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ABSTRACT

Negligence, a tort liability, is defined, discussed, and reviewed in relation to several court decisions involving school principals. The history of liability suits against school principals suggests that a reasonable, prudent principal can avoid legal problems. Ten guidelines are presented to assist principals in avoiding charges of negligence. (DW)

A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
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January 1975

NEGLIGENCE--WHEN IS THE PRINCIPAL LIABLE?

Every school principal has undoubtedly thought about the possibility of being held liable for injuries suffered by a student. While some degree of concern is caused by the fact that we live in a litigious society, there is certainly no cause for alarm. The Anglo-American legal system generally functions fairly, and the person who does his job conscientiously usually fares very well. Given the importance of school principals in our society--almost all children over five years of age spend most of the day in their care--there are surprisingly few reported court decisions pertaining to the liability of principals.

While it is not in the scope of this Legal Memorandum to explore in any depth the liability of school districts, superintendents, or teachers for injuries to students except as they relate to the principal's liability, it is important to recall that until about 15 years ago school districts were generally immune from suit for injuries. Since then, almost half the states have eliminated or sharply limited such immunity. School district immunity, which had its origins in the English common law and in the concept that the King as sovereign is not to be involuntarily held to account in his courts, applies to activities which are governmental, rather than proprietary, in nature. Whether a particular undertaking such as an athletic contest for which admission is charged is governmental or proprietary varies from state to state.

In states which have retained immunity, however, the school district's immunity does not extend to its employees.[1] Of course, in such states, the doctrine of respondeat superior--that is, the employer is liable for the acts of the employee--is inapplicable. In those states which impose liability on school districts, the concept of respondeat superior is important. A successful plaintiff who has sued both a school principal and a school district will most likely collect any substantial judgment from the school district rather than from the principal since it is the party with the greater ability to pay. The degree to which liability will be imposed varies considerably from state to state on the basis of court decisions and legislative enactments affecting the immunity of governmental entities from liability.

1. Whitt v. Reed, 239 S.W.2d 489 (Ky., 1951)

In some jurisdictions, statutes have been enacted which require the school district to provide a legal defense for an employee sued as a result of any actions taken within the course and scope of his employment and to pay any judgment entered against the employee.[2] In states with such legislation, school employees are often not even named as plaintiffs in lawsuits involving injury to a student.[3]

What Is a Tort?

In the language of the law, our concern is with the "tort liability" of a principal. A tort is: "...a wrongful act, not including a breach of contract or trust, which results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation."[4]

Torts may be either intentional or unintentional. Intentional torts are injuries to another person resulting from actions designed to harm that person. Such conduct is sometimes called "willful." Similar to willful conduct, at least in the eyes of the law, is "wanton" conduct which occurs when a person acts in a manner that is so reckless that injury to another is likely to result. There need not, however, be an intent to harm a particular individual. It should be noted that there are few if any cases involving the commission of an intentional tort against a student by a principal.

Our real concern is, therefore, with unintentional torts. Such torts result from negligent conduct. Negligence is: "...the failure to exercise that degree of care which, under the circumstances, the law requires for the protection of other persons...."

Stated differently, negligence is the absence of care. It may be either active or passive; that is, an act of commission or an act of omission--something you do that you should not have done or something you do not do that you should have done.

As noted in Cianci v. Board of Education of City Sch. Dist. of Rye, 238 N.Y.S.2d 547 (1963): "Quite apart from any liability imposed by statute, under the common law there was imposed upon her as the principal, both the duty to be reasonably vigilant in the supervision of the pupils and the liability for her negligent performance of such duty."

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2. See, for example, California Government Code Section 995.
3. In the May 1968 issue of "The California School Employee," in an article by Richard H. Perry, it was said: "...I personally perceive no value in joining as a defendant the particular school employee who may have been the negligent actor."
4. The Random House Dictionary, unabridged ed., Random House, New York 1967.
5. Ibid.

