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**SCHOOL SYSTEM PERSONNEL AND TORT LIABILITY****Overview**

Past commentaries have covered issues of *school security*, where the focus of the discussion was on such topics as peer sexual harassment, search and seizure, and the involvement of police officers (e.g., School Resource Officers) in student disciplinary matters. The intent in this month's edition is to discuss another critical and interrelated aspect of school operation, maintaining *school safety* and *potential liability* for student injury.

*School Safety.* Legal experts agree that a major responsibility of today's educational leaders is to provide a healthy, safe, and hazard free school environment that lessens the likelihood of injury to students. What makes it difficult to carry out this responsibility is the fact that school personnel at all levels of education are faced on a daily basis with the potential for accidents (unforeseen occurrences) involving students; especially in such high risk areas as the elementary school playground, science and vocational education laboratories, physical education, interscholastic athletics, and student off-campus field trips.

While school officials, administrators, teachers, and other school system personnel cannot guarantee that the school environment will be "accident free," prudence must be practiced to lesson the possibilities of student injury happening. Vacca and Evans (1986) As past case law demonstrates, despite the best efforts of diligent school principals, teachers, coaches, custodians and others student injury remains a fact of life. Vacca and Boshier (2003)

Can all injuries to students be prevented by school personnel when there is no guaranteed system of doing so? Is it prudent to guarantee parents that their children will be kept injury free when in attendance at school and at school sponsored functions? What level of care can students and parents expect from school administrators, teachers, and other school personnel? Can administrators, teachers, and other school personnel be held liable for injuries suffered by students? The purpose of this commentary is to explore these questions and the implications for school board policy.

*Tort Liability: What is a tort?* According to Black's, a tort is not a crime. It is not a breach of contract. A tort is a civil wrong (individuals suing individuals). Premised on the notion that an injured person should be allowed to

recover something from the person who injured him or her, the remedy usually sought in a tort action takes the form of legal (money) damages. Black's Law Dictionary (1999)

There are four categories or types of tort that apply in school situations and these are: (1) *intentional torts* (e.g., assault and battery, false imprisonment), (2) *defamation* (the twin torts of libel and slander), (3) *negligent torts* (conduct that falls below an established or acceptable standard), and (4) *civil rights torts* (the application of federal constitutional and/or statutory protections). Of the four types, the *negligent tort* represents a major source of student injury lawsuits taken against public school personnel. Vacca and Bosher (2003)

*Negligent Torts.* Searching for *negligence* is a case-by-case exercise. More specifically, a determination of the presence or absence of *negligence* in a given situation is made by applying the *reasonable man standard* (recast today as the *reasonable person standard*) to the specific set of facts present in a particular situation. Thus, the following question must be answered: "Given the set of facts present in this situation, what would a reasonable person (e.g., administrator, teacher, coach) have done or not done?" As one source reminds us, individuals only can be held liable for the consequences of their acts or their failures to act that are the *proximate cause* of injury to others. Cambron-McCabe, et al. (2004)

In a school setting, administrators and teachers "are not the insurers of safety of students...and may be charged only with reasonable care such as a parent of ordinary prudence would exercise under comparable circumstances." And, they only can be held responsible, accountable, and liable for those things that are *foreseeable*. Rock v School District (N.Y. 1986)

*The Application of State Law.* In analyzing student injury situations in search of *negligence*, the application of relevant state law is critical. For example, in Virginia, *negligence* is defined as a breach of a legal duty owed by one person to another person. Friend (1998) As such, in that jurisdiction the element of legal duty owed must be a major element to establish in the legal analysis. Moreover, in Virginia the standard applied to public school personnel is one of *gross negligence*. Different from simple errors in judgment, *gross negligence* "shows an utter disregard of prudence amounting to complete neglect of safety to others.... A [m]ere lack of attention or inadvertence does not constitute gross negligence." *Gross negligence* indicated the presence of a *reckless disregard* of a legal duty and the consequences on others. Friend (1998)

*Criteria of Negligence.* As explained above, *negligence* involves conduct by one person that falls below an established or acceptable standard that results in an injury to another person. Because negligence in one situation may not be present under another set of facts, courts must decide cases based on the application of specific criteria to each case. As applied to student injury situations these criteria include the following questions: (1) In this situation did the administrator, or teacher, or coach, or other staff members present owe the injured student a duty (e.g., instruction, supervision, hazard free environment)? (2) Was that duty breached? (3) Was the breach of duty the proximate cause of the student's injury? As a general rule, the burden will be on the injured student to establish negligence on the part of school personnel as the proximate cause of his/her injury. Vacca and Bosher (2003)

*School Board Immunity.* Traditionally, there have been several defenses available to public school boards, administrators, and teachers in negligent tort suits. Among these defenses (e.g., assumption of risk, contributory negligence) is the case hardened doctrine of *sovereign immunity*. Where local school board immunity still exists, state law extends that shield to school boards for all policy decisions, absent a showing of willful and wanton conduct. Tollett v Orleans Parish School Board (La. 2001)

Until recent years, immunity from negligent tort actions enjoyed by local school boards did not extend to school system administrators and employees. In 2004, however, things have changed and public school policy-makers must consider the applicability of governmental immunity to employees when drafting local school board policy.

