

THE TORT LIABILITY OF EDUCATORS
FOR ACTS OF NEGLIGENCE

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CHAPTER I

INTRODUCTION

The law of negligence applied to school personnel is termed Common Law Negligence. This means that very little of it is of statutory enactment. Rather, it is a child of the old Anglo-Saxon Common Law. This is made up of decisions by English courts over a period of many hundreds of years which are in turn binding on subsequent courts' decisions as rules of precedent.

Negligence is a tort for which compensatory and often nominal and punitive damages may be collected. However, in order to collect other than nominal damages, some actual injury to person or property must be shown.

Negligence cannot be an intentional act. It may be the result of an intentional act, but only the act and not the result can be intended in order to constitute negligence. Likewise, the failure to act when a positive duty to do so is imposed on the person also constitutes negligence. Thus, one could phrase a very simple definition of negligence as an act or omission that results in injury to the person or property of another.

The Problem

For some time, a definite need has been felt for a clear and concise review of pertinent decisions relating to teacher and administrator responsibility in the performance of professional duties. It was felt that a study of this type would fill that void and prove of practical value to educators when carrying out the responsibilities of their employment.

The tort liability of a public school teacher is materially distinct from that of a private citizen. Seldom does a private citizen have imposed upon him the duty to act. If he chooses to act where he is under no legal obligation to do so, then in most instances, if the act adversely affects the person or property of another, it will render him liable regardless of his good faith.

An educator is under a compulsion to act with respect to others; the private citizen enjoys a privilege of selection with no culpability for nonaction, and with an inducement not to act. A teacher commits no tort, of course, so long as he faithfully performs the duties of his office pursuant to legal authority.

In deciding if a person is negligent, one cardinal test with its many variations is applied. This test involves the mythical "reasonably prudent man." Thus, every adult male, with no other distinguishing characteristics, is expected to exercise the same degree of care in any particular situation as would be exercised by the mythical "reasonably prudent man" under the same or similar circumstances.

The variations of this test are used to cover the differences between the characteristics of the reasonably prudent man and those of the specific person involved. Hence, a reasonably prudent man of eighty years, or a child of five, would not be held to as high a standard as would a young man of twenty five.

Any peculiar skills or abilities possessed by the person which are above and beyond the ordinary must be considered in figuring his liability. A trained physical education instructor or a trained industrial arts teacher would be held to a higher degree of responsibility for the injury

of a student under his supervision than would a regular classroom teacher who was merely handling the class on a substitution basis.

Limitations

This study was limited to the major legal statutes and cases in the United States pertaining to the tort liability of teachers. Such statutes and leading cases which involve a significant point of law which establishes or leads to the establishment of precedent binding on or influencing the subsequent decisions of other courts are considered major. No practical list, of course, can be all inclusive, or a sole criterion for professional conduct. Unforeseeable situations will arise in which no legal precedent has yet been set and for which no statute has been written; such is the basis of legal evolution.

Procedure of the Study

To gain an understanding of the liability of educational personnel for acts of negligence a review of all major legal statutes and cases throughout the United States was made. In addition to research conducted in a professional law library, the author has also included material derived from secondary sources, that is, textual material commenting upon the specific area under study.

Chapter II consists of an analytical breakdown of the various aspects of negligence as they might pertain to educational personnel.

CHAPTER II

NEGLIGENCE

The principles of negligence and liability for pupil injuries are of great importance to teachers. Shop teachers, teachers of science who supervise laboratory work, driver education teachers, physical education teachers, and coaches of sports are in positions especially subject to negligence allegations.¹ The areas of greatest danger of liability of school personnel are exactly where one would expect to find them -- in laboratories, manual arts shops, and in athletic and physical education activities. Classroom teachers are closely associated with pupil activity. They are often named as defendants in cases alleging negligence which resulted in injuries to pupils.

