

## **Tort Liability**

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### **ABSTRACT**

Educators are responsible for their actions and can be liable for damages if they intentionally or negligently cause injury to others. Educators have a responsibility to act reasonably; are expected to exercise a standard of care commensurate with a duty to provide proper instruction and adequate supervision; to maintain equipment, buildings, and grounds in proper condition; and to provide foreseeability of harm regarding any known dangers.

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A *tort* is a civil wrong, not including contracts, for which a court will award damages. The three major categories of torts are intentional interference, strict liability, and negligence. Instances of intentional interference and strict liability in school-related injuries are rare and will not be pursued in this article. Accordingly, I will examine the elements of negligence and the defenses against liability. Also, I will address Liability under Section 1983 of the Civil Rights Act.

### **Elements of Negligence**

To establish a legal cause for action in tort, four essential elements must exist: The individual has a duty to protect others against unreasonable risks; the individual failed to exercise an appropriate standard of care; the negligent act is the proximate cause of the injury; and a physical or mental injury, resulting in actual loss or damage to the person exists (Alexander & Alexander, 2011).

### **Duty**

School employees have a *duty* to protect students entrusted to their care from being injured. Specifically, these duties include adequate supervision and instruction, maintenance of premises and equipment, and foreseeability. The test of foreseeability is whether under all circumstances the possibility of injury should have been reasonably foreseen and that supervision likely would have prevented the injury. For example, a teacher was found guilty of negligence when an eighth-grade pupil was injured from pebble throwing during a morning recess (*Sheehan v. St. Peter's Catholic School*, 1971). Similarly, in a New Jersey suit, an elementary school principal was held liable for injuries suffered when a pupil was struck by paperclips shot from a rubber band by another child before the classrooms opened. The court found the principal had acted improperly by

announcing no rules on the conduct of students before entering classrooms, by not assigning teachers to assist him in supervising the pupils before school, and by engaging in activities other than overseeing the activities of the pupils (*Titus v. Lindberg*, 1967).

### **Standard of Care**

Failure of a school employee to act in a manner that conforms to an appropriate *standard of care* can render said employee negligent. The standard of care is that which a reasonable and prudent person would have exercised under similar circumstances. For example, the Oregon Supreme Court said “Negligence...is...the doing of that thing which a reasonably prudent person would not have done, in like or similar circumstances....” (*Biddle v. Mazzocco*, 1955). The model for the reasonable and prudent person has been described as one who possesses

(1) the physical attributes of the defendant himself, (2) normal intelligence, (3) normal perception and memory with a minimum level of information and experience common to the community, and (4) such superior skill and knowledge as the actor has or holds himself out to the public as having. (Alexander & Alexander, 2011, p. 502)

The standard of care required would depend on such circumstances as the age, maturity, and experience of students; the type of activity; the environment; and the potential for danger. The amount of care owed to children increases with their immaturity. A higher standard of care is required in shop, physical education, and laboratory classes and in situations and environments that pose a greater threat of danger (e.g., school field trips).

### **Proximate Cause**

There must be a connection between the action of school personnel and the resultant injury sustained by the student. Courts will ask, “Was the failure to exercise a reasonable standard of care the *proximate cause* of the injury?” The cause of the injury first must be established. Then it must be shown that there was some connection between the injury and the employee’s failure to exercise a reasonable standard of care.

As in determining whether an appropriate standard of care has been exercised, the test of foreseeability is used in establishing proximate cause. It is not necessary that a particular injury was foreseen for proximate cause to be established. If reasonable precautions are taken and an intervening injury not foreseen occurs, no negligence exists. Such was the case when a student returned to his desk and sat on a sharpened pencil placed there by another student. School authorities were not held liable for the injury (*Swaitkowski v. Bd. of Edu. of the City of Buffalo*, 1971).

## **Injury**

There must be proof of actual loss or damage to the plaintiff resulting from the *injury*. If the injury suffered is caused by more than one individual, damages will be apportioned among the defendants (Alexander & Alexander, 2011). A school district may be required to compensate an injured party for negligent conduct of an officer, agent, or employee of the district. Individual school board members or employees (superintendents, principals, and teachers) may also be liable personally for torts that they commit in the course of their duties.

