

Liability for Student Injuries

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Protecting Your Teachers, Your Students, and Your School

BACKGROUND ON THE ISSUE

Probably no area of school law arouses more anxiety, confusion, and misunderstanding than the possibility of being sued for student injury. Rumors circulate in many teachers' rooms about educators who have lost their jobs and their life savings because some injured student won a million-dollar award against them. As a result of the possibility of being sued, many educators view the law as an invisible monster hiding in every classroom, hallway, and playground ready to ensnare any teacher who makes an innocent mistake. Thus, there emerges a sense that teaching is an especially dangerous profession in which hazards are greater, liability is more personal, negligence more likely, and the result of negligence more disastrous for educators than other people. One result of this erroneous perception is that many teachers fail to discipline students when they should because of unfounded fear of being sued. Similarly, some teachers don't intervene in fights when they may, or if they do, they worry unnecessarily about being sued if a student is injured.

This lesson will clarify many of these confusions and misunderstandings. It will outline what an injured student has to prove to hold teachers or schools liable for their injuries. One outcome of this lesson is that it will enable teachers and administrators to have a common understanding of the law that applies to student injuries and will enable them to collaborate in practicing preventive law. As practitioners of preventive law, educators will be able to protect themselves, their students, and their schools.

Activator

Motivator



10 min

In this activity, ask participants to indicate whether they think educators can be held liable for student injuries in a number of hypothetical cases. Distribute copies of Table 1.1, and ask teachers to indicate if they believe the teacher in each case would be held liable. If you choose, you may tally totals for each response and write the number in each column. Finally, tell participants that you will return to these cases later in the lesson, and transition into the rationale and goals of the lesson.

Table 1.1 Liability Hypothetical Cases

Hypothetical Cases	Is the Teacher Liable?		
	Yes	No	Don't Know
Case 1. As a result of Mr. Big's using reasonable force to break up a fight in the hallway, one of the students hits his head on the floor and has a serious concussion.			
<i>Totals</i>			
Case 2. After a play rehearsal, Mrs. Care gives a student a ride home without parental permission, and the student is injured, but not because of the teacher's negligence.			
<i>Totals</i>			
Case 3. Although Mr. Carefree is supposed to be on duty in the gym at 1 p.m., he drinks another cup of coffee in the teachers' room and then walks into the gym at 1:15. At 1:14, a high school student was seriously injured when he bumped heads with a classmate while jumping for a rebound during a friendly basketball game.			
<i>Totals</i>			



Hypothetical Cases	Is the Teacher Liable?		
Case 4. Ms. Busy leaves her class for 10 minutes to duplicate science worksheets. She tells the students to work quietly while she is gone. When she leaves, some students begin to throw spitballs, pencils, and paper planes. After 6 or 7 minutes, a girl is struck by a pencil and blinded in one eye.	Yes	No	Don't Know
<i>Totals</i>			
Case 5. As the bus was leaving the high school on a field trip, 16-year-old Flo Friendly suddenly reached out of the window to waive at a friend and broke her arm when it hit a lamppost. She sued teacher Tripper for failing to adequately supervise and for not warning students not to open the bus windows.	Yes	No	Don't Know
<i>Totals</i>			
Case 6. Instead of paying attention to the students when she was on playground duty, Mrs. Lesscare was gossiping with another teacher. During this time, Sue Sadly ran across the playground, tripped, fell on her face, broke three teeth, and received six stitches.	Yes	No	Don't Know
<i>Totals</i>			
Case 7. Despite repeated warnings to Bob Bobbing to stay in his seat, he continued to jump out of his seat, disrupt the class, and perhaps injure himself. As a result, teacher Strictman put a restraining hand on Bob's shoulder—against the advice of a colleague who told him, "Never touch a student."	Yes	No	Don't Know
<i>Totals</i>			

Alternative

Consider sending the scenarios out beforehand. That way, you can ask teachers to complete all of the scenarios without taking time out of the lesson.

