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ABSTRACT

In the absence of immunity, courts have held schools and school personnel liable for personal injury by a student with a disability that resulted from negligent failure to provide a reasonable safe environment, failure to warn of known hazards, or failure to provide adequate supervision. Case law is presented to demonstrate the extent that school districts owe greater responsibility for instruction and/or supervision of students with disabilities. After reviewing court cases involving student attacks on other students, lack of supervision of students with disabilities, sexual assaults by students with disabilities, and negligence, the paper discusses implications for school districts. It identifies four elements that must be present for negligence to occur: (1) duty to protect students from unreasonable risks; (2) breach by not exercising a reasonable standard of care; (3) causal connection between breach and injury; and (4) actual physical or mental injury resulting from negligence. The report discusses two tests that must be applied to determine the school's responsibility: "reasonable person" and "foreseeability." The report concludes that for students with disabilities, courts have held that the student's Individualized Education Program, nature of disability, and their needs are relevant factors in determining the reasonableness of supervision. (Contains 15 references.) (CR)

Running head: STUDENT INJURIES

School Liability: Student to Student Injuries
Involving Students with Disabilities

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Abstract

School districts in general owe a duty under traditional concepts of liability to provide for student's safety in school. In the absence of immunity, courts have held schools and school personnel liable for personal injury that resulted from negligent failure to provide a reasonably safe environment. Case law will be presented to demonstrate the extent that school districts owe greater responsibility for instruction and/or supervision for students with disabilities.

School Liability: Student to Student Injuries Involving Students with Disabilities

In the absence of immunity, courts have held schools and school personnel liable for personal injury that resulted from negligent failure to provide a reasonably safe environment, failure to warn of known hazards or to remove dangers where possible, or failure to provide adequate supervision. Case law will be presented to demonstrate the extent that school districts owe greater responsibility for instruction and/or supervision for students with disabilities.

In 1961, the decision in Ferraro v. Board of Education of the City of New York indicated that courts will hold school personnel liable if a student attacks and injures another student and the teacher could have prevented the injury. The teacher should have known that an attack or aggressive behavior was possible because the student had a long history of behavior problems. The student assaulted Ferraro in a junior high classroom and had assaulted his peers on a number of occasions. A substitute teacher was in charge of the class on the day of the assault. She had not been informed of the student's tendency to misbehave and attack other students. The court found the school negligent because they had not informed the substitute of the student's aggressive behavior toward others. In an analysis, the court reasoned that the substitute teacher could have prevented the assault if she had known of the student's propensity to be aggressive.

Supervision

Schools owe a duty of care to adequately supervise students under their care and will be held liable for foreseeable injuries that are proximately caused by lack of supervision. The school only has a duty to exercise the degree of care that a reasonably prudent parent exercises under similar circumstances. The Board of Education of Massena was denied a summary judgment motion when the court found a pattern of undisciplined, disruptive, and unruly behavior in a drawing class (Maynard v. Bd. of Ed.

of Massena School District, 1997). Sosville, a ninth grader, placed a pencil on a ruler, then pulled the ruler back, called Maynard's name and, when Maynard turned to him, shot the pencil at Maynard striking in his eye. The parents sued the school district and Sosville in a state court for personal injury, claiming that the district failed to maintain a safe environment and did not provide adequate supervision and discipline in the classroom. Evidence was provided showing that disruptive and unruly behaviors were common in the drawing class. On appeal to the New York Supreme Court, Appellate Division, the decision was affirmed.

A case was heard by federal district court in Pennsylvania in Cohen v. School District (1992). A special education student with learning disabilities, behavior problems and known violent tendencies was mainstreamed into a regular classroom without adequate supervision. The student attacked and injured another student. The parents of the injured student sued the school claiming that the injured student's rights had been violated. The court held that placing a student with problem behaviors in the general education setting was not unconstitutional. However, the placement may result in school officials being held liable if the officials knew that a student with disabilities was violent, and they placed the student in the general education classroom without adequate supervision.

In contrast, a 15 year-old with cognitive, emotional, and behavioral problems suffered severe head injuries as a result of wrestling with another student in a school hallway (Grooms v. Marlboro County School District, 1992). The student with problem behaviors was instructed by the principal to go to the janitor whenever he felt he was going to misbehave. In this instance, it was alleged that the janitor did not intervene and merely watched the students wrestle. On appeal, the court ruled that there were facts at issue and the trial court erred in giving summary judgment to the school district. The rationale provided by the court stated that the school personnel allowed the student "whose

judgment was impaired by the disability" to leave the classroom at will and report to a person who "did not have the level of expertise necessary" to deal with the student. This may have constituted gross negligence.

