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ABSTRACT

Over the past few years both administrators and teachers have found themselves involved in an increasing number of law suits. When students are injured on school grounds, parents often place the blame of negligence on the teacher, so many teachers find themselves involved in lengthy court battles over the issue of liability. Teachers and principals in elementary schools are particularly at risk because young children are inexperienced at protecting themselves in risky situations. Negligence cases that teachers would most likely find themselves involved in usually ask one of four questions: (1) Did the teacher fulfill his/her duty to protect the student against unreasonable risk? (2) Did the teacher breach his/her duty of protecting the student? (3) Is there a causal connection between the teachers' breach of duty and the student's injury? and (4) Was significant harm inflicted on the student? Numerous examples of court cases where each of these questions is raised are examined. If a teacher is found guilty of negligence, three defenses can be used by the teacher to keep from being found liable for damages: (1) student assumption of risk; (2) student contribution to negligence; and (3) shared negligence between the teacher and the student. (KDP)

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Who's Liable? Accidents Involving Young Children

Robert J. Beebe

An upset child bursts into the school office, saying that another child has been hurt. You and the school nurse rush to the scene and minister to the injured child's immediate needs. If it's a serious injury, you notify parents or guardians and make hospital arrangements. The child's teacher may need to be calmed, some students need to be comforted, and the normal order of school business will need to be reestablished.

This may be a familiar scene. Accidents happen every day in our schools. But there's another, perhaps less familiar, point of view—the legal perspective of what should be done to prevent accidents. Young children are at special risk because of their immaturity and inexperience in protecting themselves.

The chief caretakers of young children during the school day are teachers, and they are the school personnel most often confronted with legal actions arising from accidents. But principals directly supervise teachers' activities, and are charged with ensuring the health and safety of the school. The prevention of accidents is part of the principal's job. There is an emerging body of case law in which courts have held principals legally responsible for protecting students against harm at school (Beebe 1990).* Principals need to be able to answer teachers' questions concerning their exposure to accident lawsuits. In so doing, you can promote students' safety as well as the emotional security of your teachers.

While there is no substitute for competent legal counsel, this article looks at cases in which teachers have been taken to court over accidents involving young students, and offers some guidelines on analyzing school accident situations—potential or actual. Consult your state code for statutory requirements in your area.

Personal negligence is the area of law governing school accidents. It may be defined as the failure of a teacher to exercise the degree of care for the safety and well-being of students that a hypothetical "reasonable and prudent" teacher would exercise under the circumstances. The circumstances in which the accident occurs play a role in determining negligence. Both the hypothetical behavior and the specific facts of the situation are normally defined by the jury charged with hearing the relevant evidence.

Proof of Personal Negligence

The precise definition of teacher negligence has developed over many years, as appellate court judges have resolved disputes, and their opinions offer guidelines for assessing the likelihood of a teacher's winning or losing a court challenge. Negligence cases may be analyzed in terms of four legal elements of proof: 1) a teacher's duty to protect the student against unrea-

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* *Also see* DeMitchell, T. "Tort Liability," *Principal* 69:4, March, 1990.

sonable risk of harm; 2) a breach of that duty; 3) a causal connection between the breach of duty and the harm to the student; and 4) significant harm to the student. No state has what may be called a self-contained law of negligence—cases from other jurisdictions are often used by courts as persuasive precedents. Let's look at the four elements of proof as they apply to teachers of young children.

1. ***A teacher's duty to protect the student against unreasonable risk.*** This is not usually difficult to establish in negligence cases. There is little doubt, when a student is assigned directly to a teacher, that that person is responsible for protecting the child. In other circumstances, however, the matter may not be as clear. Principals should give teachers clear direction about who is responsible for students' safety at all times of the day—on arrival at school, en route to classrooms, in the restrooms, in the halls, in the lunchroom, and at the end of the day. The specific roles and responsibilities of teachers who are assigned extra supervisory duty should be made clear, both for their own benefit and for that of their fellow teachers.

Such actions by the principal provide a clear trail of responsibility for student safety, and represent good management practice, as well as sound staff and student supervision. Because of the sheer number of students that schools serve, accidents will probably never be eliminated. But none should be permitted to occur due to confusion over who has responsibility.

