974) the court noted, “The relationship of school pupils and school authorities should call into play the well-recognized duty in tort law that people entrusted with children or others whose characteristics make it likely that they may do somewhat unreasonable things, have a special responsibility recognized by the common law to supervise their charges.”

A physical education teacher was found to have a duty to properly instruct students before a vertical jumping exercise was attempted. After she failed to provide sufficient instruction, a child suffered injury when she ran into a wall while performing the exercise (Dibortolo v. Metropolitan School District of Washington Township, 1982).
Unless the students are on school buses, the courts generally do not find a duty on the part of schools and teachers to supervise students on their way to and from school. For example, in a case where a seven-year-old child was killed while crossing a road in front of his school, a Louisiana appellate court, in Johnson v. Ouachita Parish Policy Jury (1979), held that the public school did not have a legal duty to provide safety patrols or adult crossing guards.

The duty to supervise typically ends when students leave the premises (except when on a school-sponsored trip) unless the school assumes such responsibility or liability or fails to exercise reasonable care under the circumstances. In Brownell v. Los Angeles Unified School District (1992) a high school student was shot by a non-student gang member while the student was in front of the school just after school hours. School administrators were inside near the doors distributing bus passes (it was raining). They had not heard of any threats or fights. The court held that the school satisfied its duty to supervise during school hours and while students were on the premises, and it satisfied its duty to establish and enforce rules and regulations necessary for the protection of students. The court held that no visual precautions by school officials to deter criminal conduct were required unless there was a specific indication that such precautions were necessary, or if there were prior incidents that made events and harm like this one foreseeable. The court in Brownell also stated that schools can not be the insurer of the safety of students, particularly after school hours and off school property.
Administrators should be aware that courts may hold them responsible for student behavior and its consequences occurring on school property before or after school. In one such case, *Titus v. Lindberg* (1967), a principal was found to be liable for student injury occurring on school grounds before school started because he knew that students arrived on the grounds before the doors were opened, he was present on campus when they were, he had established no rules for student conduct outside the building, and he had not provided for the supervision of the students. The court found that he had a reasonable duty to provide such supervision when he knew students were on the property as a regular practice.

The court will look at the reasonable nature of the administrator's behavior. Is it reasonable to expect that an administrator will provide for the supervision of students on school grounds no matter how early they arrive and how late they stay? The court will expect some policy or procedures as to when students may arrive on campus, what rules they are to follow, and what kind of supervision will be provided. Also, students who remain long after school is dismissed or who arrive early on non-school days for athletic or other practices pose the same type of problems.

There are several possible approaches to this supervision problem: 1) post "no trespassing" signs and enforce a policy of no presence on school grounds outside specified times, 2) notify parents if a student is on the grounds when no supervision is provided, 3) warnings and penalties should be given when necessary, 4) pay
someone to provide supervision before and after school, 5) a remedy for elementary schools may be to provide an extended-care program, and 6) require that any child who is in the school building or on the campus at unlawful times will be put in day care and the parents will be billed for the service.

In addition to requiring a duty of care, negligence cannot exist without the second element, violation of duty. A person being injured does not necessarily imply that the duty of care has been violated. Usually the question of whether the duty of care has been violated is answered by the question, “Could the educator have foreseen the injury occurring?” The other issue is “Would the educator’s presence have made any difference?” Most teachers’ questions lie in the realm of “Am I liable if I am not in the room when the injury occurred?” Yes, if the teacher’s presence would have prevented the injury; and no, if it would have not made any difference.

The court must consider whether a temporary absence was reasonable or negligent in light of the purpose and duration of the absence, the distance of the teacher from his or her charges, the class makeup and its conduct history, and the assignments given to students during the teacher’s absence (Valente and Valente 1998).

The following are cases in which teachers were found to have breached their duty of care:

- A regular classroom teacher left a lit candle on her desk, and a child whose costume came in contact with the flame was badly burned (Smith v. Archbishop of St. Louis, 1982).
• A teacher left a classroom of mentally challenged teenagers unattended for a half-hour, and one student threw a wooden pointer, injuring the eye of another (Gonzalez v. MacHer, 1963).

• On the school playground, students engaged in slap boxing for five to ten minutes until one student fell, fatally fracturing his skull (Dailey v. Los Angeles Unified Sch. Dist., 1970).

• A student was injured when permitted to wear mittens while playing on the jungle gym (Ward v. Newfield Cent. Sch. Dist., 1978).