Public school teachers, as public employees working under the jurisdiction and authority of state and local governments, operate within a legal framework. This legal framework consists of federal and state constitutions, state laws, and judicial decisions. It will be helpful for teachers to understand the law which surrounds them and which so greatly affects the daily performance of their professional duties. This paper will, therefore, deal largely with a cumulative analyzation of pertinent laws and court cases affecting the conduct of public school teachers.

Negligence Defined

There seems to be general agreement that the liability of a teacher

¹National Education Association Research Division, The Teacher and the Law, p. 76.

for an accident in a school is fundamentally the same as the liability of any person for an injury of a child outside the school, unless the courts or legislature specify otherwise. The teacher acts in the place of the parent in relation to the pupil. His duties and rights are equal to, or greater than, those of a parent, insofar as negligence is concerned. The teacher has the responsibility to anticipate danger or an accident and to remove the circumstances which may cause the accident.

Teachers are likely to be considered negligent under the following circumstances:

1. Failure of the teacher to keep in mind the fact that his pupils are children and that actions of children are normally guided by childish impulses. It is the teacher's duty to use reasonable care in anticipating or foreseeing the results of such impulses and prevent avoidable injury.

2. Failure of the teacher to realize that the ordinary care or reasonable care mentioned above is defined by law as greater caution in conduct when one is dealing with children than when dealing with adults.

3. Failure of the teacher to realize that the law demands from children less care for their own protection than it demands from adults. The measure of care in this instance is the care usually shown by children of like age, intelligence, and experience in the same or similar situations.

The extent to which a teacher can be held liable for the damage to the person or property of another depends upon the common law principles of negligence. Some injuries are caused by what the law terms "pure accident." They are unforeseeable, unavoidable, and the fault of no one. In order for an injury to be classified as accidental there must

be no carelessness involved. Furthermore, the injury must not have been subject to prevention by precautions suited to the circumstances. Other injuries are caused by personal negligence in allowing, or neglecting to prevent, the injury.² If a teacher's negligence can be proven, he can be held for damages in a tort action brought by the injured party or by the party's parents.³ Once this negligence has been proven, there are far-reaching implications of liability. A person whose negligence has caused an injury to another may be held liable for such physical harm as may result from fright or shock or for additional bodily harm resulting from acts done by a third party in rendering aid irrespective of whether the aid was administered in a proper or a negligent manner.⁴ If the educator can prove that there was no negligence, but that the injury was caused by pure accident, there is, of course, no recovery of damages.⁵

Negligence at law is any conduct which falls below the standard for the protection of the person or property of another against unreasonable risk of harm. Negligence may be acts of commission or omission. Liability is dependent upon the character of the conduct and the nature of the results. The amount of care and caution required by law is proportionate to the amount of threatened and apparent danger.⁶ For a person to be careless it is not necessary that damage as a more, rather than a less probable result should be anticipated. Danger consists of the risk

²National Commission on Safety Education, Who is Liable for Pupil Injuries?, p. 5.

³Remmelein, Madaline Kinter, School Law, p. 152.

⁴Ibid., p. 154.

⁵Ibid., p. 152.

⁶Ibid., p. 153.

of harm, as well as the likelihood of it, and a danger calling for anticipation need not be of more probable occurrence than less. If there is some probability of harm sufficiently serious that ordinary men would take precautions to avoid it, then failure to do so is negligence. The test of foreseeability is not a balance of probabilities; it is a test of the existence of some probability of sufficient importance to induce a different action to avoid possible injury on the part of a reasonable mind. When a reasonably prudent person possessing the same physical and mental attributes as the actor could have foreseen the harmful consequences of his act, the actor in disregarding the obviously foreseeable consequences, is liable for negligent conduct. Applying this rule to the teacher-pupil situation, it may be stated that if a reasonably prudent teacher with similar physical and mental attributes and training could have foreseen that the person or property of another could be injured under the same or similar circumstances by the teacher's act or failure to act, then the teacher is liable if he disregards these foreseeable consequences.⁷

