Negligence
What Principals Need to Know About Avoiding Liability

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Teachers and principals owe a duty of reasonable care to their students. Teachers and principals can be sued for the breach of that duty that caused the injury. There is no magic formula or incantation that can be invoked that will protect an educator from such lawsuits. The best protection from lawsuits lies within the control of educators—how they consistently discharge their professional duties. Attentiveness to the duty that is owed students is important in that it builds habits of action. Knowledge of our duty is critical. Review of how we discharge our professional duty is imperative.

The prudent principal should consider the following:

1. Insert a section in the staff handbook that describes the responsibilities of staff members concerning appropriate supervision (see appendix B). The section could include comments on the importance of supervision, the educator’s legal responsibility to the students, and the need to be diligent in performing supervision. The principal should bring to the attention of the teachers this handbook section at the first faculty meeting. This agenda item should appear in the minutes of the meeting. The principal should contact any personnel who were absent, and the importance of the section should be made clear. The principal should write a notes-to-file memo stating when and with whom he or she met. This documentation demonstrates prudence and reasonableness and
may help to protect the principal from a suit for negligent supervision of the faculty when a student is injured. Often the principal is named as a defendant in a suit for negligence and a paper trail of prudent actions assists his or her defense.

2. While on duty the teacher or aide should be assigned to a specific location. That location should be clearly defined (a map in the handbook is helpful) with enough supervision allotted to dangerous areas. The educator should circulate through the assigned area and report to duty on time.

3. At least twice a year the principal should place a notice in the weekly bulletin to teachers directing them to review the safety rules with their students. The teacher should make a note in his or her lesson plan book as to when the review took place and follow up with any students who were absent.

4. Teachers and other supervisors should be instructed that when supervising students involved in class activities or playground recess, their main job is supervision and instruction, not participation in the activity. Often there is a tendency to play in the game instead of supervising the game. For example, a high school substitute teacher was supervising a boy’s physical education class when an overweight (327 pounds) student collapsed and later died of cardiac arrest brought on by heat stroke. The boys played for approximately twenty minutes in a poorly ventilated gym at a temperature of ninety degrees. A Louisiana Court of Appeals upheld a judgment of $560,000 for negligent supervision. The court held that the teacher “participated in the game himself rather than observe and monitor the students as he should have under these conditions.” Had the teacher not participated in the game, would he have seen the signs of impending heat stroke?

5. Set up a safety inspection plan with the custodian and keep to the plan. Any potential problem areas must be dealt with immediately and effectively. Either the dangerous condition must be repaired or, barring a time constraint, the area or piece of equipment should be removed from service.

6. Ask teachers to conduct periodic inspections of equipment and areas under their control. If equipment is broken and presents a foreseeable risk of injury, have the educator immediately take it out of service and notify the principal so that repair may be undertaken. While the principal has ultimate responsibility for maintaining a safe environment, the duty owed to students requires that all educators act reasonably to reduce the likelihood
of injury. The responsibility to repair resides with the principal, but all faculty and staff carry the duty to warn students and to take appropriate steps to reduce harm.

7. Permission slips pose a challenge for principals. They may provide a false sense of security. It is prudent to adopt the position that they do not protect us from our negligence. At a minimum, a signed permission slip may indicate that we have permission to transport or remove a student from the normal setting of the school and thus have not kidnapped the student. Its practical value, then, may be more public relations than a statement that we can now disregard the duty that we owe to the students. In fact, the duty may be heightened because of the foreseeability of additional dangers associated with where the students are going and what they will do once they get there. We require permission slips because the student will not be involved in the normal school routine with its regular practices and protections. A non-routine activity usually requires notice and permission.

Zirkel states that the legal status of permission slips or release forms varies, "but they are generally considered to be neither rock-solid protection nor legally valueless in terms of immunity." However, even if the protection afforded by permission slips is questionable, the prudent principal will strictly adhere to any policy that requires the receipt of permission slips before a student can take place in a school activity either on campus or off campus. To ignore the policy is to place yourself in jeopardy. Not only will you have to defend your probably unprofessional and possibly insubordinate decision, there typically is no upside in allowing a student to participate in the activity. For example, Zirkel notes that a Missouri principal was disciplined for not following board policy requiring teachers to secure written parental permission for field trips.