2. ***Breach of the teacher's duty to protect the student.*** This focuses on the standard of behavior set by a hypothetical "reasonable and prudent" peer under the specific circumstances of the accident. Five appellate court cases involving young students illustrate how courts decide the extent of a teacher's duty to protect children from harm.

• During free play at the end of a physical education class, a Missouri kindergarten student climbed the jungle gym on the playground with a rope in his hand. He tied the rope to the top of the jungle gym, tried to swing down, fell, and broke his arm. His teacher did not know of these events until after the injury had occurred. The question for the court was whether the evidence established that the teacher had acted unreasonably in supervising the child.

The court found in favor of the teacher, noting that the student had been taught for nearly a semester about the use of the playground equipment, and knew his attempt to swing from the jungle gym was dangerous. At the time he started up the jungle gym, the teacher was looking away from him. The court found "no evidence that [the teacher] was inattentive, careless, or was failing to perform his supervisory obligation." The student had no history of hazardous behavior. The court stated, "Defendant's obligation was to exercise ordinary care to supervise the children. He is not an insurer of their safety....Ordinary care does not require having each of 22 six-year-olds constantly and continuously in sight."

The teacher was held to the standard of providing preventive instruction and of continual monitoring of students, but was not held to a superhuman standard of behavior. However, if the teacher had been inattentive, or heedless of a student's history of dangerous behavior, the court may well have found a breach of duty. *Clark v. Furch* (1978).

• A group of 25 to 30 kindergarten students was skipping and dancing to music for a play rehearsal on the school stage, when one fell and was injured. The teacher was supervising the group from 20 feet away, below the level of the stage.

The court held for the teacher, finding on the evidence that the activity was not inherently dangerous, that the students had been instructed in what to do, had been behaving, and that there had been no previous accidents. As in the case above, the teacher was not required to guarantee the moment-by-moment safety of every student. If the rehearsal had been found to be inherently dangerous, or if students had been left to their own devices, the court may well have found otherwise. If students had been permitted to misbehave, or if there had been a previous accident, the court may have concluded that the teacher had not exercised due care. *Barbato v. Board of Education of the City of New York* (1959).

• An Oklahoma kindergarten teacher was frying doughnuts shaped like the letter "D." During the activity, a student stepped on the electric cord of the deep-fat fryer being used, tipping it over. It fell and spilled the hot grease, burning a second student. The case was decided on procedural rather than negligence grounds, but the situation raises some interesting questions.

Does cooking doughnuts using hot grease constitute an inherently dangerous activity? Probably not. If the students had been permitted to be disorderly during the activity, the teacher may have been found liable. We might speculate whether a jury would find that allowing the cord of the fryer to be accessible to students' feet was unreasonable, and whether the fryer should have been attached to a base to prevent tipping over. Cooking

PROFESSIONAL ADVISORY

This article is in support of the following standards from *Proficiencies for Principals, Revised* (NAESP 1991):

Organizational Management. The principal must:

Keep abreast of developments in education law, including the implications of liability.

Develop and implement administrative procedures consistent with local policies, state and federal rules and regulations.

Provide a safe, orderly climate for learning.

activities may pose physical hazards to students and legal hazards to staff. *Wetsel v. Independent School District I-1* (1983).

• An Illinois teacher put a water-filled teapot on a table in her kindergarten classroom and plugged it in. A student's foot became entangled in the cord and overturned it, scalding himself with boiling water. This case was resolved on statutory rather than negligence grounds, but one can speculate whether the teacher's behavior was negligent. Because the teapot was not being used for an instructional purpose, proof of reasonableness on the teacher's part would be more difficult. The teapot (and cord) could have been placed out of the way, and if the teapot had been fixed to a base, the accident may have been prevented. Negligence might well be found. *McCauley v. Chicago Board of Education* (1978).

• A Florida substitute teacher, following normal classroom procedure, permitted a kindergarten student to go to the restroom unattended. No accidents had occurred in the seven previous months. The student pushed open the door to a toilet stall, but a child already in the stall tried to close the door. The first child's finger became caught in the door, and was severed.