Duty to Act

There arose very early in Anglo-Saxon jurisprudence, a distinction still deeply rooted in the law of negligence, between "misfeasance" and "nonfeasance"--that is to say, between active misconduct working positive injury to others, and a passive inaction, or a failure to take steps to protect them from harm. The reason for this distinction may be said to

⁷Ibid., p. 153.

lie in the fact that by "misfeasance" the defendant has created a new risk of harm to the plaintiff, while by "nonfeasance" he has at least made the situation no worse, and has merely failed to benefit him by interfering in his affairs. The earliest recognition of a duty to act for the protection of others is found in the cases of common carriers of passengers. Similarly to the common carrier of passengers, courts have imposed upon innkeepers a duty to act for the protection of a guest. In deciding why the courts have imposed in some cases and not in others a duty to act for the protection of another, independent of contract, the fact a relationship exists which is actually or potentially beneficial to the defendant is important. The imposition of a duty to act for the protection of another, as distinguished from the duty to refrain from action creating an unreasonable risk of injury to others is also applied when there exists certain relationships of dependence and trust such as that existing between an adult teacher and his minor charges.

Foreseeability

A teacher must not only act in a reasonable and prudent manner but must also foresee that his actions or those of the pupils are not injurious to other pupils. It is not necessary to see the exact form of injury, but the fact that one would foresee that some type of injury would result from the action is sufficient cause to elicit caution on the part of the teacher.⁸ It is the responsibility of the teacher to prevent pupils from harming each other where the teacher is in control. If a teacher leaves

⁸Edwards, Newton, The Courts and the Public Schools, p. 474.

a class unsupervised and a fight occurs which results in an injury, the teacher is, in most instances, liable. A teacher who fails to appear on the playground for duty may be held liable for injuries incurred during this period on the playground.⁹ Here exists a practical application of the "test of foreseeability."¹⁰

Contributory Negligence

When an educator is sued for negligent conduct which has caused injury to a pupil, one defense may be contributory negligence. Contributory negligence is conduct on the part of the injured person which falls below the standard to which he should be held to conform for his own protection, and which is a contributing factor in bringing about the person's injury. Naturally, students of tender years are not held to as high a degree of care and caution as is demanded of mature adults. The standard of care and caution required of children is that degree of care which a reasonably prudent child of the same age and with similar physical and mental attributes, including training and experience, would ordinarily exercise under the same or similar circumstances. Here stated has been the general, common law rule as applicable to contributory negligence; however, due to statutory enactment, contributory negligence is not, in many states, an adequate and sufficient defense to an action for negligent damage to the person or property of another.

⁹Thomas, Wesley E., "Liability of Teachers," Michigan Education Journal, 30:233, November, 1952.

¹⁰National Commission on Safety Education, op. cit., p. 79.

Assumption of Risk

An even more difficult defense to claim in cases involving injury to children is that of assumption of risk. It is founded upon the maxim, volenti no fit injuria and implies that the person against whom it is invoked voluntarily, by the exercise of free will and intelligent choice, has put himself in the way of a danger which he knew and comprehended, or which was so obvious that he must be taken to have known and comprehended it. Since children are not held to an adult standard of conduct for their own protection, this is an extremely difficult defense for an educator to invoke in a tort action for the injury to the person of a minor child. Obviously then, a pupil's youth and inexperience increase the degree of caution necessary on the part of the teacher in order to avoid an unreasonable risk toward the youngster.

Proximate Causation

Proximate causation may be defined as that natural and continuous sequence unbroken by any efficient intervening cause which can be held to have produced the injury and without which, said injury would not have occurred.