*School Employee Immunity.* As a general rule, where state law has not abolished governmental immunity for local school boards, school officials, administrators, and employees are entitled to assert this defense, where there is no evidence of actual malice or intent to injure someone. Coffee County School District v Snipes (Ga. 1995) In Virginia, for example, a public school superintendent and school principal are entitled to share the school board's shield of immunity by virtue of their job responsibilities. Banks v Sellers (1982). What is more, the immunity shield might also extend to a teacher who is (1) acting within the scope of his/her employment, (2) exercising professional judgment and discretion, and (3) not charged with gross negligence. Lentz v Morris (1988) There are other state law jurisdictions where the local school board's immunity shield might even extend to school bus drivers. Cotton v Pascal (Miss. 2001)

### **Emerging Issues and Case Law**

The cases presented below were selected for the following three reasons: they demonstrate (1) the breadth of issues found in the body of negligent tort law, (2) the importance of applying state law to personal injury situations, and (3) the reluctance of judges to interfere with the professional judgment and discretion of school officials and school personnel, absent evidence of willfulness or intent to harm.

Ex Parte Spivey (2002) is an Alabama case involving a vocational center director and a teacher. An injured student who had been severely cut when using a spindle wood shaper in a vocational class sought damages in court. In reaching a decision the court held that the teacher and director were entitled to state employee immunity. Regarding the teacher, four reasons were cited for granting immunity and these were: (1) the teacher's actions were not willful, (2) the safety guard on the spindle wood shaper was on the machine when it was transferred to the vocational center from another school, and (3) the teacher could not foresee that an injury would result from using the shaper.

Doe v Unified School District (2003) involved a lawsuit taken on behalf of a sixteen-year-old female student who had been subjected to sexual abuse by her stepfather. The abuse had taken place since elementary school. In the suit, the school district, the elementary school principal, and guidance counselor were alleged to have acted negligently in their handling of the matter. It seems that at some time early in the chain of events the student claimed that the counselor and the principal received information about the abuse. The court denied the principal's motion for summary judgment. The court held that the counselor was not liable for negligent failure to protect the student from sexual abuse. In the court's opinion the counselor had not undertaken an affirmative duty to protect the student, and she had not created an undue risk of harm to the student. Regarding the school board, the court did not find any evidence of either negligent hiring or negligent retention of either employee as a proximate cause of injury suffered by the student.

Harris ex rel. Harris v McCray (2003) involved a fifteen-year-old football player who suffered a heatstroke during a practice session. Among those named in the suit was the football coach. A trial court ruled against the injured athlete citing the State of Mississippi's sovereign immunity statute. The Supreme Court of Mississippi affirmed. In the appellate court's view, since the football coach was exercising discretion in the exercise of his job duties as coach, he and his employers were immune from liability.

In Scott v Savers (2003), parents and their son sued a high school guidance counselor claiming that the counselor provided inaccurate information to the NCAA resulting in the student losing out on receiving a four-year college hockey scholarship. The parents claimed, among other things, that the counselor had been negligent. Even though the facts were not disputed, both the trial court and the state appellate court agreed that the parents' complaint should be dismissed. In the opinion of both courts the counselor's actions in providing information to the NCAA, albeit inaccurate information, was a discretionary function entitling him to immunity under state law.

Cooper v Paulding County School District (2004) is a Georgia case involving a parent who was injured when she ran into a school parking lot gate. She had come on school grounds to pick up her daughter. She sued the school principal and the superintendent for negligence. A trial court granted a summary judgment to the defendants and the parent appealed the judgment for the principal. The court of appeals held for the principal. In the court's opinion, the school principal's decisions regarding the gate were discretionary in nature. And, since there was no evidence of actual malice or intent to harm on the part of the principal, he was covered by the doctrine of governmental immunity.

### **Policy Implications**

Whatever the defense available to public school personnel, *negligence* has no place in schools and at school-sponsored events. To put it another way, no student (as well as a parent, visitor, staff member) in school or in attendance at a school event should be injured because of unnecessary *and unreasonable risks* created by the negligent acts of a school official, administrator, teacher, or other staff member. Where *negligence* is shown to be the *proximate cause* of injury, the person (school official or school personnel) *at fault* should be held liable for the harm done to the injured person.

Suffice it to say, the implications for local school board policy are several. What follow are *five suggestions* to consider as school system policies are reviewed. School system policies must make it clear that:

- It is the intent of the school board to establish and maintain a safe and healthy educational environment in every school building and at every school-sponsored activity.
- Administrators, teachers, and other school system personnel (functioning as a safety team) are required to report all hazardous and unsafe conditions to supervisory personnel.
- Immediate steps will be taken to remedy hazardous and unsafe conditions brought to the attention of school officials.
- Administrators, teachers, and other school system personnel are expected to exercise due diligence and care in planning for and carrying out their responsibilities with students.
- Administrators, teachers, and other staff members are expected to foresee the consequences of their actions and inactions, and to take appropriate steps to prevent student injuries.

One final thought is in order. *School safety* must be a team effort. Every member of the school staff must do his/her part in preventing student injury and harm.

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Note: The views expressed in this commentary are those of the author.