

NEGLIGENCE - KING OF TORTS

A Review of School Liability for Negligence

BY CHARLES MCKINSTRY

Billy and Juan, both 10 years old, liked to stay after school. Sometimes they helped their fourth-grade teacher, Mrs. Smith, with chores in the classroom. Other times, they would play outside for as much as two hours after the end of the school day. One time, Mrs. Smith bought the boys a small gift for their help.

At one point, Mrs. Smith had encouraged them to go home when classes ended, but since they would be alone there, she concluded that the boys were probably better off at school. The school bulletin stated that students were to leave school grounds within 15 minutes of the end of the school day, although the principal had not enforced the rule.

One day, the boys were in Mrs. Smith's classroom about an hour after school ended. She went to the office and did not return for about 30 minutes. One of the boys took a playground ball out of the cabinet, and they began playing catch in the room. One throw hit the overhead light fixture, which landed on Billy, injuring him.

Mrs. Smith had told her students not to throw balls in the classroom, though she did not remember clearly the last time she gave this warning. If asked, Billy would say that he knows the teacher has told him and his classmates not to throw balls in the room during the school day when other students are present.

Billy's injuries are serious. His parents sue the school and Mrs. Smith

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for negligent supervision. Will they win?!

It will be up to a jury to decide. Cases like this are determined by a combination of facts, law, and the evaluation of a jury. After the evidence has been presented, the judge will instruct the jury about laws applying to the case.

Elements of Negligence

Standard instructions for a case such as this include definition and elements of negligence. They usually go something like this: "It is negligence when (1) you have a duty to protect someone, and because (2) you fail to act as a reasonable person, (3) your action causes an injury to that person.

In legal terms, a *prima facie* case of negligence must include evidence establishing that the defendant had a duty to the person injured, the duty was breached, the breach was the proximate cause of the injury, and there are damages."

Duty

In the example above, the first legal issue is duty. There is clearly a duty to care for the students. Parents who entrust their child to the school and who pay tuition expect, among other things, that the teacher will carefully supervise the students under his or her care. In our hypothetical situation, the injury occurs after school. Generally, the law will not impose on the school an unlimited duty to look after students. Probably, a good rule of thumb would be that schools should expect to provide supervision for 30 minutes before and after school.

However, this can be modified in many ways. One is by communicating clearly to the parents the extent of supervision provided. The school can also create a duty where none exists. If the school allows students to stay late after school and provides some measure of supervision, a court or jury may say the parent may now rely on that care. Suppose the principal, in an effort to solve the problem, writes to the parents saying, "Please pick up your child by 3:30 because we have to supervise students when they stay longer." The principal has just unwittingly created a duty. It would be better to say, "Please pick up your child by 3:30 because we are unable to pro-

duty?

care?

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danger?

cause?

negligence?

violence?

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supervision?

vide supervision beyond that time.”

In the example above, the school created a duty where none existed by permitting the boys to frequently stay after school, not enforcing the rule in the bulletin, and by Mrs. Smith’s buying a gift for the boys’ help.

Standard of Care

What standard will be used to determine whether Mrs. Smith has been negligent? The age-old rule says one must act as a “reasonable and prudent person” would in the situation. This standard is modified when professionals are involved, becoming the “reasonable-and-prudent teacher” standard. There would likely be testimony at the trial from experts as to what a prudent teacher would have done in those circumstances.

Proximate Cause

In order for liability to be imposed, the negligence must be the proximate cause of the injury. This means that the negligence must be closely enough connected to the injury as to fairly impose liability. Most injuries have many causes. For example, if Columbus had not discovered America, Billy would not have been injured. However, Columbus’ discovery is not a proximate cause of the injury, since it is not closely enough related. Is Mrs. Smith’s leaving the boys unsupervised the proximate cause of the injury? If she had been in the room, she would have stopped the ball throwing. But what about the responsibility of the boys?

Contributory Negligence Defense

In many locations, a contributory negligence defense cuts off liability. Such a defense comes into play when the injured person has negligently contributed to the injury. This rule is so harsh that many states have abandoned it. Instead, using the concept of comparative negligence, the jury determines the percentage of fault for each party, and the damages are prorated accordingly.

