



## THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE

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## TEACHER LIABILITY FOR STUDENT INJURY: IMPLICATIONS FOR POLICY

## Overview

In our textbook chapter “Tort Liability,” my colleague Professor Bill Boshier and I begin with the following observation: “At all levels, school personnel are faced with a potential for accidents. The educational environment cannot be made accident proof; for despite the best efforts of all concerned, accidents do occur. An injured party may or may not be able to recover in damages for his injury; this depends on a number of factors.” (Vacca and Boshier, 2008) In our chapter’s discussion we separate pure accidents (*unforeseeable* events) from events where *fault* is alleged.

Needless to say, potential liability of public school boards, administrators, classroom teachers, and coaches for student injury is and always has been an important subject of discussion. Of the major sources of potential litigation found in education law literature, this commentary deals with *negligent tort* claims. The paragraphs below specifically focus on potential liability of classroom teachers for injury suffered by their students, where parents of the injured student argue that the teacher’s classroom *negligence* was the *proximate cause* of their child’s injury.

## Negligence: What is it?

Black’s Law Dictionary defines *negligence* as “[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others’ rights.” (Black’s 1999) Rephrased and applied in the context of this commentary, *negligence* is narrowly defined as the expected behavior (action or inaction) of a classroom teacher that falls below that which a reasonably prudent teacher of similar qualifications and experience would do or not do under the same or similar circumstances. On one end of the continuum is *ordinary negligence* (a lack of ordinary diligence and care) and on the opposite end of the continuum is *gross negligence* (a reckless disregard of a legal duty). (Black’s 1999)

*The Immunity Defense.* Whatever the defense, there is no place for negligence in school buildings, on school grounds, or at school sponsored and/or sanctioned events. However, as a general rule, in matters involving student injury and resulting negligence claims, state legislatures and state courts have been reluctant to tamper with local school district governmental immunity. (Vacca and Bosher, 2008) A clear distinction has been drawn between the possible liability of local school boards (as corporate entities), school board members (as individuals), school superintendents, school principals, classroom teachers, athletic coaches, and other school system personnel.

While in most jurisdictions school boards and board members are, as a general rule, cloaked by the doctrine of governmental immunity, a question remains as to how far into the school system's organization the immunity defense extends. Frederick County School Board v. Hannah (Va. 2004) As such, whether or not a local school board's immunity defense is available to an individual board member or to an individual school administrator or other school system employee is a matter of law and differs from state-to-state. To determine the reach of governmental immunity the researcher must look from one jurisdiction to another on a case-by-case basis. Anderson v. Anoka Hennepin I.S.D. 11 (Minn. 2004) In the Commonwealth of Virginia, for example, the Supreme Court of Virginia has held that a local school superintendent "is a supervisory official who exercises powers involving a considerable degree of judgment and discretion. Under the circumstances of this case, we hold that the division superintendent is entitled to sovereign immunity." Banks v. Sellers (Va. 1982) In addition the Court extended the immunity doctrine to school principals.

*Classroom Teacher Liability.* Experts in education law make it clear that "[t]eachers as well as others are liable for their own torts..." Alexander and Alexander (1995) Additionally, the working relationship between teacher and student (sometimes in over crowded situations), especially in high risk environments (e.g., chemistry classes, vocational education, the gymnasium, playgrounds and athletic fields) is itself conducive to producing litigation.

As a general rule courts have held that a teacher's responsibility to monitor, control, and supervise students is a discretionary act and is protected by the doctrine of governmental immunity. Butler v. McNeal (Ga. App. 2001) In some jurisdictions (e.g., Virginia) the governmental immunity doctrine has been made available to classroom teachers where the teacher involved at the time of the student's injury was: (1) acting within the scope of his/her job description (i.e., performing his/her teaching duties), (2) exercising discretion in carrying out the functions of his/her job, (3) acting in a reasonable and prudent manner (i.e., exercising reasonable judgment and care) and (4) not *grossly negligent* in his/her actions. Lentz v. Morris (Va. 1988)

Because student injury claims are fact based, courts ask four specific questions in an effort to determine possible liability for negligence in a given situation and these are:

- (1) Did the teacher owe the student a duty?
- (2) Did the teacher breach that duty?
- (3) Does *proximate cause* (a *causal link*) exist between the teacher's breach of duty and the injury suffered by the student?
- (4) Did injury occur?

A key element in the court's determination of liability is *foreseeability*. While teachers cannot guarantee the safety of their students in every situation, and they cannot be held responsible for "sudden and unforeseen events" Swan v. Town of Brookhaven (N.Y.A.D 2 Dept. 2006), they nonetheless are expected to *foresee* the

possible consequences of their own actions and take reasonable measures to provide a safe and hazard-free environment. (Vacca and Bosher 2008)

Employing the foreseeability doctrine courts also will ask the following questions:

- Did the circumstances of the situation offer choices (options) of conduct (for the teacher and the student)?
- Under the circumstances was there time to assess the situation and act to avoid the consequences?

### **Grammens v. Dollar (Ga. 2010): The Science Experiment**

Recently, I came across an excellent case on point decided by the Supreme Court of Georgia. Briefly summarized, the facts of the case are as follows.

