

# LEGAL MATTERS

## An Educator's Risk May Be Less Than You Think

BY SUZANNE E. ECKES AND DAVID SCHIMMEL

Probably no area of school law arouses more anxiety, confusion, and misunderstanding than the possibility of being sued for student injury. Rumors circulate in many teachers' rooms about some injured student who sued a teacher and school for more than a million dollars. As a result of the possibility of being sued, many educators view the law as an invisible monster hiding in every classroom, hallway, and playground, ready to ensnare anyone who makes an innocent mistake.

Thus, there emerges a sense that hazards are greater, liability is more personal, negligence more likely, and the results of negligence more disastrous for educators than for other people. One result of this erroneous perception is that some high school teachers fail to discipline students when they should because of an unfounded fear of being sued. Similarly, some elementary teachers don't interfere in student fights, or if they do, they worry unnecessarily about being sued if a student is injured.

Keep in mind that there are legal challenges that an injured student has to overcome to hold an educator liable. Also, there are state and federal laws that protect an educator from personal liability, even when their negligence causes an injury.

### When Will Liability for Negligence Be Found?

An educator will not be held liable for a student's injury unless evidence is presented to a court that proves four things. First, evidence must show that the teacher breached her duty of care. Teachers have a duty to exercise reasonable care not to injure their students and to protect them from foreseeable dangers. Second, evidence must show that the teacher was negligent. Teachers are negligent if they fail to act as a reasonably prudent teacher (RPT) should act under the circumstance. If circumstances

are more dangerous, as on field trips, in chemistry class, or when working with young children, an RPT should provide clearer warnings and closer supervision. To determine whether a teacher acted as an RPT, the teacher's behavior is measured against the professional norms of reasonable educators. In one case, *Brammer v. Bossier Parish School Board*, a Louisiana teacher was found guilty of negligent supervision when she failed to take any action to protect a fourth-grade student who she knew was being physically bullied by classmates at recess.

Third, evidence must show not only that the teacher was negligent, but also that the negligence caused the injury. For example, a teacher who was supposed to be supervising the school gym was absent when a student was injured in a friendly basketball game. Although the teacher's absence constituted negligence, he was not held legally responsible for the injury because there was no causal connection between his absence and the injury. The accident was a normal, possible consequence of the game and would not have been prevented by reasonable supervision. In fact, most student injuries are accidents that are not caused by any teacher's negligence. Similarly, a seventh-grade student who sued for injuries after he tripped during a gym obstacle course lost his case because the judge found that careful supervision would not have prevented the accident.

Fourth, evidence must show that there is a provable injury.

### Are There any Defenses to Negligence?

**Assumption of risk:** Judges recognize that even a high degree of care may not prevent injuries in some situations. Thus, there is a defense against liability known as "assumption of risk." This means



method the state requires, frequent, informal, positive, and constructive interaction between the principal and staff remains essential and should be promoted by the superintendent.

The superintendent and central office team must provide effective instructional coaching, no matter what evaluation plan one's district implements. Coaching must take place in the schools, be ongoing, and incorporate frequent classroom walkthroughs with the school principal.

### Leadership

A graduate course in theories of leadership may provide a theoretical base for how one is to behave effectively. However, putting theory into practice requires much training and reflection. New principals need to "walk the talk." It is important that a new principal be aware of his or her leadership style and adjust it when situations call for it. The superintendent should ensure that discussion of effective leadership be part of every agenda.

### Social and Emotional Learning

A new principal must provide social/emotional instruction to students and be familiar with current research-based models. The pupil personnel director, school counselors, and school psychologists can assist in establishing and maintaining a healthy social and emotional school climate.

To enforce the shared responsibility for discipline, principals should insist that teachers join them in responding to students who misbehave in the classroom. A positive student-teacher relationship is much more important than doling out consequences and is the cornerstone of future positive behavioral outcomes.

### Fiscal Allocations and Building Operations

Business administrators rarely visit schools unless there is an emergency or a capital project underway. New principals usually receive a brief orientation about the construction of the school

budget. This is not sufficient to grant a thorough understanding of the expenditures, revenues, and allocations of resources. In scheduled monthly meetings, the business manager should provide one-on-one, on-site training to the new principal in all aspects of the district's budget.

### Political Awareness and Support

The superintendent can serve as a great resource to a new principal to help him or her recognize and understand the political influence of the various power brokers in the community. This person should share how political influence impacts the school, and how principals can gain community members' support.