The court found for the substitute teacher, reasoning that the substitute had no duty to leave the classroom to accompany the student to the restroom. In fact, this would have required her to abandon her responsibility to the rest of the class. The mere occurrence of the accident did not mean the teacher was legally responsible for the injury. It is important to note that an unwritten policy existed to permit students to go to the restroom unattended. If such a policy had not existed, or if there were a contrary policy requiring someone to accompany students to the restroom, the issue of liability might well have been resolved differently. *Benton v. School Board of Broward County* (1980).

3. ***A causal connection.*** This requires evidence of a direct, unbroken, and foreseeable chain of events between the teacher's breach of duty and the injury to the student. During a recess period on a school playground, a kindergarten student and a friend were playing an unofficial game, throwing a stick. Their teacher was responsible for supervising about 48 students during the temporary absence of another teacher. The student looked away from his friend for a few seconds, and as he turned around, was struck in the eye by the thrown stick. He subsequently lost the eye, and a negligence action was brought against the teacher.

The court found in favor of the teacher, holding as a matter of law that the injury resulted directly from the action of the friend, which the teacher could not have anticipated or prevented. If the teacher had known that the students were playing such a game or had seen it developing, appropriate preventive action would have been expected. Knowledge of previous dangerous activity on the part of the students would also have increased the necessary level of supervision. But the events in this incident were found to be outside the teacher's knowledge, foresight, and ability to take preventive action. *District of Columbia v. Cassidy* (1983).

4. ***Significant harm to the student.*** Several forms of compensation may be available when negligence is found. The student may receive damages for medical expenses, pain and suffering, or loss of use of a body part. In the event of a student's death, the parent or guardian may receive compensation for loss of the student's companionship or future earnings. A court may also award punitive or exemplary damages to punish or make a public example of a negligent teacher. Damage awards in negligence cases can be large, and a negligent teacher may also lose his or her position. School boards recognize that teachers are responsible not only to teach, but also to supervise. And few school boards wish to defend the actions of a teacher whom a court

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Wetsel v. Independent School District I-1, 670 P.2d 986, 14 Ed.Law.Rep. 194, Supreme Court of Oklahoma (1983).

has found to have failed in meeting a key responsibility of the job.

Defenses to Personal Negligence Damages

Even if a teacher is found negligent, he or she still may not be found liable for damages. Two or three defenses may be available—1) assumption of risk, 2) contributory negligence, and 3) comparative negligence. These may either insulate the teacher completely from liability or reduce the amount of damages to be paid.

1. ***Assumption of risk.*** A teacher is insulated from negligence liability in some states if there is persuasive evidence that the student (given the applicable reasoning capacity), voluntarily exposed himself or herself to a known danger and that the exposure was the proximate cause of the student's injury. Assumption of risk is often a complete defense, but proving it on the part of young children may be difficult, as they are not generally assumed to be attentive to the hazards around them. Therefore the burden of proof in demonstrating that the child voluntarily exposed himself to danger is relatively heavy.

2. ***Contributory negligence.*** In some states the teacher is insulated from liability if the student (given the applicable capacity), fails to exercise reasonable and prudent care for his or her own safety. The elements of proof are exactly those used for negligence, but are applied to the student, as in this non-school case.

A Minnesota child (age 5 years and 8 months) was held contributorily negligent in a traffic accident. The child left the sidewalk of a busy street, suddenly ran into the street, and was struck by a car. The court found that the child had failed to exercise the degree of care "which a reasonable child of the same age, intelligence, training, and experience would have used under like circumstances." *Toetschinger v. Inhot* (1977).

3. ***Comparative Negligence.*** Some states recognize the partial defense of comparative negligence. In a situation that would establish contributory negligence, both the teacher and the student are held financially responsible for some part of the harm, and the amount of damages due the student is apportioned between the teacher and the student.

Educators will agree that all school accidents are regrettable, but teachers need to be prepared to face possible legal action following accidents. The principal should be a source of support and information regarding potential or actual accident situations, and should encourage teachers to take all reasonable precautions to prevent accidents. The yardstick against which teachers will be measured is whether they exercise the degree of care for children's safety that a "reasonable and prudent" teacher would exercise under the circumstances. That's the best short advice for avoiding negligence liability.

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