If an injury occurs due to the negligent conduct of a teacher, said teacher may be relieved of legal responsibility for his negligent conduct if some other event breaks the connection between his act and the injury suffered, in such a way as to be considered in the eyes of the law a superseding cause of the injury. However, if the intervening act is the normal response to the stimulus of the situation created by the

teacher's negligent conduct, it is then not legally a superseding cause of the resulting injury. To break the connection between the teacher and the harmful consequences of his negligent act, a new and independent cause must intervene to produce the injury.¹¹ A dependent intervening cause is not sufficient to produce a break in the causal connection necessary between the negligent act and the injury for which regress is sought because the dependent intervening cause itself is dependent for its existence upon the negligent act. An independent intervening cause, on the other hand, is in itself, a superseding cause and breaks the chain of proximate causation necessary between the negligent act and the injury.

Unless it can be said that without the act of negligence under consideration, no damage would have resulted, there is no connecting cause between the negligence and the happening that caused the damage. It is necessary that, but for the acts of the defendant, the consequence in question would not have occurred. This is called the sine qua non or "but for" rule. The breach of duty must be the cause of the damage. The fact that the defendant has been guilty of negligence, followed by an injury, does not make him liable for that injury, which is sought to be referred to the negligence, unless the connection of cause and effect is established.

Negligence is determined by the specific details of the circumstances, and generalities may be too vague to be of a practical value. However, in most instances the factual cause of an injury is obvious and the difficulty lies in establishing the legal cause. The legal cause may

¹¹National Education Association Research Division, op. cit., p. 77.

be defined as that cause among all the antecedent events which in the natural and continuous sequence of events, without the interference of an independent superseding cause, can be held to have produced the damage. Stated more concisely, there must have existed an unbroken connection between the wrongful and tortious act and the injury. Thus, the connective nature of the sequence of events must render it such as to make it just to hold the teacher responsible for the injury suffered by the pupil.¹²

Governmental Immunity of School Districts

The school districts of many states at the present time have governmental immunity from liability for the acts of their officers, teachers and employees. The history of this immunity dates back to the time of the old English common law, which championed the concept that "the King could do no wrong." Certain customs became the basis for proper conduct. These customs became crystalized into principles which were then followed by the courts in cases of controversy. Such was the common law.¹³ Courts tended to follow their earlier decisions and thus came into existence the doctrine of "stare decises" (let the decision stand). The major part of law as it today exists has arisen basically from this common law origin.¹⁴ Historical precedent found its way into the United States Constitution, thus providing that a state cannot be sued without its consent. Many jurisdictions have held that school districts are acting as agents of the state

¹²Ibid., p. 77.

¹³Hamilton, Robert, and Mort, Paul, The Law and Public Education, p. 3.

¹⁴Ibid., p. 4.

in carrying out their duties, and that the rule of governmental immunity should apply to them. Many additional reasons are assigned why a school district should not be liable in tort. Some authorities place it on the ground that the law provides no funds to meet such claims; others hold that school directors in performing the duties required of them exercise merely a public function and agency for the public good for which they receive no private or corporate benefit.¹⁵

In the great majority of jurisdictions across the country, collection must be made through tracing the responsibility to an individual, an employee of the school district. If responsibility can be shown on his part, he is the one sued. If there is a financial recovery, the individual has to pay it. If he is unable to render a cash settlement, his wages may be garnished or property attached (both within certain prescribed legal limits varying from state to state). Thus, the doctrines of respondeat superior upon which the entire law of agency is built and which has proven a haven for negligent employees in the field of business and industry by allowing the injured plaintiff to elect to bring suit against the usually much more wealthy corporation or business, denies its protection to educational personnel. Typical of this legal precedent is a recent holding by the Supreme Court of the State of Kansas which stated that an employee of a school district is not covered by the districts cloak of immunity and can be held personally liable for injuries resulting from his negligence.¹⁶

¹⁵47 Am. Jur. 335.

¹⁶Rose v. Bd. of Education, 248 N. C. 506, 103 S. E. 2nd. 854.