Boilerplate permission slips must be reviewed periodically. However, permission slips that are used in unusual circumstances, such as an overnight trip, should be reviewed for the individual circumstances of the trip. For example, these are some recommended additions I made to the standard permission slip for a school district that sponsored a field trip to Washington, D.C., for eighth graders:

We must stress that the school district cannot ensure the safety of our students. Our obligation is to take reasonable precautions in light of foreseeable dangers. Your child also has a responsibility for his/her safety
and the safety of others. Because Washington, D.C., may be a new experience for your child, it is imperative that your son/daughter obey all rules and directives of the chaperones and, most important, not wander away from the group at any time.

I understand that no medical services or medical personnel will be provided by the school district for this educational field trip. I will provide the school staff with medical or other important information that I believe the school should know about my child. Every effort will be made to keep the provided information confidential.

_____ I am not attaching any medical or other information regarding my child.

_____ I am attaching information on my child’s emergency medical or important other needs. I have attached verification from my physician and directions for any necessary and vital prescription medication that my child must take.

Below is a sample of a portion of Portsmouth (New Hampshire) High School’s student permission form used when students leave the campus for school-sponsored activities.

In case of medical emergency, in the event that I/we cannot be reached, I/we authorize a representative of the school department to procure and consent to any medical examination, diagnostic process, or course of treatment, including transportation and hospital care, to be rendered to my/our child by or under the supervision of any duly licensed health care provider. A copy of this authorization is to be accepted as valid as the original. I/We understand that the information herein may be necessary by the school department.

Signature: Parent/Guardian Date:

I/We understand that the school department does not provide personal or health insurance coverage for students.

In arranging transportation or medical treatment in an emergency, the school department does not assume financial liability for the student’s medical care.

I/We understand that the information provided herein may be used as necessary by the school department.

Signature: Parent/Guardian Date:

8. Make a copy of the site plan for your school. Each time an injury occurs mark the spot of the injury on the site plan. You can color code it for the time of day and type of incident if you choose.
The major use of the plotting is to ascertain the dangerous spots at your school. You can then use the data to make corrections to practices and policies, as well as to discuss liability issues with the faculty and staff. I have also used this type of data plotting for discipline problems. Through its use we were able to find holes in our supervision. It is quite clear that if the adults in the school don’t own specific areas of the school through enforcement and presence, the students will. And the students who claim the territory don’t usually do so for benign reasons.

For example, I was giving a presentation to the faculty in a semiurban school district when a teacher told of a problem in the hallways of one of their high schools. She stated that the students created a gauntlet in certain areas that some students were afraid to traverse, opting instead to take a circuitous route to their classroom. She asked my advice because the inservice was on sexual harassment.

I first asked, semihumorously, Where are the adults? If there is no adult presence or a limited adult presence in that hallway, then some of the students have claimed it as their territory.

I recommended that during the passing time all teachers who were not legitimately engaged in a more compelling act than making the hallways safe for students should step outside their doorway for the first minute or two of the passing period. This would create a phalanx of teachers and adults in that hallway. This would likely deter most behavior, and that behavior that is not deterred can then be appropriately addressed.

I explained to the teachers that one spring when I was a principal in southern California I was having a problem with an increase of student fights right after school let out for the day. Not only did we contact the parents about the problem, but all of the faculty and staff stepped outside their classroom doors (we did not have interior corridors at the school) for the first several minutes to let students know that they were being supervised. The incidents of fighting soon dropped, and we withdrew the extra supervision. The problem was seen as a school problem in which all adults had a responsibility. It was not phrased or viewed: if it is not my students then it is not my problem. This leads to my last recommendation, one of symbols rather than law.

9. I strongly believe that all educators at a school have a responsibility for all students. When I was a principal I consistently
You took this quiz at the end of chapter 2. Please take it again at this time. You can compare your scores for changes and then check your pre- and post-test scores with the answers in Appendix H.

