

Undergraduate course work in school law is vital for both teachers and principals.

Educators' Negligence: What, Why, and Who's Responsible?

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J.K. Footlick (Footlick, 1977) noted that, "Ordinary citizens, awakened to (their) 'rights' only recently defined, have found more occasion to tell their troubles to a judge. The mounting influence constitutes one of the great unnoticed revolutions in U.S. history: the ever-increasing willingness, even eagerness, on the part of elected officials and private citizens to let the courts settle matters that were once settled by legislatures, executives, parents, teachers—or chance." Today few educators have failed to notice the increasing role that the courts are playing in all aspects of public education.

Many social critics have noted with alarm the public's tendency to use the courts excessively with one result being that judges currently control many public institutions including school systems. Through litigation, and the failure of other forms of negotiation, the courts have been given power they did not seek, without without any guarantee that they could exercise it with wisdom or effectiveness. The continuing thrust of education case law has had an effect on the organizing, financing and conducting of public education. Many educators have discovered too late that there are legal as well as educational consequences in the smallest and seemingly most innocuous decisions. Americans no longer ignore minor infractions, inconveniences and innovations to their lives imposed by fellow citizens (Levin, 1985).

Education is affected by a variety of laws. One of these is the law of torts. A tort is a legal wrong against the person, property or reputation of another. "Tort" is a Norman word for injury or wrong. It is derived from the Latin word "tortus" meaning twisted. Underlying the concept of torts is the reasonable and prudent relationship between individuals. Although there is no one satisfactory definition of tort, it is generally thought of as an actionable wrong, exclusive of a

breach of contract, which the law will recognize and set right. The three categories of torts are: the direct invasion of some legal right of the individual, e.g., invasion of privacy; the infraction of some public duty by which special damage accrues to the individual, e.g., denial of constitutional rights; the violation of some private obligation by which damage accrues to the individual, e.g., negligence. The most frequent tort action in the educational setting is negligence.

Negligence is the "failure to exercise the degree of care for the safety and well-being of others that a reasonable and prudent person would have exercised under similar circumstances" (Peterson, Rossmiller and Voltz, 1978). Four elements must exist if a valid claim of negligence is to be sustained: a duty to protect; a failure to exercise a standard of care; conduct which is certainly a proximate cause of the damage, and an actual resultant loss.

An examination of the literature and selected litigation related to the area of tort liability for negligence, i.e., duty and standard of care, proper instruction, supervision and maintenance, field trips and post-injury treatment, resulted in the following observations:

1. Educators can be found financially responsible for their professional actions if an injured student or adult proves to the court's satisfaction that some inappropriate action led to the student's or adult's injury.
2. The courts have recognized the difficulty of constantly supervising every student, and have not held educators to be the absolute ensurers of each student's safety.
3. The courts have been cognizant of the burdens placed on educators when ruling on their liability; however, these burdens have not relieved educators of the responsibility for their actions.
4. Educators have been found accountable for their failure to take into consideration the students' special needs or limitations, abilities or pre-existing medical conditions when making instructional decisions.
5. Educators have been found liable for their selection, maintenance and supervision of the use of instructional equipment when the educator's action in this regard was shown to be based on poor judgment not expected of a professional educator.
6. Educators have been upheld by the courts for their attempts to provide post-injury first aid to injured students. However, the courts have not afforded protection for educators who attempted to deliver medical therapy or treatment which exceeded or fell short of rudimentary first aid procedures.
7. The courts have not required educators to be able to diagnose serious injuries of the student when the outward appearance of the student was such that a layperson could not have anticipated serious disorders.
8. Educators on field trips have been found accountable for the same duty and standard of care expected of them within the confines of the schools and grounds.
9. Educators have not been found accountable for their instruction or supervision when the student was shown to have had adequate knowledge to complete the task assigned, or when the student exceeded the instruction or supervision knowingly assumed the risk inherent in the activity.
10. Educators have been held liable for accidents which occurred during an educator's absence from

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the classroom or activity when it could reasonably be anticipated that the educator's presence in the room or area would have prevented the accident.

11. There is a lack of research to determine the current knowledge of tort law possessed by practicing teachers and administrators.