Educators handling certain professional duties stand in precarious positions in regard to liability for possible student injuries while under their charge. A teacher often feels reluctant to engage very extensively in field trips or other educational excursions, although they possess unquestioned educative value. The coach, chemistry teacher, vocational education instructor, and other similar personnel are often made extremely cognizant of the problem. School principals and superintendents, too, are liable in their individual capacities for their individual acts of negligence and they are not immune from suit on the ground that the action is against them for torts committed in the performance of duties as public officials.¹⁷

There has taken shape three major concepts in public school liability within the United States. The most generally accepted of the three and the one to be assumed present in the absence of a specific statute or leading state supreme court decision to the contrary is, of course, that of complete governmental immunity on the part of school districts for liability for the tortious acts of their officers, employees, or agents. School districts, as subdivisions of the state, receive immunity for negligent failure to perform duties (misfeasance) as well as for the performance of duties in a negligent manner (malfeasance), in the absence of such aforementioned legislative act or court decision.

Typical of current court rulings on this matter is one handed down by the Supreme Court of the State of South Carolina:

¹⁷Whitt v. Reed, 239 S.W. 2nd. 489.

Since a school district, a board of education or school trustees, or other local school organization is a subordinate agency, subdivision, or instrumentality of the state, it is not subject to an action except as permitted by statute.¹⁸

Similar judicial holdings transpired in both North Dakota and Mississippi:

In the absence of some statutory authorization a school district or body of school officials such as a county board of education, which is not expressly created as a corporation, has no capacity to sue or be sued.¹⁹

In many states, however, school districts or boards or bodies of school officials may sue and be sued under statute expressly conferring on them corporate capacity or the capacity to sue and be sued; and a statute of such a nature applies to boards of education of cities or city school districts as well as to boards of county school districts.²⁰ Furthermore, in many jurisdictions, the statutes are held to have expressly or impliedly conferred on such organizations or authorities the capacity to sue and be sued. Such statutes are subject to court interpretation and it is often not necessary for exact enumeration of such corporate powers.²¹

Another concept applied in this country is that of the substitute

¹⁸Carter v. Lake City Baseball Club, 218 S.C. 255, 62 S.E. 2nd.

¹⁹Fernwood Rural Separate School District v. Universal Rural Separate School District, 170. Miss. 35, 154 So. 268.

Huron Independent School District Board of Education v. Whisman, 56 S.E. 472, 229 N.W. 522.

²⁰Hawkins v. State Board of Adjustment, 242 Ala. 547, 7 So. 2nd. Ex Parte Board of School Commissioners v. Mobile County, 230 Ala. 304, 161 So. 108.

²¹79 C.J.S. 315.

defendant clause usually introduced within a specific jurisdiction through a "save harmless" statute which requires that school districts reimburse teachers in the amount for which a judgment has been recovered against them for negligent acts performed while engaging in their professional duties. The third statutory trend, which, thus far, has received rather narrow acceptance removes the school districts within a state from the privilege of governmental immunity from suit. Within this latter category are such leading states in the educational field as Washington, California, and New York. These make provision through "save harmless" legislation for the protection of school district personnel from financial loss due to judgments against them.

Corporal Punishment

The term "corporal punishment" usually denotes whipping, spanking, or beating. The phrase, however, must be considered in a broader sense to include any unpermitted touching such as would constitute common law battery. Thus, the slapping of a child's hands or the shaking of said child would include the principal requirements of corporal punishment.²²

In the absence of a statutory enactment in the specific jurisdiction under consideration, common law restrictions upon the use of corporal punishment apply. Under the common law the force used must be reasonable.²³ Punishment that is disproportionate to the offense or unnecessary to compel obedience to a proper command is considered unreasonable. The

²²Remmelein, Madaline Kinter, The Law of Local Public School Administration, p. 211.