POST-TEST ON TORT LIABILITY

TRUE or FALSE
1. T  F Educators owe a legal duty to their students.
2. T  F The reasonable person concept applies to educators under tort liability/negligence.
3. T  F Principals cannot be held liable when a teacher's act or failure to act causes an injury.
4. T  F Proximate cause is a defense in tort liability/negligence cases.
5. T  F As the foreseeability of injury increases so must the duty owed increase.
6. T  F Breach of duty is an aspect of the prima facie case in tort liability issues.
7. T  F Sufficient injury or actual loss or injury must be proved in tort liability/negligence cases.
8. T  F Adequate/proper supervision is an aspect of the duty educators owe their students.
9. T  F All torts involve negligence.

discussed this viewpoint with the faculty and staff. I asserted that our school was not an egg crate in which each classroom was walled off and protected from the next. Our classes were not meant to separate us as unconnected entities. We were responsible for the school and all of the students in the school and not for those students in our individual classes. We worked on establishing a strong ethic that we were the true architects and builders of the school.4 We were responsible for what the school was and what it could become.
We decide through the small daily decisions that we make and the large policies that we adopt not only what we value but
who we value. We are responsible for building the school, not
with brick and mortar, but with the infusion of enduring val-
ues that define who we are as educators and what is the core of
our school.

The principal, faculty, and staff who genuinely believe that they are
part of something bigger than just the dukedom of their classroom
avoid liability not just because liability is costly but because it is the
right thing to do. In schools where all students are valued, students
are better protected.

When a principal is in court defending against a suit for negligence,
what that principal has done prior to the injury to inform and supervise
faculty activity is critical to the defense. The principal who takes reason-
able steps to inform his or her faculty of their legal responsibility to stu-
dents and then supervises the discharge of that responsibility goes a long
way in protecting her- or himself as well as students, faculty, staff, and the
school district. All too often the discussion about legal responsibility
takes place after the injury has occurred and facts cannot be changed.

The discussion about our legal responsibility should be part of an
ongoing schoolwide dialogue. Professional practice includes reason-
ably discharging our legal responsibilities. Building habits of mind
about our duty builds habits of action.

NOTES

2. Perry A. Zinkel, “Permission Forms,” 84 Principal, 8 (January–February 2005).
   1986).
4. When I was the chair of the Department of Education at the University
   of New Hampshire, a large and complex department for which it seemed like
   I was a principal once again, we used the aphorism “Hammers and Rulers–
   We Build What We Value” to frame a core understanding of our responsibil-
ity. One of the things that we valued was the people in our department. Each
   faculty agenda had a section under the heading of “Hammers and Rulers–We
   Build What We Value” called “Supporting Our Own.” In this section we listed
   professional and personal accomplishments and successes. Our belief was
   that if we didn’t support and celebrate our own, perhaps no one else would.
Appendix B

Handbook Policy on Supervision

It is well established that the proper supervision of students is an important professional and legal responsibility. We owe our students a duty of providing reasonable care. An orderly and safe environment is necessary for the delivery of quality education. Therefore, at ________________ school, all educators owe all students four obligations.

ADEQUATE SUPERVISION

• Report to all duty assignments on time (see map for assigned duty areas).
• Circulate through your duty area and your classroom, paying particular attention to areas and activities that pose an increased risk of injury.
• Be vigilant while supervising students. If you are on recess duty, your responsibility is to supervise all of the students in your assigned area. Your attention must be focused on the supervision. Supervision is not a time to play games or engage in other activities with the students.
• If you know that a particular student has a propensity to act dangerously in a specific manner, your supervision of that student must increase with the known risk of injury.
• The greater the foreseeable risk of injury to students, the greater our duty to increase the vigilance of our supervision.

PROPER INSTRUCTIONS

• Proper instructions are necessary to reduce the risk of injury when students undertake an activity, especially an activity that has an increased risk of harm to students.
• Repeat the instructions on how to complete a task that has a heightened risk of danger as often as needed. Do not assume because students heard the directions once that they will be remembered.
• When you go over safety rules with students, note it in your lesson plan book.
• Review playground and classroom safety rules at least once each semester, and note when you do it in your lesson plan book. Also, if any students are absent when you review the rules, contact the students to review the same information and also note that contact in your lesson plan book.

PROPER MAINTENANCE OF BUILDINGS, GROUNDS, AND EQUIPMENT

• Conduct periodic inspections of equipment under your control. If equipment is broken or presents a foreseeable risk of injury, immediately take it out of service and notify the office so those repairs may be undertaken.
• Provide warnings regarding known or reasonably foreseeable hazards.
• If you have knowledge of a hazard that can likely cause injury, you must take steps to reduce the risk of injury.