## **Defenses against Negligence**

Several defenses can be invoked by a defendant (school board, superintendent, principal, or teacher) in a tort action. These defenses include contributory negligence, assumption of risk, comparative negligence, and government immunity.

### **Contributory Negligence**

If it is shown that a student's own negligence contributed to the injury, the law in many states would charge the student with *contributory negligence*. However, a student cannot be charged with contributory negligence if he is too immature to recognize the risks: A standard of care that is adequate when dealing with adults generally will not be adequate when dealing with children. For example, in about a dozen states, courts have ruled that students under seven years of age cannot be prohibited from recovery damages because of negligence. In other states, the age has been set at four, five, or six years. And for older children up to the age of fourteen, there is a "rebuttable presumption" that they are incapable of contributory negligence (Alexander & Alexander, 2011).

### **Assumption of Risk**

Another commonly used defense in tort actions is the doctrine of *assumption of risk*. It is based on the theory that one who knowingly and willingly exposes oneself to a known danger may be denied tort recovery for injury sustained. An essential requisite to invoking a defense of assumption of risk is that there be knowledge and appreciation of the danger. Thus, it was held that a child who was cut by submerged broken glass while playing in a high school sandpit did not assume the risk of injury because he did not know the glass was in the sandpit (*Brown v. Oakland*, 1942). On the other hand, the Oregon Supreme Court found an assumption of risk in the injury of a high school football player when he was injured in a scheduled football game (*Vendrell v. Sch. Dist. No. 26C Malheur Cty.*, 1962). Like contributory negligence, courts will consider the age and maturity level of students when assessing a defense of assumption of risk in tort.

## Comparative Negligence

Where the common law rule of contributory negligence and assumption of risk is followed, plaintiffs whose own negligence contributed to an injury are barred completely from recovery. This harsh rule has been modified. A number of states have adopted the doctrine of *comparative negligence*. Under the comparative negligence doctrine, a plaintiff can obtain a proportionate recovery for injury depending on the amount of negligence she contributed to the injury. Specific statutory provisions vary from state to state (Alexander & Alexander, 2011).

## Government Immunity

The origin of the doctrine of *government immunity* from tort liability can be traced to two early cases, one in England in 1788 and the other in Massachusetts in 1812 (*Russell v. Men of Devon*, 1788; *Mower v. Leicester*, 1812). The courts held that the government could not be sued for negligence. Thus, the precedent of the immunity of school districts from tort liability was established and remained in effect until the passage of the Federal Tort Claims Act of 1946. Subsequently, the doctrine of state immunity in tort has been abrogated or modified by state legislatures. However, tort law does extend certain immunity to teachers and administrators in the scope and performance of their duties. One example is administering corporal punishment in schools (*Ingraham v. Wright*, 1977).

School board members also have some degree of immunity in the scope and performance of their duties. However, Section 1983 of the Civil Rights Act rooted in 1971 changed the status of the immunity of school board members for their activities. This section provides that every person who subjects any citizen of the United States to the deprivation of any rights secured by the Constitution be liable to the (injured) party in an action at law (42 U.S.C., Section 1983, 1871). A plethora of court cases have been litigated under the act, primarily dealing with First and Fourteenth Amendment rights. The tort liability of school board members was further extended under Section 1983 to students by the Supreme Court decision in *Wood v. Strickland* (1975). The Court held that school board members could be sued individually by students whose constitutional rights were denied. The case involved a denial of due process of students in a suspension hearing.

## Conclusion

Educators are responsible for their actions and can be liable for damages if they intentionally or negligently cause injury to others. Educators have a responsibility to act reasonably; are expected to exercise a standard of care commensurate with a duty to provide proper instruction and adequate supervision; to maintain equipment, buildings, and grounds in proper condition; and to provide foreseeability of harm regarding any known dangers.

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