²³Ibid., p. 210.

punishment cannot be degrading or cause permanent harm. In order to determine if the punishment is excessive, the nature of the offense, the apparent motive of the pupil, the influence of his example upon the other children, and the age, sex and mental condition of the child are all subject to consideration.²⁴

New Jersey is the only state which by statute expressly prohibits the use of corporal punishment.²⁵ Many local school boards have rules that prohibit or set up procedure for administering corporal punishment, but these regulations are applicable locally only.²⁶ Nine states indirectly sanction the use of moderate and reasonable corporal punishment by making an exception in the definition of assault and battery when the use of force is by a teacher on a pupil.²⁷ Even in these nine states as well as in all other states in which there are no statutory provisions regarding corporal punishment, the teacher's legal rights rest upon the common-law principles. Under common law the teacher has the legal status of a conditionally privileged person standing in loco parentis to the pupil, which means that he stands in place of the parent in disciplinary matters. Therefore, unless there are statutory or regulatory provisions to the contrary, teachers may discipline their pupils by corporal punishment.²⁸

²⁴Ibid., p. 210.

²⁵N.J.S.A., Sec. 18:19-1.

²⁶National Education Association Research Division, The Teacher and the Law, p. 74.

²⁷Ibid., p. 74.

²⁸Remmelein, Madaline Kinter, op. cit., p. 209.

An excellent synopsis of the legal concept loco parentis is to be found in the encyclopedic Corpus Juris Secundum:

As a general rule a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge, and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as a teacher and accomplish the purposes of education, subject to such limitation and prohibitions as may be defined by legislative enactment. If nothing unreasonable is demanded, he has the right to direct how and when each pupil shall attend to his appropriate duties, and the manner in which a pupil shall demean himself.²⁹

Corpus Juris expertly ties the disciplinary privileges of educational personnel to the legal concept with these words:

As a general rule a school teacher, so far as it may be reasonable and necessary to the maintenance of the discipline and efficiency of the school, and to compel a compliance with reasonable rules and regulations, may inflict corporal punishment upon a pupil for insubordination, disobedience, or other misconduct. The infliction of corporal punishment by a teacher is largely within his discretion, but he must exercise sound discretion and judgment in determining the necessity for corporal punishment and the reasonableness thereof, under the varying circumstances of each particular case, and must adapt the punishment to the nature of the offense, and to the age and mental condition and personal attributes of the offending pupil, using an instrument suitable to the purpose, and, considering the circumstances and conditions of the particular offense and pupil, the punishment must not be inflicted with such force or in such manner as to cause it to be cruel or excessive, or wanton or malicious.³⁰

The parent has wider privilege in the discipline of his youngster than does the teacher since the teacher is limited to situations which fall within his jurisdiction and responsibility as a teacher. The

²⁹56 C.J.S. 1088.

³⁰56 C.J.S. 1100.

parent and the teacher who stands in loco parentis are both privileged to engage in certain conduct under certain circumstances and for certain purposes. This privilege includes physical chastisement or other forms of punishment if done for the purpose of enforcing reasonable discipline. If a teacher exceeds his limited privilege, he may become liable not only in a civil tort action, but also criminally liable to a charge of assault and battery.³¹

The power to inflict corporal punishment is delegated by the parent only to promote the child's welfare. The teacher's authority extends to all offenses which directly and immediately affect the decorum and morale of the school, including acts done away from the school premises. The privilege enjoyed by a public school teacher in regard to the use of force is limited to that reasonably necessary for the purpose to be accomplished. The teacher may be held liable if the punishment is excessive, malicious, or without proper cause. These factors are subject to the assumed action of "reasonable men" under the "same or similar circumstances."³² When a teacher uses excessive punishment he takes himself out of his privileged position in loco parentis, and stands as a stranger before the courts.³³

Teachers exceed the limits of their authority when they cause lasting mischief, but act within the limits of it when they inflict temporary pain.³⁴

³¹National Education Association Research Division, op. cit., p. 74.