Rationale

Objectives

Rationale



3 min

Because there is widespread fear of being held liable for student injury (which may inhibit appropriate disciplinary action) and because of extensive misunderstanding about how the law applies to these situations, it is important for teachers to understand when and why educators can and cannot be held personally liable.

Objectives

Post and/or state the following objectives for the lesson plan:

1. Teachers will identify what an injured student must prove in order to hold teachers and/or schools liable.
2. Teachers will be able to apply the “reasonably prudent teacher” standard in order to practice preventive law.
3. Teachers will become familiar with how insurance, as well as state and federal laws, might protect educators from personal liability.

The Law



15 min

In this section of the lesson plan, the principal will provide the content needed for educators to make informed and legal decisions. This lesson is based on the law of torts. *Torts* are civil (as contrasted with criminal) wrongs and are primarily an area of state law, rather than law made by the

federal government. Tort law imposes a *duty of care* on educators. This means that educators must use *reasonable care* not to injure their students and to protect their students from *foreseeable dangers*. If educators fail to use reasonable care, they are considered *negligent*. If their negligence is the *cause* of a student’s injury, they or their school may be held liable in monetary *damages* to compensate the student for his or her injuries. To determine whether an educator is negligent, courts ask if the educator acted as a *reasonably prudent teacher* (RPT) should have acted under the circumstances. If in doubt about how a RPT should act, a teacher should *consult* with prudent, experienced teachers and administrators who have faced similar circumstances.

In considering whether to hold teachers and/or schools liable for a student’s injuries, judges would apply the above principles and ask four questions. (Use Table 1.2 as a handout or presentation slide to provide the law for each of these questions.)

Table 1.2 Student Liability Questions and Legal Principals

Question	The Law
1. Was there a duty of care?	Educators have a duty not to injure their students and to protect them from known or foreseeable dangers.
2. Was there negligence?	Teachers are negligent when they fail to act as a hypothetical <i>reasonably prudent teacher</i> (RPT) should have acted under the circumstances. To determine whether a teacher acted as an RPT, the teacher’s behavior is measured against the professional norms of prudent teachers. If they do act as an RPT under the circumstances, they are not negligent. When circumstances are more dangerous (e.g., on field trips, in chemistry class, or when working with young children), an RPT should provide clearer warnings to and closer supervision of students.
3. Did the negligence cause the injury?	The plaintiff (or injured student) must prove not only that the defendant teacher who is being sued is negligent but also that the negligence caused the injury. (Plaintiffs usually sue for a dollar amount for medical expenses, lost wages, and/or pain and suffering to compensate them for their injury.)
4. Was there contributory negligence?	Adults and most high school students are expected to exercise ordinary/reasonable care and not to expose themselves to known or obvious dangers. Therefore, in most states, if an injured person’s own negligence contributed to her injury,



(Continued)

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Question	The Law
	<p>courts would usually reduce the amount of the dollar award to the injured person in proportion to her negligence. This is known as <i>comparative negligence</i>. For example, an older student might have her award reduced by 40% if the judge concluded that she was 40% responsible for her own injury. However, if she was primarily responsible for her injury (i.e., more than 50%), she would probably receive no award.</p> <p>In all states, different standards apply to children. Generally, children under the age of 7 cannot be charged with contributory negligence. Children between 7 and 14 are usually presumed incapable of contributory negligence. And beyond the age of 14, students are expected to act as reasonably prudent students of their age and maturity should act under the circumstances.</p>

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Alternative

Consider providing teachers with a blank note sheet with the four questions. Ask the teachers to take notes as you deliver the content.

To summarize, the legal principles relevant to student injury—that educators have a duty to act with reasonable care, that they are negligent if they fail to do so, and that they can be held liable if their negligence causes injury—apply in all states. The principles are relatively easy to understand, and with practice in applying them, teachers and principals can anticipate and prevent problems that can lead to lawsuits.