In our case, there is a big problem with trying to claim contributory or comparative negligence. Billy is only

10 years old. Some states set an age under which it is impossible for a child to be legally negligent. Usually, that is about 7 years of age. Beyond that age, there is modified accountability that increases as children grow older. In this case, a developmental psychologist would probably be called as an expert witness by the defense. He or she would testify that at age 10, Billy did not have the ability to foresee the injury that occurred. The jury would have to decide how much credibility to give to this testimony.

One further factor works against Mrs. Smith. It is not a legal issue, but a psychological one. When Billy takes the witness stand

to testify in his own behalf, the jury might well take pity on him after they hear the details of his injury. While the judge does instruct the jury that the verdict is not to be motivated by pity, jurors are only human.

So what will be the outcome? It varies. There is evidence to meet all of the elements of a *prima facie* case of negligence. The real crux of the case will be the dividing of blame between Billy and Mrs. Smith. In mock trials, most “juries” that have decided this

case have set the percentage of liability of Mrs. Smith and the school at between 50 and 80 percent.

Negligent Supervision

Negligent supervision is the most common legal basis for suing a school when a student is injured. In other words, the school is not automatically liable. Only if it has been negligent in student supervision will liability be imposed.

The school has the duty of general supervision when students are engaged in normal school activities. Apart from special activities such as shop or labs, which require a higher degree of supervision, the highest level of supervision is needed for students in the classroom. Supervision is also required for students in the halls and common areas.

Playground Supervision

Playground supervision is one area where teachers and schools worry about how much supervision they must provide. Courts have not provided consistent guidance in this area. The number of supervisors needed relates to several factors: the age of the students, the activities, and the condition and layout of the playground. For instance, if the supervising teacher cannot see all the students because of the layout of the play-

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Shop classes and labs require a higher level of supervision than normal classroom activities.

ground, more than one supervisor would be needed.

A 1985 case from Louisiana addressed the issue of playground supervision. Mrs. Buggs was supervising some 40 students ranging in age from 5 to 8 years old. It was recess time, and students were choosing their own games. Some third-grade boys started a softball game. A student was hit in the head by a bat when he tried to retrieve his glove, which had been tossed in the air and had fallen behind the batter. Not seeing the child, the batter swung at the pitch and hit the plaintiff. Mrs. Buggs was about 40 feet away, talking to a kindergarten student. The injured student died four days later. The court held that the supervision was reasonable.²

Dangerous Activities

Areas or activities involving higher levels of danger require more supervision. For instance, working with power tools in an industrial-arts class requires a high level of supervision, training in the use of the tools, and proper safety equipment. Student use of chemicals in science class also increases the level of supervision and training needed, as well as the safety equipment required.

In a recent case, the court held the school partially liable when a student was injured by the chemicals used to

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preserve a frog used in a biology experiment. This ruling came despite the fact that the school and company supplying the frog testified there were no other instances they knew of where a person had been injured by the chemicals.³

Schools have also been held liable for injuries occurring during sports activities if the injury was proximately caused by improper instruction, matching students unevenly in contact sports,

or failure to provide appropriate equipment or playing conditions.

Violence

More and more court cases involve student violence. During a volleyball game, Carlos was playing to lose. A teammate, Tracy, objected. The argument escalated quickly. Carlos hit her in the face, causing serious injury. She sued the school, claiming improper supervision and failure of the administration to warn the teacher about the violent tendencies of this student. At the time of the injury, the teacher was officiating at another volleyball game. The confrontation took only a minute and a half. The court noted that state law requires school personnel to supervise students at all times and to enforce rules necessary for protection: "The standard of care imposed upon school personnel in carrying out this duty is . . . that degree of care which a person of ordinary prudence, charged with comparable duties, would exercise under the same circumstances."⁴

The court went on to examine the argument that the school failed to warn the teacher that Carlos had been involved in prior violent behavior, as required in public schools by the state education code. The court found that the administration had breached this duty, but that was not the proximate cause of the injury because the teacher had learned independently of Carlos' violent tendencies. The court concluded that even with this knowledge, the teacher acted reasonably, and did not hold school or teacher liable.