³²Williams, J. Post, "Criminal and Civil Liabilities of Teachers," The American School Board Journal, 111:31, October, 1954.

³³Weltzin, Joachim F., The Legal Authority of the American Public School, p. 277.

³⁴Boyd v. State, 88 Ala. 169, 7 So. 268.

Ordinarily he is not liable for an error in judgment as to when and to what extent punishment is necessary. However, if the punishment is cruel or excessive and beyond that required by the circumstances, the master is liable for an assault, from which liability is not relieved by the fact that he acted in good faith and without malice.³⁵

If the punishment is not clearly excessive in the general judgment of reasonable men, the school teacher is not civilly liable for the infliction of same.³⁶ In inflicting punishment, the teacher may take into consideration the habitual disobedience of the pupil.³⁷

The punishment must be for some specific offense which the pupil has committed and which he knows for which he is being punished, commensurate with the offense, and not excessive. There must be reasonable ground for the punishment and said punishment must contain no malice.³⁸

A teacher is not justified in inflicting corporal punishment to enforce an unreasonable rule, to compel a pupil to pursue a study forbidden by his parent, or to compel him to do something which his parent has requested that he be excused from doing.³⁹

He must use an instrument suitable to the purpose, and, considering the circumstances and conditions of the particular offense and pupil, the punishment must not be inflicted with such force or in such a manner as to cause it to be cruel or excessive, wanton or malicious.⁴⁰

³⁵Fox v. People, 84 Ill. App. 270.

Fertich v. Michever, 111 Ind. 472, 11 NE. 605.

Melen v. McLaughlin, 176 Atl. 297, 5 C. J. 641, Note 38.

³⁶Patterson v. Nutter, 78 Maine 509, 7 Atl. 273, 57 Am. R. 818.

³⁷Sheehan v. Sturges, 53 Conn. 481, 2 Atl. 841.

³⁸State v. Mizner, 50 Iowa 145, 32 Am. R. 128.

³⁹State v. Vanderbuilt, 116 Ind. 11, 18 N.E. 266.

⁴⁰Berry v. Arnold School District., 199 Ark. 1118, 137 S.W. 2nd. 256.

There are times when an educator may use forms of corporal punishment which he believes will help maintain school or classroom discipline, but which courts find unreasonable or excessive. A teacher forcibly ejects an obstreperous child from the room, thus causing an injury; a teacher loses his temper and strikes a child with a book; a teacher throws a pencil at a daydreaming pupil; in all these cases the jury ruled in favor of the pupil. In coming to such decisions, the courts have held that the teacher may not have intended to harm the student but that he intended to perform the act which resulted in the injury and that this intention was sufficient to render him liable.⁴¹

Dean of the University of Wyoming School of Law, Robert R. Hamilton, has drawn up a set of rules which is intended as a guide to school personnel who find it necessary to inflict some form of corporal punishment.⁴²

1. Act from good faith, and not from malice or anger.
2. Inflict only moderate punishment.
3. Determine that the punishment is in proportion to the gravity of the offense.
4. Convince yourself that the contemplated punishment is not excessive, taking into account the age, sex, size and physical strength of the pupil to be punished.
5. Assume the responsibility that the rule you seek to enforce is reasonable.

It might be possible to summarize this section on corporal punishment with the concluding statement that it is best, if practical for school instructors to refrain from the use of any type of physical force

⁴¹Hamilton, Robert R., Legal Rights and Liabilities of Teachers, p. 34.

⁴²Hamilton, Robert R., "Teacher and Tort Liability," Illinois Education, 45:13, September, 1956.

except in their own protection.⁴³

Field Trips

A teacher, in embarking on a field trip, places himself in a perilous position in regard to tort liability. In taking a field trip the teacher must use much more care and caution than when merely engaging in a day of classroom instruction.