Although there is little chance of a reasonably prudent teacher being held personally liable for student injuries, this fact should not make competent teachers less careful. Instead, this knowledge should

- 1 reduce misinformation and misunderstanding about teacher liability;
- 2 enable teachers to enforce reasonable discipline and order without unfounded fear; and
- 3 enable teachers to collaborate with their principals and colleagues in applying the “reasonably prudent teacher” standard to issues of supervision and safety.

As a result of this knowledge, teachers will be less likely to view law as a source of anxiety and instead feel empowered to be practitioners of preventive law when confronting legal issues.

Application

Content to Practice



15 min

Divide the participants into small groups of three to five, and ask them to talk out the hypothetical cases they used in the Activator/Motivator. The goal is to determine whether it is likely that the teachers in the scenarios would or would not be held liable by applying the principles we have explained to the facts of the cases. That is, in each case, ask

1. Was there a duty of care?
2. Was the teacher negligent? That is, did the teacher fail to act as a reasonably prudent teacher should have under the circumstances?
3. Did the teacher’s negligence cause the injury?
4. If so, was there contributory negligence that might reduce the award to the plaintiff?
5. After the small groups report the results of their discussion of the cases, the principal can use the answers in Table 1.3 to summarize and clarify how the principles of law would likely apply. The principal may need to address only selective cases, as time permits.

Table 1.3 Application of Principles to Liability Cases



Case Number	Result
1	<p><i>Teacher not liable.</i> Mr. Big has a duty to protect students from being injured. If, pursuant to that duty, he tries to break up a fight and he unintentionally injures a student, he should not be held liable for the student’s injury. This is because a teacher who uses reasonable force to protect himself or a student is not negligent even if a student is injured in the process. Furthermore, even if the teacher was negligent, some state laws and the federal Teacher Liability Protection Act (2001) would probably protect him from liability if his action was carried out to “maintain order or control in the classroom.”</p>
2	<p>Mrs. Care is <i>not liable</i> for the student’s injuries if they were not caused by her negligence. The fact that Mrs. Care did not have a parent’s permission may or may not have violated a school policy. But even if Mrs. Care did violate school policy (or administrative advice), this would not make her a negligent driver, and if she was not negligent, she cannot be held liable for the student’s injury.</p>
3	<p>In this case, Mr. Carefree is <i>not liable</i> for the student’s injury. By drinking coffee when he should have been supervising the gym, Mr. Carefree was negligent and violated his contractual duties. But, if bumping heads in a friendly game is an accident that would not have been prevented even if a reasonably prudent teacher would have been present, then Mr. Carefree would not be liable for the injury because his negligent absence was not the cause of the accident. Carefree should be disciplined for not being on duty when he should have been supervising the students, but he could only be held liable if the facts of the case were different and the injured student could prove that a teacher’s presence would have prevented the injury.</p>
4	<p>Ms. Busy probably is <i>liable</i> for the injury of the blinded student. Ms. Busy had a duty to protect her students from injuries caused by other students when such injuries could have been prevented by reasonable supervision. If, under the circumstances of this case, a reasonably prudent teacher would not have left the classroom unattended for 10 minutes, then Ms. Busy was negligent for doing so. And if a reasonably careful teacher would have stopped the students’ misconduct before it caused the injury, then a judge or jury could conclude that Ms. Busy’s negligence caused the injury.</p>
5	<p>In this case, Mr. Tripper probably would <i>not be held liable</i> because a judge or jury would probably conclude that Ms. Friendly was negligent in failing to act as a reasonably prudent high school student should have under the circumstances. High school students have a duty to exercise ordinary care and not to expose themselves to obvious dangers. Even if</p>