The duty to act with "reasonable vigilance" is most often described as the duty to act as a reasonably prudent person would under all of the circumstances. The California Supreme Court described the duty as follows:

> It was not necessary to prove that the very injury which occurred must have been foreseeable by the school authorities in order to establish that their failure to provide the necessary safeguards constituted negligence. Their negligence is established if a reasonably prudent person would foresee that injury of the same general type would be likely to happen in the absence of such safeguards.[6]

A 15-year-old high school girl along with other members of her physical education class ran from the gymnasium to the playing field, something students at this school frequently did. As she was running, she was struck by a garbage truck proceeding on the school grounds at about 25 miles per hour. In upholding a judgment for the student against various parties, the court made it clear that school officials have the duty "...to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary for their protection."[7]

The court found that the principal failed to properly discharge this duty since he had known for a period of seven years that students in physical education classes regularly acted precisely as the plaintiff did. The principal also knew that a significant number of trucks came onto the school grounds. The court was critical in that school authorities: "...nevertheless took no precautions to minimize the danger of injury to the studerts after the trucks had entered the grounds, to supervise the traffic that came on the grounds, and to caution people to drive carefully. *They failed to post a lookout or to warn students against running across the courtyard.* [Emphasis added.][8]

The case also contains another significant lesson. In rejecting the defendant's contentions that the plaintiff was herself negligent and, therefore, prohibited from recovering damages, the opinion makes it clear that the precautions required to be taken by school administrators vary with the age and understanding of the student:

> Plaintiff [student] is bound only to that duty of care which a normal child of the same age would be expected to exercise in such a situation.... The question is not whether plaintiff must be viewed as an adult or as a child but simply whether the plaintiff as a 15-year-old girl in a physical education class on the grounds of a high school, used mainly for school activities and not as a thoroughfare for automobiles, exercised proper caution in running across the courtyard toward the athletic field without being on the alert for the sudden appearance of a motor vehicle.[9]

6. Lehmuth v. Long Beach Unified School Dist., 53 Cal.2d 544 (1960).
7. Taylor v. Oakland Scavenger Co., 17 Cal.2d 594 (1941).
8. Ibid.
9. Ibid.

Thus, it is clear that a principal has a duty to act when he encounters a situation in which a reasonably prudent person would foresee the possibility of injury to a student. In Titus v. Lindberg, 49 N.J. 66 (1967), the New Jersey Supreme Court was confronted with a case in which a 13-year-old student severely injured a 9-year-old student with a paper clip shot from a rubber band. The younger student attended Fairview School while the older boy boarded a bus there to be transported to the school he attended. The principal arrived on site at 8 a.m. each day, as did some students, a fact with which the principal was familiar. The doors of the school opened at 8:15 a.m., and students were expected to be in their seats 15 minutes later. The accident occurred at 8:05 a.m.

A lawsuit was filed by the injured boy against the aggressor youth, the principal, and the school district. The trial court entered a jury verdict in favor of the plaintiff and against the defendants.[10] In holding that as a matter of law there was ample evidence for the jury to find that the principal was negligent, the court stated:

> He had not announced any rules with respect to the congregation of his students and their conduct prior to entry into the classrooms. He had assigned none of the teachers or other school personnel to assist him in supervising the students and he undertook the sole responsibility. He then failed to take any measures towards overseeing their presence and activities, except at the point of the milk delivery and by walking from east to west around or through the building. When he was walking through the building there was no semblance of supervision on the grounds outside and that was precisely when the injury to Robert occurred. Before then Lindberg [the aggressor] had been fooling around and had struck another student while no supervisor was anywhere about. Bearing all of these circumstances in mind, it clearly cannot be said that the finding that Smith [the principal] failed to take suitable supervisory precautions lacked reasonable support in the evidence.[11]

Since "...negligence is related to awareness of a recognizable risk of harm,"[12] the question arises as to what the school principal must do to avoid liability. First, it is accepted that the principal is not the insurer of the safety of all of the students under his jurisdiction. Unforeseen and unforseeable accidents can and will occur. The courts have recognized that a principal cannot be everywhere at once and cannot continuously direct the activities of each subordinate employee.[13]

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10. The court also ruled that the district and the principal were to be dealt with as one entity and that the district was to pay one-half of the total judgment which included the principal's share.
11. Ibid.
12. Caltavuturo v. City of Passaic, 124 N.J. Super. 361 (Superior Court of N.J., App. Div., 1973).
13. Luce v. Board of Education, 157 N.Y.S.2d 123 (1956).