• Students were required to play a game of line soccer in the gym with little experience or technical instruction in soccer skills. A melee occurred as the students kicked for possession of the ball, and one student was hurt (Keesee v. Board of Educ., 1962).

• In shop, a student was injured using a drill press while the instructor, who had not properly instructed students in use of the press or provided safety warnings, was absent from the shop (Roberts v. Robertson County Bd. of Educ., 1985).

• On a school-sponsored field trip, a child unsupervised while swimming in the ocean was hurt by a rolling log (Morris v. Douglas County Sch. Dist., 1965).

• Two school counselors were informed by a student’s friends that the student intended to kill herself. After the student did kill herself, a court held the counselors had a duty to use reasonable means to prevent the suicide and that they breached that duty when they failed to warn the student’s parents (Eisel v. Board of Educ. of Montgomery County, 1991).
• A high school student attending junior college shop class slipped, fell, and was injured. The junior college was found 80% negligent. The court concluded that the floor’s surface was the primary cause of the injury. Also, the floor wasn’t considered appropriate for the kind of shop class offered by the college (Williams v. Junior College Dist. of Central Southwest Missouri, 1995).

• A school bus struck and killed a child after she was dropped off. Evidence established that the bus driver was negligent. The court also held that the district’s insurer was required to allocate policy proceeds proportionally between the bus driver and the school district (Countryman v. Seymour R-II School Dist., 1992).

• A student walking between two buses fell into the street and was hit by car. The court held that a teacher and the assistant principal were not immune from suit by reason of doctrine of official immunity (Jackson v. Roberts, 1989).

**Proximate cause** asks if there is a connection between the alleged misconduct and the resulting injury. This is a cause and effect connected to foreseeability. The teacher’s negligence must be the main contributing factor to the child being injured or harmed. If the harm that occurred is within the scope of the danger or risk attributable to defendant’s negligent conduct, then it is deemed foreseeable.

There are three ways in which the harm may fall within the scope of danger: first, the legislature may specify the type of harm; second, if the same type of
harm has occurred previously due to the same type of negligent conduct and the tortfeasor (the person who commits the tort, either intentionally or through negligence) has actual knowledge of this, liability can be established; and third, liability can be established if the negligence has resulted in harm so frequently "in the field of human experience" that harm may be expected to happen again (Bryant v. School Bd. of Duval County, 1981).

Courts understand that accidents and spontaneous actions occur. If a teacher is properly supervising a playground and one child throws a rock and injures another child, the teacher cannot be held liable. However, if the teacher allows the rock throwing to continue without attempting to stop it and a student is injured, the teacher probably would be found to have violated a duty. Teachers leaving a classroom unattended in order to take a coffee break generally will be found to have violated a duty if a student is injured and it can be shown that the teacher’s presence could have prevented the injury. If it can be shown that teachers often left students unattended while the principal, through inaction or inattention, did nothing about the situation, the principal also has violated a duty under the doctrine of respondeat superior — where the employer is responsible for the actions of the employee if the employee’s actions occur during the performance of their official duties.

The violation of duty must be the proximate cause of the injury. The court or jury has to decide whether proper supervision could have prevented the injury and, in so deciding, the court has to look at the facts of
each individual case. William and Christina Valente have observed, “To be proximate, a cause need not be the immediate, or even the primary cause of injury, but it must be a material and substantial factor in producing the harm, ‘but for’ which the harm would not have occurred” (1998, p. 221-22).

To receive compensation, the plaintiff must show that the educator’s negligence was the cause of the injury. If the accident would have occurred anyway, there can be no liability. For example, the lack of supervision was not the proximate cause of an injury a student received while participating in a varsity football scrimmage (*Hull v. Wellston Independent School District*, 2001).

In *Levadoski v. Jackson City School District* (1976) a teacher failed to report that a 13-year-old girl was missing from class. The child later was found some distance from the school, where she had been attacked and subsequently died. The child’s mother filed suit arguing that, if the child’s absence had been reported, the murder would not have happened. The court found that no evidence existed proving a causal link between the violation of duty and the injury. Thus the case failed in proximate cause. It is not the act itself that results in legal negligence, it is the causal relationship between the act and the injury. If the relationship is too remote, legal negligence will not be found. Any reasonable educator will try to be as careful as possible, of course, and not gamble on the “causal connection” (Shaughnessy 1991, p. 82).

