



# Negligence, Student Supervision, and School Business Officials

By Charles J. Russo, J.D., Ed.D.

Education leaders can take several steps to help shield the district from liability for negligence related to student supervision.

**W**ith a new school year on the horizon, the topic of adequate student supervision is once again on educators' minds. Whether students are attending classes, playing in school yards, or participating in extracurricular sports or other activities, educators are at risk of liability for injuries that children sustain if officials fail to meet their duty to protect youngsters from unreasonable risks of harm.

Accordingly, awareness of the principles relating to the legal duty to supervise students adequately and the defenses to negligence can go a long way toward shielding school districts from liability. As evidenced by the representative cases cited in this column, negligence claims result in a significant amount of litigation each year.

## Elements of Negligence

Negligence is a common-law tort wherein one's unintentional behavior breaches a duty of care and injures another person or persons. School districts have a duty to protect students from reasonably foreseeable risks of harm. Still, educators are not insurers of student safety, meaning that they are not responsible for all harms that occur, because most injuries in schools derive from what the law calls unavoidable or pure accidents for which no legal fault can be assigned, and officials cannot reasonably be expected to supervise students without interruption.

For districts or individual educators to be found liable for negligence, injured parties must prove that the defendants failed to meet the elements of negligence:

- Duty and the related concept of foreseeability
- Breach
- Injury
- Causation

In response, educators can assert one or more of three defenses to help reduce or eliminate liability: (1) immunity, (2) assumption of risk, and (3) contributory negligence and comparative negligence.

**Duty.** Educators who act within the scope of their duties, such as supervising sporting events or field trips, must help all students—even those they do not know personally. That duty arises from educators' legal relationships with their districts as employers.

Given the significance of duty, most negligence cases can be described as arising in the context of adequate supervision. Although adequate supervision should prevent students from being injured by reasonably foreseeable dangers during school activities, degrees of supervision vary, depending on such factors as the ages of the students and their abilities. For instance, younger children or those with disabilities ordinarily require greater supervision than older students.

Once the law recognizes the existence of legal relationships, educators have the duty to anticipate reasonably foreseeable injuries or risks to students or others who may be present while taking reasonable steps to protect them from harm.

Foreseeability is a flexible concept on the basis of, as noted, student ages and physical conditions coupled with the degree of danger inherent in an activity. The law does not expect educators to foresee all harm that might befall children. Rather, educators are responsible for those mishaps of which they are reasonably aware or that they can reasonably anticipate.

If school officials take reasonable precautions and unforeseen acts occur, they are unlikely to be liable. For example, where teachers could not have anticipated that students would pull chairs out from under peers who attempted to sit down, courts

refused to impose liability (e.g., *Tomlinson v. Board of Education of Elmira* 1992). Other courts refused to impose liability for unforeseen events, such as where a student slipped and was hurt during a classroom skit (*Jones v. Jackson Public Schools* 2000) and where a child spontaneously kicked a peer while on a playground (*Van Leuvan v. Rondout Valley Central School District* 2005) unless one child was clearly the aggressor and officials failed to intervene (*Shoemaker v. Whitney Point Central School District* 2002).

The needed level of supervision may decrease before the school day starts and after students are dismissed. Regardless, once officials know, or should know, that children are present, they must take precautions to ensure their safety. Accordingly, where a board operated a breakfast program but only one teacher was present for its first half hour of operation, an appellate court in Louisiana rendered it liable for the injuries a child sustained when she fell on the school's playground before the start of classes (*Laneheart v. Orleans Parish School Board* 1988).

Conversely, where a mother called her son on her cell phone as he was leaving school and waved to him from across the road, an appellate court in New York affirmed that the board was not liable when he was struck by a vehicle as he attempted to cross in the middle of a block, under her direction, rather than at a designated, supervised location on school grounds (*Vernali v. Harrison Central School District* 2008). The court held that insofar as the board did not owe a custodial duty of care to the student, it was not liable for his injuries.

**Breach.** Educators can breach their duties in one of two ways: (1) by not acting when they have duties to act, referred to as nonfeasance; and (2) by failing to act properly when

there are duties to act, known as misfeasance.