There are several safeguards which a teacher should follow before attempting to take pupils on a field trip:

1. It should be established that the board of education authorizes field trips of this type, and knowledge of the restrictions placed upon such trips should be gained.
2. The teacher should preview the trip to locate possible hazards and should notify the children of possible dangers in advance.
3. The proprietor of the establishment to be visited should be notified, so that he may prepare proper safeguards.
4. The teacher must anticipate what additional supervision will be required as a result of the unusual nature of the excursion.⁴⁴

If the previously stated safeguards are followed, the teacher places himself in a more defensible position should an injury occur.

The greatest danger in the area of the field trip is negligence. The teacher must use the same degree of caution that a careful parent would

⁴³Glenn, John E., "The Teacher and Tort Liability," New York Education, 44:204, December, 1956.

⁴⁴Glenn, John E., "Field Trips and Teacher Responsibility," New York State Education, 43:132, November, 1955.

show toward his children.⁴⁵ Most courts would use this definition in a liability case in determining if negligence had been present. Questions to which the court would look are:

1. What plans would a prudent person make prior to a trip of this nature?
2. For how many children would a prudent person assume the responsibility of assuring safety?
3. Would a prudent person visit the activity prior to the trip to ascertain the hazards?
4. What would a prudent person do to warn the children prior to the excursion of the possible hazards inherent therein?⁴⁶

It thus appears necessary that the teacher, in all instances, act as a prudent person if he is not to be held liable for the injury of a pupil. On the other hand, if the field trip is conducted with no compensation incurring therefrom, many courts will hold the teacher only to a very low standard of care and award damages only for gross negligence. Such gross negligence may be defined as the absence of even slight care in the performance of a duty. It would, therefore, be important in taking youngsters on a field trip whether such trip was part of the regular duties for which the educator was being compensated, in which case he might be held to the "highest standard of care," similar to that required of a common carrier, in providing for the safety of his charges.

Teachers should not feel secure in taking pupils on a field trip

⁴⁵Garber, Lee O., The Yearbook of School Law, 1953, p. 64.

⁴⁶Garber, Lee O., "Field Trips and Excursions," The Nation's Schools, 56:83, September, 1955.

merely because they have obtained written permission from the parents. A teacher can always be sued for negligence; only by statute can a teacher be released from such liability. A note of permission from a parent is not sufficient to erase an educator's legal responsibility for an injury caused by his negligent act or failure to act. The pupil cannot release the teacher, and the parent cannot waive the child's right to sue.⁴⁷ Therefore, a teacher must at all times be on guard against his or her own negligent acts.

⁴⁷Hodgdon, Daniel R., "Liability and the School Trip," The Clearing House, 17:433, March, 1943.

CHAPTER III

SUMMARY AND CONCLUSIONS

In the treatment of an injured pupil only that aid which a reasonable and prudent person would administer should be used by the teacher. Standing in loco parentis, it is mandatory for the teacher to administer aid of some type depending on the circumstances. But the teacher can be held liable for any further injury resulting from the attempt to give aid to the child.

The danger involved in bringing about a liability suit for injuries suffered by youngsters when such are used as personal messengers is so great that the practice should be abandoned. In this instance, not only is the teacher liable for his or her own negligence but also that of the pupil.

The teacher's status, in loco parentis, permits the use of corporal punishment, unless the use of said punishment has been specifically denied by statute or ruling. In using corporal punishment, however, only that amount which a reasonable and prudent person, under the circumstances would use, may be administered by the teacher. Corporal punishment should only be administered to maintain school and classroom decorum and not to teach the pupils a lesson. If it can be proven that the teacher was not reasonable and prudent in his action, he becomes liable for the resulting injuries.

In taking pupils on a field trip, the teacher must take all precautions that a reasonable and prudent person would take. The number of children, general plan of the trip, and system of adequate warning signals must all be considered by the educator prior to embarking on the trip. If

these precautions are not taken and an injury to a child results, the educator may be held liable for damages.

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