Besides the general duty educators have to conduct themselves “reasonably,” the courts have recognized
negligent supervision as a legal cause of action. During recess, a teacher took 20 eighth-grade girls to an athletic field, then told them to sit near a field where some eighth-grade boys were playing baseball. The teacher then went into the school building, and the boys began pelting the girls with pebbles while waiting to bat. This continued until a student was hit in the eye and permanently injured. The teacher did not return to the field until after the injury.

The student sued the school for negligent failure to adequately supervise students. The judge instructed the jury that the school had a duty "to use ordinary care and to protect its students from injury resulting from the conduct of other students under circumstances where such conduct would reasonably have been foreseen and could have been prevented by the use of ordinary care."

The student received $50,000 in damages, and the school appealed to the Minnesota Supreme Court, which considered cases from other states involving alleged inadequate supervision of students (Sheehan v. St. Peter's Catholic School, 1971). It cited a Wisconsin case, Cirillo v. City of Milwaukee (1967), for the idea that "an ordinary layman," without special knowledge or training, must anticipate conduct by children that may cause harm. The court reasoned that the teacher could not defend herself on a spontaneous injury (her presence would not have prevented the injury) because, had the teacher been present, the dangerous conduct would have stopped.

The Sheehan case does not mean that teachers can never leave students unsupervised. There are occasions
when teachers can reasonably leave students alone. One such instance would be an emergency requiring the teacher to leave; courts have declined to offer a definition for "emergency." If an accident occurs during a teacher's absence, the court will decide whether the teacher's action was reasonable. In the 1969 case, Segerman v. Jones, a physical education teacher left her class unattended while students were doing push-ups. One of the student's feet hit another student's head and damaged her teeth. The appellate court found the teacher to be innocent of negligence as it ruled, under the spontaneity theory, that the teacher's presence might not have prevented the injury. In determining whether a teacher's behavior is reasonable, a court might ask the following questions: Has the teacher given the students clear instructions as to how to behave when no adult is present? Is the teacher absent a reasonable length of time?

In Sheehan, the trial court discussed the concept of foreseeability; it was not necessary that the defendant had foreseen the particular injury but only that a reasonable person should have foreseen that some injury was likely.

Causation can be tempered by the legal theories of contributory negligence and comparative negligence. Schools may use the defense that the injured student contributed to the harm. Gatti and Gatti have observed, "Contributory negligence is the oldest and most commonly used defense against negligence. Under this rule, even if a teacher or an administrator was negligent, he or she will not have to pay if the injured party was also negligent" (1983, p. 127). This concept has been replaced
in the majority of states by that of comparative negligence. Courts operating under a comparative negligence doctrine attempt to determine each person's part in the action or inaction and, hence, each person's percentage of responsibility for the injury. Under comparative negligence, it is possible for an injured party to be considered responsible to such an extent that the school is exonerated from blame.

In *Wyke v. Polk County School Board* (1997), the 11th Circuit Court found a school board liable for a student's suicide. The Florida junior high student committed suicide at home after twice attempting suicide at school. The school had failed to inform the student's parents of the suicide attempts. A jury returned a verdict at the trial court level holding the board 33% at fault for the student's suicide (resulting in judgment against it for $165,000), the mother 32% at fault, and the grandmother, whom the student had lived with, 35% at fault.

In the 1990 case, *Brown v. Tesack*, two students removed partially used cans of duplicating fluid from a school dumpster, carried them to their apartment complex, played with them, and finally set them on fire. When the fluid cans exploded, a third child was severely injured. The injured child's mother alleged that the school's disposal of the fluid containers was negligent and thus the school district should be liable for the injuries sustained by her son. The court discussed causation: "negligent conduct is a cause-in-fact of harm to another if it is a substantial factor in bringing about the harm."

The court found that the school had not breached its duty of care in disposing of the fluid; the actual cause-
in-fact was the students’ negligent misuse of the duplicating fluid. The school’s action was not considered the proximate cause of injury. It is difficult to predict what a court will determine to be the proximate cause in any particular allegation of negligence.

The fourth element necessary for a finding of negligence is *injury*. In order to bring suit, an individual has to have sustained an injury. No matter how irresponsible the behavior of a teacher or administrator, there is no legal negligence if there is no injury. However, any reasonable person can see that no one in authority should take risks that may result in injury.