A third, similar-sounding tort, malfeasance, occurs when educators act with evil intent, such as in cases involving sexual misconduct with students. Although malfeasance is an intentional tort to which different legal rules apply, it is mentioned here to help avoid confusion. If officials are aware that employees are failing to meet their duties, then they may share in the liability for the negligence of those individuals.

### **Districts have a duty to protect students from reasonably foreseeable harm.**

Another major consideration under breach is the standard of care that educators must follow. In evaluating whether individuals met the appropriate level of care, courts adopted a common-law standard of reasonableness. Courts typically instruct juries to consider educators' behavior in light of the legal fiction known as the reasonable person or the reasonably prudent person. Although stopping short of creating a clear hierarchy according to such factors as age, education, experience, maturity, and other relevant characteristics, a reasonable teacher is likely to be expected to provide greater care than a reasonable person, but less care than a reasonable parent. Courts have thus attempted to create an objective standard to require teachers to provide the same level of care as reasonably prudent professionals of similar education and background.

A sports case illustrates the significance of applying the proper standard in negligence cases. When a high school football player broke his neck while correctly executing a block, New York's highest court found that the coach should have been judged under the same standard of care as a reasonably prudent educator rather than the higher

standard of the reasonable parent (*Benitez v. New York City Board of Education* 1989). Also, the court observed that insofar as the student voluntarily participated in the game, the coach could rely on the assumption-of-risk defense (discussed later).

**Injury.** For aggrieved parties to prevail, injuries must be such that compensation can be awarded. As an illustration, if a student who ran through a school hallway slipped and fell on water leaking from a drinking fountain that had accumulated for at least an hour, three factors need to be examined:

- The first is whether educators had a duty to keep the floor safe and clean. Assuming the obvious, that such a duty was present, foreseeability comes into play. To the extent that officials should have foreseen that such an incident could have occurred, they should have had the water cleaned up reasonably quickly.
- Second, the issue of school officials' duty and possible breach with regard to supervising the area must be addressed.
- The third concern is the nature of the child's injuries. If the only injury was a wet pair of pants, the claim would be unlikely to proceed because there was no compensable harm. However, if the child broke his leg on falling, there is a greater chance that may be deemed an injury for which compensation can be awarded.

**Causation.** The final element in establishing liability is that school personnel must be the legal, or proximate, cause of injuries brought about by their breaches. In other words, as situations unfold, the last person in a series of events who could have taken steps to prevent an injury from occurring is typically considered as at least contributing to the legal cause.

A case from New York exemplifies judicial reasoning in that regard. A board challenged the denial of

its motion for summary judgment, essentially to dismiss the claim, in a case filed by a high school student who was assaulted by a peer on a school board–owned athletic field after school. An appellate court reversed in favor of the board, deciding that it had no duty to protect the student from the unforeseen attack that occurred after the school day ended (*Weisbecker v. West Islip Union Free School District* 2013). Moreover, the court rejected the argument that the failure of educators to lock the gates to the field was the proximate cause of the plaintiff's injuries because they made no assurances to protect students after hours, and he had not relied on such a promise.

### Defenses

Even if injured parties have established that the elements of negligence are present, districts and their employees have three primary defenses available to limit or eliminate liability. The defenses recognize that even though boards and educators have the duty to supervise students, they cannot be accountable for all conceivable harms that occur during school hours.

**Immunity.** Immunity is the defense school districts use most frequently. Under immunity, school districts, as arms of the state, are typically not liable for the torts committed by their employees, such as teachers and coaches, when they are acting in their official capacities.

**Contributory negligence and comparative negligence.** Contributory negligence and comparative negligence are premised on the role of individuals in causing their injuries. The difference between those similar-sounding defenses, which apply in an almost equal number of states, is significant. Contributory negligence prevents individuals from recovering for their injuries if they contributed in any way to the harm that they suffered

(*Funston v. School Town of Munster* 2006).