From these observations it is clear that schools must change and adapt to new circumstances and new demands. The amount of education litigation and the outcome of court decisions indicate that many educators do not have an adequate grasp of law, and have a tendency to practice "preventive" law after the fact, i.e., management by crisis. The cost of litigation to school districts, when viewed on a national basis, is staggering now and continues to grow. The stemming of the tide of education litigation in the future will be determined by the knowledge, preparation and skills of school personnel.

As a matter of their preliminary research, the authors wondered about the degree of teacher and principal knowledge about how tort laws affecting education are applied to the daily operations and situations inherent in teaching and administration. They wondered how much teachers and administrators know about tort liability, and whether teachers and administrators had equal knowledge bases. Additionally they wondered how well each group would do when confronted with reality-based scenarios in the area of negligence.

To find answers to these questions, they designed a study to assess the knowledge possessed by selected public school teachers and principals concerning tort liability law in the specific area of negligence. A random sample of teachers and all of the principals of a large midwestern school district were selected as the respondents to the research instrument. The research instrument requested information about personal demographic data as well as responses to questions designed to assess the respondents' knowledge about tort liability law. The research instrument contained a series of 18 scenarios pertaining to tort liability law for negligence, specifically in the areas of: duty and standard of care, proper instruction, supervision and maintenance, field trips and post-injury treatment. Each scenario was an overview of an actual case which has been adjudicated. Each respondent was asked to determine if the facts presented warranted a court ruling for the plaintiff (student or parent) or for the defendant (school employee or school district).

The demographic data reported was used to formulate groups of independent variables. The mean scores on the questions concerning tort liability were used to formulate groups of dependent variables. A statistical analysis of the relationship between the independent and dependent variables was performed.

There were no significant differences in the knowledge of tort liability for negligence between groups based on gender, age, teaching or administrative experience, degrees held or graduate hours earned. However, there was a significant difference between the group that had completed course work in educational law and the group that had not. These differences were in the areas of duty and standard of care, proper supervision and proper maintenance.

The results of this study indicate that neither teachers nor principals have an adequate working knowledge of tort law. This lack of knowledge appears to be caused primarily by the lack of pre-service and in-service programs in the area of education law, not by other variables. Teachers who have had course work in education law correctly analyzed 83 percent of the scenarios, while teachers who had no course

work in education law barely exceeded 50 percent. Principals who had completed course work in education law correctly analyzed 75 percent of the scenarios, while those who had no such course work barely exceeded 50 percent.

The overall scores for all respondents place their knowledge of tort liability for negligence at 68 percent. Does this suggest that 32 percent of the time, in the selected categories of tort law examined for this study, that teachers and principals make decisions that could lead to litigation? This may not be a reasonable person inference, but in examining education litigation, the answer to this question remains one of probability beyond the scope of this study, but perhaps not beyond the realm of possibility.

In the selected category of duty and standard of care, the overall mean score for respondents was in the 56th percentile, which may demonstrate that teachers and principals do not have an adequate working grasp of their responsibilities toward children and others who frequent the school building and grounds. These responsibilities, separate from curricular aspects, encompass the entire realm of personnel physical welfare. Does this low mean score for all respondents in this category indicate that teachers and principals are unclear in their duty to exercise good judgment; their duty to instruct correct procedures, and their duty to supervise? From the results of the research instrument, the inference might well be in the affirmative, especially in light of a significant lack of understanding by teachers (mean score 1.8 of 3.0) of their overall role in the area of proper supervision.

Principals have a greater working knowledge of proper maintenance than teachers. This should be expected due to the overall responsibilities of principals and the expanded nature of their preparatory course work. However, the failure of a teacher to take appropriate steps to assist the principal in ensuring proper maintenance makes the teacher a viable candidate for litigation.

Educators are not as knowledgeable in education law as they should be—not only for the protection of the students, others and themselves, but also in light of society's current attitude toward litigation. Complacency following the education law course work may be just as dangerous as having no formal course work. Litigation for damages caused within the confines of the school or school district will continue. Educators must accept this fact and fully understand their role under the law.