Courts follow the principle, “the younger the child, chronologically or mentally, the greater is the standard of care required.” It might be acceptable to leave a group of high school seniors alone for 10 minutes when it would not be acceptable to leave a group of first-graders alone.

Most negligence cases occur in the classroom because that is where students spend most of their time. However, there are other areas that are potentially more dangerous than the classroom; hence, a greater standard of care will be expected from teachers and administrators.

Shop and lab classes contain greater potential for injury, and cases indicate that courts expect these teachers to exercise greater caution than they would in ordinary classrooms. Teachers and administrators are further expected to keep equipment in working order and to keep the area free of unnecessary hazards. It also is expected that students will be given safety instructions
for using potentially dangerous equipment. A North Carolina shop teacher’s detailed instructions in the use of power saws absolved him of liability when a student lost several fingers in an accident. Prior to students using the saw, the teacher had spent 20 minutes reviewing the safe use of the equipment and another 20 minutes demonstrating proper procedures (Izard v. Hickory City Sch. Bd. of Educ., 1984).

Participation in off-campus activities, such as a field trip or interscholastic activity, places the school in the same position of duty to use care to prevent injury as if the students were on campus. Athletics present probably one of the most serious hazards. Clear and Bagley state the nature of the problem:

First, it must be assumed that litigation can and will arise from each and every [athletic] injury that occurs. This creates an awareness that much is at stake. Second, it must be believed that the only way to avoid liability for injury is to be completely free from cause relating to it. Third, no action can ever be taken or not taken which results in injury to a student. The first two stages are easy to reach; they are merely matters of belief. But the third is not so simple to attain, for it requires specific knowledge regarding both tort law and the sophisticated technical aspects of sports and sports injuries. It is sufficient to state that coaches owe athletes a standard of care that includes the following: (1) proper precautions to prevent injuries from occurring in the first place and (2) treatment of injuries that normally occur in a manner that does not exacerbate the damage that has already been done. This standard, additionally, is based on what the coach should have known regarding the sport.
and/or injury, as well as what was actually known. (1982, p. 185)

Even if every possible precaution is taken, the possibility for student injury during athletics is very high. Administrators have very real duties to ensure that: competent, properly trained personnel serve as coaches for teams; clear procedures are followed when accidents occur; there is no delay in seeking medical attention when needed; and equipment and playing areas are as hazard-free as possible.

A Maryland high school junior was the first female football player in her county’s history. She participated in weightlifting, strength training exercises, and contact drills. However, in the first scrimmage with another team, the student was tackled while carrying the football and suffered multiple internal injuries, including a ruptured spleen. She was hospitalized and her spleen and part of her pancreas were removed. Three years later, the student and her mother sued the school board, claiming that the board had a duty to warn them of the risk of serious, disabling, and catastrophic injuries. A Maryland trial court granted the board’s motion for summary judgment, finding no such duty to warn of the risk of participating in varsity football. The student and her mother appealed to the Court of Special Appeals of Maryland. On appeal, the student and her mother claimed that the lower court had erroneously ruled that the board had no duty to warn of catastrophic risks and that the student had assumed the risk of injury by participating. The court found no case from any
jurisdiction holding that a school board had a duty to warn participants in high school varsity sports that severe injuries might result. The dangers of varsity football participation were self-evident, and there was no duty to warn of such an obvious danger. The court affirmed the order for summary judgment (Hammond v. Bd. of Educ. of Carroll County, 1994).

However, once the playing (practice) field is vacated, reasonable duty of care is reestablished. In Pennsylvania, a student was killed by another student in a javelin accident. Both students were members of the track team, and the incident occurred in the locker room after practice, while the coach remained on the track to give individual instruction to other team members. Although the case was settled out of court, the belief was that the courts would have found the coach and the school district liable for lack of reasonable supervision and negligence.

Recently Massachusetts' highest court rejected the arguments of a former cheerleader and her father that a city school system could not defend her personal injury suit on the basis of a parental release signed by the father as a prerequisite to participation in extracurricular activities. The enforcement of parental releases furthered a public policy of encouraging athletic programs and remained valid even after the student reached age 18.

The student's father signed a release form before each of her four years of cheerleading. The student was injured during a practice when she fell from a teammate's shoulders while rehearsing a pyramid formation cheer. She received a serious compound fracture that required
surgery. When the student reached age 18, she sued the city in a state superior court for negligence and negligent hiring and retention of the squad’s cheerleading coach. The city moved for summary judgment on the basis of the parental release, indicating the father’s consent for her participation in athletic programs and “forever” releasing the city from any and all actions and claims for personal injury or property damage.