### Immunity is the defense school districts use most frequently.

As jurisdictions recognized that the contributory negligence defense often led to unfair results, with plaintiffs losing out as a result of their minor actions that led to larger injuries, an increasing number of states adopted comparative negligence. That defense permits juries to apportion liability on the basis of a percentage of relative fault between the parties. Most states that rely on comparative negligence allow plaintiffs to recover for the harms they suffered if they are not more than 50% liable (*M.M. v. Fargo Public School District* 2012).

**Assumption of risk.** Assumption of risk, which is also grounded in comparative fault, can reduce recovery by injured parties to the degree to which their conduct contributed to accidents if they voluntarily participated in events involving known risks of harm. Because assumption of risk is a far-reaching defense in sports cases, it is worth considering its application in specific instances. For example, an appellate court in New York affirmed that a cheerleader who was injured during practice could not recover from her school board because she assumed the risks of her sport and was practicing voluntarily under the supervision of her coach (*Christian v. Eagles Landing Christian Academy* 2010).

Given the wide array of sports and other extracurricular activities in which students participate, other courts reached similar results,

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applying the assumption-of-risk defense in cases involving baseball, basketball, equestrian activities, field hockey, football, gymnastics, ice hockey, lacrosse, mixed martial arts, soccer, softball, swimming, track and field (involving a shot put event), tennis, wrestling, and weightlifting.

### Recommendations

The defenses can help shield school districts from liability in negligence

cases. Yet because even successful defenses to negligence claims can be costly, education leaders would be wise to increase awareness of student supervision by considering the following recommendations.

First, boards should develop comprehensive policies and procedures for student supervision. Key elements include the following:

1. Do not leave students unattended.

If teachers leave classrooms or other locations when supervising

children, they and their districts face potential liability for reasonably foreseeable harm, such as injuries from fights or thrown objects while the students are alone. If teachers must leave locations even briefly, an adult should step in as a substitute. Also, educators must not leave students unsupervised outside the classroom or in unattended areas as a form of punishment.

2. Never transport students in privately owned vehicles. Districts and their employees face liability for reasonably foreseeable accidents that occur in personal vehicles, especially since that practice is commonly prohibited. In a matter closely related to the next item, while not suggesting that educators should be overly concerned, being alone with students in vehicles—especially if they are not authorized to offer transportation—could give rise to accusations of inappropriate physical contact.
3. Avoid being alone with students. Even though such incidents involve only a small percentage of educators, in light of the rash of accusations and documented cases of sexual harassment, educators should take extra precautions. For example, if teachers must be alone with students, it would be wise for both to remain in the front of classrooms, with doors open, where they are readily observable to all.
4. Document accidents and other incidents in writing before leaving school on the day the events occurred. This procedure provides contemporaneous records that can be used to refresh memories in the event of litigation, as it may take years before disputes go to trial. Further, because the facts are highly determinative in many negligence cases, having an accurate record of what occurred can help reduce or eliminate liability.



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5. Require all visitors to sign in, sign out, and wear identification badges while in schools or at related activities, because officials need to be aware of the presence of all who are in buildings, even regular volunteers. Such information can be important in the event of crises when it is necessary to obtain an accurate count of who is in buildings.
6. Develop waivers for sports, field trips, and other activities that clearly and fully explain the risks associated with participation. As highlighted earlier, there should be separate forms for all activities because courts frown on blanket approvals insofar as that approach may fail to provide parents with sufficient information. Students who have not turned in completed forms signed by their parents must not be permitted to participate in activities.

Second, boards should provide annual professional development sessions for staff members. It is especially important to ensure that coaches and moderators, as well as teachers in classes that involve greater risks of harm, such as laboratories or woodworking, receive extra preparation, given the increased risk of injuries to participants in the activities they supervise.

Third, as with other policies, education leaders should work closely with their attorneys when devising and updating policies. They should also work with their attorneys to ensure that their policies are as up-to-date as possible.

## Conclusion

Of course, having policies does not eliminate all of the risk of liability,

but it can go a long way in demonstrating that educators did all they could to keep students and schools safe. Still, the more carefully that educators apply safety rules by providing adequate student supervision, the more likely that they can avoid unnecessary and costly litigation.

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