The effect of courts on the teaching/learning/administrative processes of public education is an important area of concern. The avoidance of tort claims is a difficult organizational and management area. This is true, at least in part, because of the extreme "flatness" and "loose coupling" of school districts as organizations and of individual schools as organizational units. In a practical sense, everything important in schools happens at the base level of the organization and is in the hands of classroom teachers—people who exercise an extremely large amount of discretion in an absence of continuous on-line supervision. School principals fall only slightly above the base level of the organization, and work within, or quite often around, policies and procedures, which, with the exception of financial matters, are usually written in the broadest terms.

Educators need to know that no part of the public school is immune from tort action and the resultant court interaction. They should be able to form sound judgments on specific legal problems where the profession is involved, and should be able to recognize the circumstances surrounding potential litigation in order to avoid unnecessary action at law. In the examination of legal cases for this study, the authors found hundreds of cases that might have

been avoided if school personnel had known and practiced their legal responsibilities. The authors are not implying that educators should become experts in school law; however, they should be able to form sound judgments on specific legal problems. Educators cannot be expected to guarantee that children, young adults or adults in their scope of supervision will not be injured. However, there is a critical need for educators to establish professional guidelines concerning appropriate professional behavior in the areas of the instruction, supervision and protection of students. The profession must develop and provide standards against which educators accused of inappropriate actions can be reasonably judged. It is imperative the educators display such knowledge of the law that it is evident that normal foresight has been exercised and that planning, precaution and execution of one's task has been performed as a reasonable and prudent educator would have performed under similar conditions.

As a result of their research, the authors believe the following recommendations will, if implemented, better prepare teachers and principals to face the challenge of avoiding litigation and to practice their chosen profession without the constant fear inherent in today's litigious society:

1. The policies and procedures of school districts should be cross-referenced with the principles of education law and be continually updated.
2. Colleges and universities with teacher training programs should develop undergraduate professional preparation curricula that address the responsibilities of teachers for pupil injuries. An education law course should be required for all undergraduates.
3. The state agency responsible for the certification of teachers should require all teachers to demonstrate competence in the area of liability for student injuries.
4. Colleges and universities that provide graduate curricula for teachers and/or school administrators should require a minimum of three credit hours in education law if three credit hours were required at the undergraduate level. If education law was not required at the undergraduate level, a minimum of six credit hours is recommended. Competency in education law at the graduate level should be a requirement for an advanced degree or administrator certification.

Knowledge of the laws concerning tort liability and a

heightened awareness of historical and ongoing litigation gives educators the foundation necessary to provide and manage a reasonably safe and secure school environment. The threat of litigation, combined with increasing insurance costs, has forced many public schools to review, and, in some cases, to eliminate programs. The doctrine of governmental immunity, protecting public schools from legal liability, has been judicially or legislatively abrogated in most states. Today the public school is given the same status and held to the same duty by the courts as an individual or corporation being sued by an injured party, and the monetary judgments that have reached millions of dollars emphasize the necessity for the educator to perform as the law requires. Thus school districts, and ultimately teachers and principals, are faced with the challenge of developing strategies that minimize their legal liability.

Educators have certain resources available in meeting society's continuous challenges to the educational enterprise; descriptions of effective schools, information about transformations in culture and society affecting education, and at least an outline of the possible contributions of social and behavioral scientists. Lacking among these resources is an understanding by educators and educational researchers of the necessity to prepare for societal intervention and judicial changes in the area of school law.

The authors' study confirmed that students, parents and others have an increasing tendency to bring the educational enterprise into litigation. Litigiousness is not simply a legal phenomenon, but rather a reflection of social change. Pre-service and in-service training should be intensified for the educational practitioner. It is imperative that educators understand the tenets of education law to protect not only themselves but also the welfare of those served by the profession.

Notes

Footlick, J.K. (January 10, 1977). Too much Law? *Newsweek*, pp. 42-47.

Levin, H. (1985). *The people's court: How to tell it to the judge*. New York: Murrow/Quill.

Peterson, L.J., Rossmiller, M.M. and Voltz, M.M. (1978). *The law and public school operations*. New York: Harper & Row.

Please contact the authors if you wish a detailed presentation of the data or case citations.