Case Number	Result
	Mr. Tripper was not watching Ms. Friendly when she suddenly reached out of the bus, her negligent behavior was the primary cause of the injury—not the action or inaction of Mr. Tripper.
6	Probably <i>not liable</i> . Mrs. Lesscare was negligent for not paying attention to the students when she was on playground duty, and perhaps she should be disciplined for her failure to carry out her duty of care. But she could not be liable for the injury to Sue (which was an accident that was caused by her running) if Sue’s injury would not have been prevented if Lesscare was carefully supervising and not gossiping.
7	Probably <i>not liable</i> . Mr. Strictman may have ignored the advice of his colleagues, but this does not mean he could be held liable for preventing Bob from repeatedly jumping out of his seat, disrupting the class, and possibly injuring himself. Although many educators tell teachers, “Never touch a student,” this is overly broad advice and in some situations is poor advice. Certainly, sexual touching of students by teachers is always illegal. But, there are many situations where the law permits teachers to use reasonable force to protect themselves or their students and use reasonable restraint to enforce discipline. In fact, the purpose of the Teacher Liability Protection Act (2001) is to protect teachers from frivolous lawsuits and the fear of liability for their reasonable actions to maintain order in their classrooms.

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Assessment



7 min

One way to assess teacher understanding is to ask teachers to apply the legal principles they learned to the following variations of the cases we have discussed. Copy Table 1.4, and fold each scenario on the dotted line. Ask participants to read only the question portion of Question 1. Ask participants to pair up and discuss what they each think about the scenario and explain their reasons. After a few minutes, inform the pairs to open their cards and review the answer. Repeat this with the second scenario.

Table 1.4 Student Liability Scenario Flash Cards



paper copies



Q1. While Mr. Carefree was having coffee instead of supervising the gym, some of the students started a rough basketball game that included pushing, elbowing, and cursing. After 10 minutes of increasingly unsportsmanlike conduct, one of the students intentionally tripped another player who was seriously injured just as Mr. Carefree entered the gym. Is the teacher liable? Why or why not?

A1. Mr. Carefree probably would be held liable because he was negligent in not being on duty in the gym and because a reasonably prudent teacher would have intervened to stop the uncontrolled game before the student was injured.

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Q2. Just before Ms. Busy returned to her classroom after duplicating worksheets for 10 minutes, a student threw a baseball from the playground that shattered a window and sprayed glass that blinded one student's eye. Is the teacher liable?

A2. Ms. Busy would not be held liable because the presence of a prudent teacher would not have prevented the unforeseeable injury that occurred.

FAQ



10 min

As time permits, you may add some of these additional questions to the follow-up discussion.

1. What should teachers do when they confront new situations that might pose dangers, such as field trips?

When in doubt about what one's duty of care requires, a reasonably prudent teacher should *consult* with other reasonably prudent teachers or administrators who have confronted similar situations. By collaboratively developing and following safety checklists, teachers protect their students, themselves, and their schools.

2. Are teachers liable for *any* injury that occurs if they leave their classroom unattended?

No. There may be emergencies in or outside the classroom that would require a reasonably prudent teacher to *briefly* leave her class, and in these circumstances, she would not be negligent for doing so.

3. Can teachers be held liable for failing to prevent every injury that might occur when they are supervising a class, hallway, or playground?

No. Most injuries are caused by accidents, which are not the result of anyone's negligence and for which no one is liable. Furthermore, teachers cannot be expected to anticipate every situation in which one student could injure another. The law does not expect teachers to prevent unforeseeable injuries, only those that ordinary care can prevent.

4. Do teachers have a duty to physically intervene in a fight?

Not necessarily. It depends on the circumstances. For example, a female teacher has no duty to physically intervene in a fistfight between two high school students and risk injury. In many situations, teachers simply have the duty to seek help when circumstances are beyond their control.

5. What happens if I am injured while breaking up a student fight?

Teachers would be covered by their medical insurance for short- and long-term disability as well as workman's compensation for a serious injury.