How we conduct our professional duties is important. Attentiveness to the duty that we owe our students is critical.

I am the decisive element in the classroom. It is my personal approach that creates the climate. It is my daily mood that makes the weather. As a teacher I pos-
sens tremendous power to make a child's life miserable or joyous. I can be a tool of torture or an instrument of inspiration. I can humiliate or honor, hurt or heal. In all situations it is my response that decides whether a crisis will be escalated or de-escalated, and a child humanized or de-humanized. (Hiam G. Ginott, Teacher & Child, 1972)
Appendix C

Tort Liability Handout

PRIMA FACIE CASE FOR NEGLIGENCE

Duty Owed

• Educators owe students a duty to anticipate foreseeable dangers and take necessary precautions to protect students entrusted in their care from such dangers.

BREACH OF DUTY

• Did the educator's action, or failure to act, create an unnecessary risk of harm? This standard of care is measured against a reasonable person (teacher) standard: did the teacher act as a reasonable and prudent teacher would have acted in the same or similar circumstances? Did the educator fail to exercise an appropriate standard of care (duty owed) given the age of the students, the environment, and the type of instructional activity?
Appendix C

CAUSATION

Cause-in-Fact

- Is there a causal or sequential connection between the teacher's action or inaction and the resultant injury? This is the but-for test.

Proximate Cause

- Was it foreseeable that the teacher's action or inaction would cause the injury? Was the injured person a foreseeable plaintiff?

SUFFICIENT INJURY

- The plaintiff must have sustained a sufficient injury in order for the court to provide a remedy.

Obligations of an Educator

Provide Adequate Supervision
Provide Adequate Instructions
Provide Properly Maintained Equipment
Provide Warnings Regarding Known Hazards
Appendix D

Liability and the Science Lab

HANDOUT FOR SCIENCE TEACHERS

The science lab may well be the most dangerous place in our school. The need to provide hands-on learning activities often creates heightened danger for some of our lessons. Therefore, extra planning and constant vigilance is required in order to provide safe instruction.

The Council of State Science Supervisors has developed a list of duties that form the basis of the duty that we owe our students at _______ school. In addition, working safely is an expectation and a condition of employment.

Duty of Instruction

• Instruction given prior to beginning a laboratory activity should
  • be accurate;
  • be appropriate to the situation;
  • address reasonably foreseeable dangers;
  • identify and clarify any specific risk involved;
  • explain proper procedures to be used; and
• present comments concerning appropriate and inappropriate conduct in the lab.
• Instruction must follow professional and district guidelines.
• Develop proper safety guidelines, inform and instruct students on those guidelines, and require that those guidelines be implemented. Do not allow students to conduct experiments until they have passed a test on appropriate safety rules. Keep a copy of the passed tests for your records.
• Remember, "teachers who set bad examples by not following proper laboratory procedures may be sued if injury results from students following the teacher’s bad example."

Duty of Supervision

• Misbehavior of any type must not be tolerated.
• The greater the degree of danger, the higher the level of supervision required of the teacher.
• Younger students and students with disabilities who may not fully understand the dangers of the instructional activity require heightened supervision.
• Be sure to circulate through the lab when an instructional activity is taking place.
• Even if you have warned students about the dangers of the activity, such as the necessity to wear protective eye goggles, a number of times, do it again when the risk of danger is foreseeable. Don’t just tell students to put on their goggles; instead, watch to make sure that all students have them on before you allow them to start the exercise.
• If in doubt about the ability of providing a reasonably safe environment for an activity, do not perform the activity and report the safety concern as soon as possible to the proper individual.

Duty of Maintenance of Equipment

• Never use defective equipment for any reason.
• Establish regular inspection schedules and procedures for checking safety and first aid equipment. Document these inspections.
• Follow all safety guidelines concerning proper labeling, storage, and disposal of chemicals.
• File written reports with the administration for maintenance and correction of hazardous conditions or defective equipment.
Maintaining Safe Facilities

- Keep class enrollments to the recommended safety level for the square footage of the laboratory.
- Use safety shields, especially when performing demonstration experiments in an open area.²
- Secure chemical storage separate from laboratory, classroom, and prep/equipment storeroom.
- Provide minimum ventilation with nonrecirculated air.
- Provide appropriate eyewash and safety shower.¹

NOTES