The concept of respondeat superior does not apply to the relationships between a teacher or other person who reports to the principal since they are both employees of the school district. The duties of a school principal are essentially supervisory in nature. His job is to make sure that appropriate rules are promulgated at his school for the safety of students and staff. He must assign sufficient school district employees to adequately supervise students in their various activities and take steps to remedy dangerous conditions at his school.

In Cox v. Barnes, et al., 469 S.W.2d 61 (Ky. Ct. of App., 1971), a high school student drowned while on an excursion. A lawsuit was filed against a teacher, a coach, and the principal, alleging that each of them was negligent. The students had asked the principal's permission to make the excursion. After asking the superintendent for an interpretation of a recently revised policy of the school board, the principal authorized the trip. When asked if swimming would be permitted, the principal said it would be, provided the students furnished their own lifeguard. The principal told the coach and the teacher essentially the same thing. In ruling that the principal was not negligent, the Kentucky Court of Appeals stated:

> We have said when a principal of a school is personally negligent he may be held responsible for injuries resulting therefrom.... It appears to us that [the principal] had fulfilled his duty when he gave appropriate instructions and specified certain conditions under which the trip might be taken. He was guilty of no negligence.... The duties of a principal of a school are manifold and he cannot be at all places at all times. He is not responsible for the failure of his staff to fulfill all their duties....

From the foregoing it should be clear that, with a modicum of conscientiousness, most situations resulting in liability can be avoided.

Guidelines for the Principal

1. An assembly or other meeting should be held periodically in which school rules for the safety of students are reviewed with both students and staff.

2. When instructions or directions for the safety of students in school are issued, the age and ability of the student must be taken into account. If there are any special categories of students for whom different standards would apply (such as physically or mentally handicapped youngsters) special rules may be necessary.

3. There should be no time during the day when each student is not under the supervision of a member of the staff.

4. If your state requires that a certificated person always be in charge of students, appropriate assignments should be made and a record kept of each assignment.

5. The staff should be instructed to report all dangerous conditions so that the principal may take steps to correct them. All such reports should be acted upon immediately.

6. Appropriate warning signs should be posted in shops, parking areas, and other potentially dangerous places.

7. All field trips should be approved by the principal. If there are any questions concerning the trip, the principal should investigate the matter and either disapprove the trip or impose appropriate limitations. Only students whose parents have signed permission slips should be permitted to go on the trip. The slip should indicate an acknowledgement by the parents of the nature of the trip, and the time supervision of students will end. While such permission slips do not absolve school personnel of responsibility for negligence, they are important evidence that the parent had knowledge of, and gave consent to, his child's participation.

8. The principal should consult his school district's attorney as to whether private vehicles may be used to transport students to athletic and other school events.

9. Either by a general procedure, or by specific instruction, the principal should always designate someone to be in charge when he is not present.

10. It should be ascertained from an attorney whether school districts in the principal's state are required by law to pay any judgment rendered against a principal from an action taken in the course and scope of his employment. If not, appropriate insurance should be carried. Such insurance may be offered through the state professional association; it is automatically provided to all NASSP members.

If these rules are followed, the reasonable and prudent principal will have a minimum of legal problems.

Contributing editor of this Legal Memorandum on liability is Ralph D. Stern, attorney for the San Diego (Calif.) City Schools, who spoke on this subject at a meeting of the National Organization on Legal Problems of Education (NOLPE) in Miami Beach, Fla., November 14, 1974.

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