Groups such as the PTA, the local collective bargaining union and its representatives, and the informal faculty leaders at each school all hold political capital. The principal must establish clear boundaries and good working relationships with each of them.

After conducting a thorough search and selecting the best candidate for the position of principal, a district's superintendent and central administrators should do all they can to ensure the new principal's success. While the job description may be exhaustive, the job of principal is also worthy of praise. Be sure your system supports the principal and periodically celebrates and acknowledges his or her dedication, hard work, and value to the school district. 📌

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that students who willingly engage in certain school activities, such as competitive sports, assume the normal and obvious risks that are inherent in participation. Therefore, a court ruled against an injured cheerleader because the judge found that she had assumed the risk of injury involved in that activity. Similarly, another court ruled that a student who was injured by a baseball during practice assumed the risk of such an injury when he went out for that sport.

**Contributory negligence:** Adults and most high school students are expected to exercise reasonable care and not expose themselves to known and obvious dangers. Therefore, in most states, if an injured person's own negligence contributed to his or her injury, courts would reduce the amount of the dollar award in proportion to the negligence. This is known as "comparative negligence" when the plaintiff and defendant are both negligent. As a result, an older student might have her award reduced by 40 percent if the judge found that she was 40 percent responsible for her own injuries. However, if she was primarily (more than 50 percent) responsible for her injury, she might receive no award, depending on the state law. Forty-six states have adopted some form of comparative negligence.

In all states, different standards apply to children. Generally, children under the age of 7 cannot be charged with contributory negligence. Children between 7 and 14 are usually presumed incapable of contributory negligence. And students over 14 are expected to act as reasonably prudent students of their age and maturity should act under the circumstances.

**Statutory protections:** There are both state and federal laws that protect educators from personal liability. In some states, laws provide that public employees such as teachers and principals cannot be held personally liable for injuries they cause due to their negligence if the injury occurs within the scope of their employment. In Colorado, teachers are generally immune from lawsuits when supervising students unless the action is committed willfully and wantonly. Furthermore, the federal Paul D. Coverdell Teacher Liability Protection Act of 2001 states, "No teacher in a school shall be liable for harm caused by an act or omission of a teacher ... if the actions were carried out ... to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school" if the harm was not caused by willful or criminal conduct. This act also

### References

*Brammer v. Bossier Parish Sch. Bd.*, 183 So.3d 606 (La. App. 2015).

*Jurgensen v. Webster Cent. Sch. Dist.*, 5 N.Y.S.3d 663 (N.Y. App. Div. 2015).

Mattleson, Wickert & Lehrer (2015). *Contributory negligence/comparative fault laws in all 50 states*. Retrieved from [www.mwl-law.com/wp-content/uploads/2013/03/contributory-negligence-comparative-fault-laws-in-all-50-states.pdf](http://www.mwl-law.com/wp-content/uploads/2013/03/contributory-negligence-comparative-fault-laws-in-all-50-states.pdf).

*Santos v. City of New York*, 30 N.Y.S.3d 258 (N.Y. App. Div. 2016).

*Woo v. United Nations Intl. Sch.*, 27 N.Y.S.3d 18 (N.Y. App. Div. 2016).



protects principals and other school employees from frivolous lawsuits.

In addition, teachers who belong to organizations such as the National Education Association (NEA) or the American Federation of Teachers are provided liability insurance (usually for \$1 million) as part of their dues for negligence claims against them. (See legal and liability protection provided for NASSP members on page 57.) In recent years, it cost the NEA \$10 million a year to cover its 3.2 million members, or less than \$4 per member. Because the premium is based on the likelihood of being sued, this indicates that the chances

of a teacher being held liable for a student's injury are extremely low. In addition, many school districts also provide liability insurance for their employees.

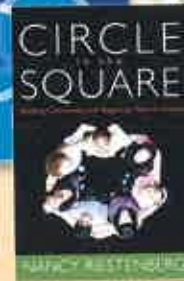
To summarize, the legal principles relevant to student injury—that educators have a duty to act with reasonable care, that they are negligent if they fail to do so, and that they could be liable if their negligence causes an injury—apply in all states. Furthermore, there are federal and state laws and insurance that protect most teachers from personal liability even if their negligence does cause student injury. The fact that there is

little chance of a reasonably prudent teacher being held liable for a student's injury should not make competent teachers less careful. Instead, this knowledge should reduce misinformation and misunderstanding about the risk of liability and enable teachers to enforce reasonable discipline and order without unfounded fear. ❗

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