One court recently ruled that a teacher is not exempt from the duty to report students' possible suicidal tendencies. A 14-year-old was required to keep a journal for English class. He included some passages about death and depression. There was no specific passage about suicide. The teacher took no action. The student committed suicide off school grounds. At the trial, the court granted a motion for summary judgment, stating that the school as a

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matter of law could not be liable in this situation. The plaintiff appealed, and the appellate court refused to dismiss the case, stating that the school had a duty to exercise reasonable care in supervising students while they were attending school. The court rejected the argument that since the suicide occurred at another location, the school had no duty. The court returned the case for trial.⁵

Several recent cases have tried to hold schools liable for shootings that have occurred in connection with school activities. Generally, courts have been reluctant to impose liability without some special circumstances in which the school added to the danger. For example, a California court refused to impose liability on a school for an after-school shooting. Ernest was assaulted by three gang members while he was standing in front of his school in the late afternoon. He sued the school for negligence, but the facts indicated that the school had no indication of any threatened gang activity when the students were dismissed for the day.

The court refused to impose a duty on the school to visually inspect the street before releasing students. The district had taken general precautions to minimize gang-related problems such as prohibiting the wearing of gang colors and confiscating weapons. Since there was no advance indication of gang activity, the court held that the school had acted reasonably and did not impose liability.⁶

Sexual Molestation

When a teacher sexually molests a student, schools are frequently sued. Courts have employed a variety of tests to determine whether the school is liable. One theory makes the school automatically liable if the molestation is done by a teacher. This is called strict liability, i.e., imposing liability without proof of fault. Fortunately for schools, this is not the criterion being used in most states.

By far, the most common basis adopted by courts is negligence. Schools will be held liable when a teacher molests a student if the school was negligent. This negligence takes two forms:

In order for liability to be imposed, the negligence must be the proximate cause of the injury.

1. *Negligent supervision of the teacher by those in authority.* If the principal knew or should have known of the inappropriate behavior of the teacher and took no action to stop it, the school will be liable. This includes failure to investigate rumors or complaints.

2. *Negligent hiring.* If the school hires a teacher who has molested before or been accused of prior inappropriate sexual behavior with a minor, the school will be found to be negligent in hiring and therefore liable for any new molestation that occurs. For this reason, background checks take on a new importance. Supervisors at previous locations and the teaching applicant should be asked specifically if this person has ever been accused of inappropriate sexual conduct with a minor. As this article is being written, one state supreme court

has taken a case to determine if the prior school could be made liable to a future molested student for failing to disclose known acts of sexual misconduct to the subsequent employer.⁷

Conclusion

Negligence is the primary reason why schools are sued for student injuries. Since negligence is governed by state law, there is some variation in how the doctrine is applied. Teachers and schools can avoid liability by acting in a “reasonable and prudent” manner in supervising students. As the level of hazard incurred in student activities increases, so must the level of supervision. In order not to create a duty to supervise before or after the school day, principals must clearly communicate to parents and students exactly how much supervision the school will provide before school and after school.

As society becomes more violent, there is an inevitable spillover on school campuses. The legal standards schools must meet to avoid liability are still being determined. Lawsuits for sexual molestations are judged on the basis of negligent hiring or negligent supervision. One thing is clear: Being a “reasonable and prudent” teacher is not getting any easier, but following the guidelines in this article should provide some protection for both teachers and students in Adventist schools. ☞

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REFERENCES

1. The facts of this case are hypothetical and have been used by the author for teaching purposes, including mock trials. They are not drawn from any specific event.
2. *Ferguson v. DeSoto Parish School Board* (La.App.2 Cir. 1985) 467 So.2d 1257.
3. *Cazsador by Cazsador v. Greene Cent School* (A.D. 3 Dept. 1995) 632 N.Y.S. 2d 267.
4. *Skinner v. Vacaville Unified School District* (CA 1st 1995) 43 Cal. Rptr 2d 384.
5. *Brooks v. Logan* (Idaho 1995) 903 P. 2d 73.
6. *Brownell v. Los Angeles Unified S.D.* (CA 2nd 1992) 5 Cal. Rptr 2d 756.
7. *Randi W. v. Livingston Union S.D.* review granted by Calif. Supreme Court March 21, 1996 (SO51441).

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