The court allowed the city to amend its pleadings to include the affirmative defense of release, then awarded summary judgment based on the release. The student appealed to the Supreme Judicial Court of Massachusetts, asserting that the release was invalid because she had disavowed it, its use violated public policy and was contrary to law, and that it was unsupported by any legal consideration.

The court found that the trial court properly allowed the city to amend its answer by asserting release. Enforcement of a parental release was consistent with Massachusetts’ law and public policy. There was undisputed evidence that the father read and understood the release before signing it, and that the form was not misleading, because it required two signatures and clearly ensured that parental permission was granted.

It was not contrary to public policy to require parents to sign releases as a condition for student participation in extracurricular activities. State law favored releases as a way of encouraging participation in extracurricular programs. The father had signed the release because he wanted the student to benefit from participating in cheerleading. The decision was made with considera-
tion for the risk of physical and financial injury. Allowing the release to remain in effect comported with the father’s fundamental liberty interest in raising his children.

The court commented that to hold the release unenforceable would expose public schools to financial costs and risks that would lead to the reduction of extracurricular activities. There was no merit to the student’s claim that the release was unsupported by legal consideration, as her participation in cheerleading supplied adequate consideration for it. The court affirmed the summary judgment order for the city (Sharon v. City of Newton, 2002).

Field trips pose special problems with respect to negligence. Principals and teachers must exercise great care in providing for field trips. The degree of supervision required for field trips depends on the nature of the environment and the age of the students. Special supervision is required for trips to hazardous or unfamiliar places. Field trips should have an educational purpose. If an accident were to occur, a school could much more easily justify an educational trip than one that is purely recreational in nature.

Principals and teachers must understand that parents cannot sign away their children’s right to safety. Those who supervise students are expected to act in a responsible, appropriate manner. Some people question the need for a permission slip, because liability can occur anyway. However, should an accident happen, a properly constructed and signed form is the best protection a school can have. Permission slips are not absolute protection, but they ensure that parents understand that
their children are participating in a field trip and that there are risks involved in any such experience.

A waiver or release form does not prevent an injured student from suing. Courts interpret waivers and release forms very precisely. However, many courts have held that minors are not bound by releases executed by their parents (*Alexander v. Kendall Central School District*, 1995).

A school district was found negligent in failing to provide adequate supervision at a downtown showing of a controversial movie entitled *King*, at which event students' attendance was required. Students were bused to the theater accompanied by chaperones. Obscene racial comments were made by both Caucasian and African-American students during the showing. Upon leaving the balcony for the lobby, a student was pushed, her wrist slashed, and her purse taken. The Minnesota Supreme Court upheld the awarding of damages against the school for failure to provide sufficient precautions in the light of having knowledge about racial tensions (*Raleigh v. Independent School District No. 625*, 1979).
Defenses

Of great concern to individual teachers is the question of being liable for damages if a student is injured. Some teachers believe that because they are employees of the school district, then the district is responsible for their actions. Others believe that because of the state’s sovereign immunity, they are exempt from liability.

The doctrine of sovereign immunity is a common law doctrine that once prevented persons from bringing any claim against a government entity. Immunity is a complete barrier to suit, designed to save the government institution or employee from the burdens of litigation.

Because school districts are agencies of the state, it has been held that the immunity that clothes the state also clothes school districts and boards of education (Krutili v. Board of Education, 1925). In addition to reasoning that the district is immune from liability, some courts argue that the district funds are trust funds and cannot be diverted from the purpose for which they are raised; so, to hold the district liable would be futile as there is no way it could discharge its liability (Freel v. School City of Crawfordsville, 1893). It is a general principle of common law that, in the absence of statute to the
contrary, a school district is not liable for the negligence of its officers, agents, and employees.

Discretionary immunity protects state and local employees and officials from liability where they perform "discretionary," as opposed to "ministerial," duties. The distinction is difficult to apply, but it typically has been construed as protecting decision makers. Public officials whose duties require them to exercise judgment or discretion are not personally liable for damages unless they act willfully or maliciously. By contrast, a "ministerial act" is one that leaves nothing to discretion and is a function, rather than a decision-making position.