*Facts.* David, an eighth grade student in a public middle school, suffered an eye injury while conducting an assigned experiment in science class. The experiment called for “launching” a two-liter plastic soda bottle by using water and air pressure. The soda bottle containing the water was to lift into the air when air was pumped into the bottle and a U-shaped metal pin was removed. David injured his eye when he removed the metal pin by pulling a string attached to the bottle.

Subsequently, David’s father (acting individually and on behalf of his son) brought an action against the science teacher, principal, and school superintendent. In his law suit David’s father alleged that his son’s eye injury was a result of a purported violation of the local school board’s eye protection policy. Quoted in its entirety in the court’s opinion the policy required, in relevant part, that “people wear appropriate industrial-quality eye protection equipment at all times while participating in or observing vocational, industrial arts, chemical, physical or any other course of instruction involving any of the following....” The policy statement then listed several specific examples such as molten metal, other molten materials, milling, sawing, turning, shaping, cutting, grinding, etc. While the policy did contain the terms “caustic or explosive materials,” the list of examples did not contain one specifically involving David’s science experiment.

Granting summary judgment to defendants, the trial court characterizing the acts complained of as being discretionary in nature and as such defendants were covered by “official immunity.” On appeal the Court of Appeals of Georgia affirmed the trial court, but reversed in regard to the teacher. In the appellate court’s view the teacher “did not fall under the umbrella of official immunity because the eye protection policy required a ministerial, not discretionary, act on the part of the teacher.” Dollar v. Grammens (Ga. App. 2008) The teacher petitioned for a writ of certiorari and the Supreme Court of Georgia took up the case.

### **Supreme Court of Georgia Rationale and Decision**

*Rationale.* Under controlling Georgia law, said the Court, “a public officer or employee may be personally liable only for ministerial acts negligently performed or acts performed with malice or an intent to injure.” As such, since there was no evidence that the teacher acted or failed to act with malice, willfulness, or intent to injure, the narrow issue before the Court was: “whether the Court of Appeals erred in ruling that the eye protection policy imposed upon the teacher a ministerial duty to require those observing or participating in the bottle rocket experiment to wear eye-protection equipment.”

In the Court’s view, whether the act of a public official is *ministerial* (requiring merely the execution, without deliberation, of a specific duty) or *discretionary* (calling for the exercise of deliberation and judgment) is determined by the facts of each case. Citing Georgia case law on point the Court focused its attention on whether the school system’s policy *required* the teacher to carry out a ministerial act or did it allow for an exercise of deliberation and judgment?

Based upon its analysis of the facts presented in Grammens v. Dollar, the Court opined that “the ministerial duty requiring the use of eye-protection equipment during the course of instruction was contingent upon the use of caustic or explosive equipment. Because the written policy did not define the term ‘explosive materials,’ the policy required the instructor to engage in a discretionary act, i.e., to exercise personal deliberation and judgment by examining the facts and reach a reasoned conclusion with regard to the applicability of the dictates of the written policy.”

*Decision.* The Court of Appeals erred in reversing the judgment of the trial court. Because the school board’s eye protection policy did not require the teacher to perform a ministerial duty, the trial court correctly ruled that official immunity shielded her from personal liability.

*Dissenting Opinion.* Three judges filed a dissenting opinion affirming the Court of Appeals decision. In essence the dissenters focused on the ambiguity of the term *explosive materials* as used in the school board policy. In their view the terms *explosive*, *exploding*, and *explosion* “encompass the launching of a projectile using air pressure.” Because the school board eye protection policy is not a technical document, it should be reviewed within the context of the manner in which its terms are applied. As such, in this case the eye protection policy did not allow for the teacher’s discretion and judgment—it was a *ministerial duty*. The teacher is not entitled to official immunity.

## **Policy Implications**

As emphasized above, while classroom teachers are expected to exercise reasonable and prudent care they cannot absolutely guarantee the safety of their students in every situation. However, it is imperative that local school board policies create a context within which teachers (especially those working in high risk environments) not only know what is expected of them as they instruct, supervise, and interact with their students, but also provide needed protections if and when issues of potential liability spring up.

While Grammens v. Dollar (Ga. 2010) is but one case from one jurisdiction, the Georgia Supreme Court’s opinion and rationale present the reader with implications and suggestions for policy formulation.

Local school board policies must make it clear that all teachers are:

- Obligated to maintain safe and hazard-free learning environments.
- Expected to carry out their contractual duties and responsibilities and to work within the scope of their job description.
- Expected to foresee the consequences of their actions (or inactions) and to carefully plan and exercise standard and acceptable professional practice in carrying out their daily duties and responsibilities with students.
- Required to: (1) carefully explain to students any inherent risks associated with a given activity, (2) emphasize basic safety guidelines, (3) carefully instruct students—giving specific directions on how to

carryout the activity, and (4) supervise students during the activity to promote safety and minimize possible injury.

- Encouraged to report hazardous conditions and defective equipment to the school administration and to request that the conditions be corrected.

### **Final Comments.**

School officials must: (1) work closely with the school system's attorney to regularly audit and up-date school system polices to remain in compliance with required federal and state statutory and regulatory safety guidelines, and (2) conduct school system-wide training in an effort to keep staff abreast of changes in safety policies and procedures.

This commentary does not explore the impact of tort insurance, signed parental permission forms, or the application of the doctrine of assumption of risk in analyzing negligence liability. These topics are left for possible discussion in future commentaries.

### **Resources Cited**

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