6. If parents sign waivers, does that protect teachers and schools from liability?

Not necessarily. In many states, courts construe such waivers very strictly or rule that waivers of responsibility in school activities are against public policy. In a few states, such as Massachusetts, courts uphold waivers in extracurricular activities—especially those that students and parents know are dangerous. Although it is usually wise to ask parents to sign permission slips to permit their children to participate in special activities, parents should not be asked to waive their right to sue educators who are negligent and whose negligence causes student injuries because most courts are not likely to uphold such waivers and because parents should not be asked to waive their children's rights.

7. Are teachers personally liable, or do they have any protections?

Teachers who belong to organizations such as the National Education Association (NEA) or the American Federation of Teachers are provided liability insurance (usually for \$1,000,000) as part of their union dues for negligence claims that might be made against them. This policy costs the NEA less than five dollars per year to insure each member. Because the premium is based on the likelihood of being sued, this indicates that the chances of a teacher being held liable for a student's injury are extremely low. In addition, many school districts and professional associations also provide liability insurance for their employees.

8. What would happen if a student assaulted a teacher?

The student could be subject to school discipline and/or criminal punishment. Although teachers could sue students for damages, this is not likely because even if teachers win their suit, they would be unlikely to collect damages (generally parents are not financially responsible for their children's misbehavior).

Alternative

Consider sending a few of these questions to teachers via e-mail, electronic discussion board, or as a hardcopy in their mailbox for them to read and consider between professional development sessions. Responses can then be collected or discussed at the next professional development session.

**Resource
Material**

Relevant Quotes

It is the duty of a school to use ordinary care and to prevent its students from injury resulting from the conduct of other students under circumstances where such conduct would reasonably have been foreseen and could have been prevented by the use of ordinary care. There is no requirement of constant supervision of all the movements of pupils at all times. . . . Children have a known proclivity to act impulsively. . . . It is precisely this lack of mature judgment which makes supervision so vital. The mere presence of the hand of authority and discipline normally is effective to curb this youthful exuberance and to protect children against their own folly.

—Sheehan v. St. Peters Catholic School (1971)

As is often the case, accidents . . . involving school children at play happen so quickly that unless there was direct supervision of every child (which we recognize as being impossible), the accident can be said to be almost impossible to prevent.

—Nash v. Rapides Parish School Board (1975)

Clarifying and limiting the liability of teachers, principals and other school professionals who undertake reasonable actions to maintain order, discipline and an appropriate educational environment is an appropriate subject of federal legislation because the scope of the problems created by the legitimate fears of teachers, principals and other school professionals about frivolous, arbitrary or capricious lawsuits against teachers is of

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national importance. . . . No teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if the actions of the teacher were carried out . . . to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school if . . . the harm was not caused by willful or criminal conduct, gross negligence [or] reckless misconduct.

—Paul D. Coverdell, Teacher Liability Protection Act (2001)

References

Nash v. Rapides Parish School Board, 188 S0.2d 508 (La. 1975).
Sheehan v. St. Peters Catholic School, 188 N.W.2d 868 (Minn. 1971).
Teacher Liability Protection Act, 20 U.S.C. 6731–6769 (2001).

Additional Resources

Alexander, K., & Alexander, M. D. (2009). *American public school law* (7th ed.). Belmont, CA: Wadsworth. (SEE Chapter 11)
Fischer, L., Schimmel, D., & Stellman, L. (2010). *Teachers and the law* (8th ed.). Boston: Allyn and Bacon. (SEE Chapter 5)
Russo, C. (2004). *Reutter's the law of public education* (5th ed.). New York: Foundation Press. (SEE Chapter 8)
Thomas, S., Cambron-McCabe, N., & McCarthy, M. (2009). *Public school law: Teachers' and students' rights* (6th ed.). Boston: Allyn and Bacon. (SEE Chapter 13)
Underwood, J., & Webb, L. D. (2006). *School law for teachers*. Upper Saddle River, NJ: Pearson. (SEE Chapter 6)