Employees of school districts are not protected by the school district's immunity. Like any other individual, they are responsible for any damages or harm that may be the result of their negligence. The master-servant relationship does not exist with respect to a school district and its employees. Unless there is a statute to the contrary, a board of education is not liable for the negligence of its employees.

Since the late 1950s, many states have repudiated sovereign immunity, either eliminating it entirely or restructuring it. State courts and legislatures have developed a variety of approaches to balance the need of protecting students and limiting the liability of educators.

A state's legislature may make school districts liable for injuries resulting from the negligence of their officers, agents, and employees. California, New York, and Washington were some of the early states to do this. Other states have provided only a limited statutory liability. For example, a state may put limits on the lia-
bility resulting from transporting students not to exceed a specified amount.

The common law doctrine that school districts are part of the state and thus are immune from liability is a judicial invention. Because it is a court invention, it has been suggested many times that the judicial system should abrogate it. The courts have refused to do this, stating that this is a legislative function and not that of the judicial system.

In 1959 Illinois became the first state in which the immunity doctrine would no longer be recognized, so that school districts in that state would be held liable for their torts (*Molitor v. Kaneland Community School District*, 1959). Other states have followed suit.

**NCLB Liability Protection for Teachers**

The Elementary and Secondary Education Act (ESEA), signed into law by President Bush on 8 January 2002 and referred to as No Child Left Behind, includes a section called the Paul D. Coverdell Teacher Protection Act of 2001. The Teacher Liability Protection Act limits the financial liability of teachers for harm they may cause acting on behalf of the school in disciplining students or maintaining classroom order; shields teachers from liability when they act within the scope of their employment and applicable laws, including civil rights laws; limits availability of punitive and noneconomic damages against teachers when they are determined to be liable for their acts; and extends protections not only to teachers, but also to administrators and school pro-
professionals, nonprofessional employees responsible for maintaining discipline or safety, and individual school board members.

The purpose of the act was to encourage educators to reinstate programs or initiate programs that had been canceled or not started due to fears of lawsuits from liability actions. One of the top concerns of educators has always been the fear of being sued for negligence. The Teacher Protection Act is an attempt to alleviate those fears and concerns.

However, it does not protect teachers from much of anything. The act is so narrowly drawn and filled with exceptions, it affords very little real protection from lawsuits. Neither does it provide funding for school employees to pay to defend themselves against even frivolous lawsuits. K-12 school employees are immune from liability for injuring a student, but only if the injury occurs while the employee is engaged in “efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school.” It is limited to the narrow category of cases in which the student’s injury occurs while the employee is attempting to discipline a student or to maintain order in the classroom or school. There is no protection when school employees are sued for negligence or for injuries students may suffer outside of the disciplinary context.

School employees are not protected from a whole range of potential legal actions. If a student is hurt in a playground accident, injured during a chemistry lab experiment or in a shop class, assaulted by other students, or sexually harassed by his or her peers, there is noth-
ing in the act to keep parents and students from filing lawsuits against school employees. There also are no provisions in the act to pay for a lawyer to defend against a lawsuit; and even if the teacher is found to have immunity under the act, there are no provisions to reimburse the individual for legal costs.

A school employee cannot claim immunity under the Teacher Protection Act if the employee — in injuring the student — violated any federal, state, or local laws or any civil rights law. This is one of the most cited reasons for negligent lawsuits. The courts have ruled that a school employee can use “reasonable force” in dealing with disruptive or violent students. But, if the student can show that the employee used “excessive force,” then a court can rule that the employee violated the student’s constitutional rights and award money damages for whatever injuries the student suffered. Thus, in cases of this sort — and there are plenty of them — the employee would have no immunity.

The law also states that this provision has no effect on any state or local laws, rules, regulations, or policies about the use of corporal punishment. The provision applies to teachers, principals, administrators, school board members, education professionals working in a school, any school employee whose job is to maintain discipline and ensure safety, and any school employee who is acting in an emergency to maintain discipline and ensure safety.
Conclusion

Schools and their employees are not automatically responsible for every injury that may occur. For liability to be present, it must be shown that: 1) the school owes a particular duty to the injured person(s), 2) the behavior fell short of that required, 3) the breach of the duty was the proximate cause of the injury, and 4) there were resultant injuries (Thurston and Metzler 2000).

However, it is advisable that educators strive to place themselves in a position that would not bring about a lawsuit for negligence. That requires continual vigilance and diligence in all areas of school operations.
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