At least three courts have found the school negligent in supervision of students with disabilities when the students sexually assaulted other students. In J.N. by and through Hager v. Bellingham School District No. 501, (1994), a nine-year old fourth grade student with emotional disturbance sexually assaulted a first grader several times in the school restroom. The student with disabilities was expelled. The parents sued claiming negligent supervision. The trial court did not allow disclosure of the psychological assessment then granted summary judgment for the school district. On appeal the court said the school district had a duty to supervise and could be held liable if the injury was within " a general field of danger that should have been anticipated." The school district knew of the aggressive behavior of the student with disabilities and should have anticipated the possibility of injury to the victim. The trial court's decision was reversed.

In a second case of sexual assault, McMahan v. Crutchfield (1997), the school district paid to settle a lawsuit involving a student with disabilities who assaulted a five-year old girl. Crutchfield, who had mild to moderate mental disabilities and had a history of behavioral problems, was participating in a job-training program when the assault occurred. He had a history of assaultive behavior, and he needed to be under constant supervision. Crutchfield worked at a college cafeteria. One day a student brought her five-year-old daughter to the cafeteria. The girl went to the bathroom unescorted. Crutchfield, who was unsupervised, followed her, took her to the men's restroom, forced her head in the toilet, and began to strangle her. The girl was unconscious and had a long recovery. The school district admitted their liability and paid the girl's mother \$400,000. She sued the community college where the job training took place and they were found negligent in supervision.

Supervision was inadequate in Guidry v. Parish School Board when a male with mental retardation sexually assaulted a 19-year old girl with mental retardation. During a regularly scheduled break, the supervisor left and went to his office briefly. He noticed through the observation window that two boys were missing. He found one boy guarding a door while another was inside leaning over a student with his pants down. The trial court dismissed the claims of the guardian of the girl because they had failed to prove sexual intercourse had occurred. On appeal the appellate court reversed and found the school board negligent. The guardians only needed to prove harm and that was satisfied.

Immunity

Several cases illustrate that the school properly exercised discretion in deciding what type of supervision was required. Courts have decided similarly in cases involving students with disabilities as in those involving students without disabilities.

For example, Franks v. Union City Public Schools (1997) and Foley v. Taylor (1997) did not involve students with disabilities. In Franks, a high school student was hit by another student during a lunch break in an area that was unsupervised by school employees. In Foley, there was an altercation between two students in an unattended classroom. One student received a fractured skull. Authorities prosecuted the students. In both of the above cases, the state law was well settled in that the supervision of students by teachers was a discretionary act. The public officials were protected by qualified immunity when exercising their discretion.

In a significant case on sexual harassment, Davis v. Monroe County Board of Education (1997), the court dismissed the claim because Congress did not discuss student on student harassment during the consideration of the Title IX amendments. A student complained to her teacher of sexual harassment by a male student. The teacher

did not immediately notify the principal of harassment and did not change the seating assignments for months. The student was charged with sexual battery, however, the school district did not take action against him.

In a similar case, Stevens v. Umsted (1996), a visually impaired and developmentally disabled student was subjected to sexual assaults by other students in a residential setting. The court granted the superintendent's motion to dismiss the case based on qualified immunity. It observed that government entities and their employees have no affirmative constitutional duty to protect individuals from third party violence.

Standard of Care Met

Two selected cases highlight that the school met the standard of care and avoided potential negligence claims. In both cases, the students with disabilities were removed from a setting with regular education students when they posed a substantial risk of injury to others.

Lauren Light, who had moderate mental retardation and a history of aggressive behavior, was enrolled in a self-contained classroom (Light v. Parkway School District, 1994). She was included in regular classes for such subjects as art, PE, and computer lab. Two full-time staff, SPED teacher, and an assistant were assigned to her. Lauren had an average of 15 incidents of aggressive and disruptive behaviors per week. The IEP team in the Parkway School District requested that Lauren be removed to a different setting. Lauren hit a student in the face soon after and she was suspended for 10 days. The court granted the district an injunction removing Lauren from the middle school. The court ruled that keeping the current placement was "substantially likely" to result in injury

In 1994, the court in Clyde K. v Puyallup School District decided that inclusion into a regular classroom was a wrong call. Ryan, a 15-year old with Tourette's Syndrome and attention deficit hyperactivity disorder (ADHD) displayed increasingly disruptive behavior. He taunted other students, harassed female students with sexually explicit remarks,

insulted teachers, refused to follow directions, and assaulted students. The 9th Circuit ruled in favor of the school district's decision to remove Ryan to a segregated setting. The court stated that the assaults "are not incidents school officials can dismiss lightly; they have an obligation to ensure that students entrusted to them are kept out of harm's way." Furthermore, "while school officials have a statutory duty to ensure that disabled students receive an appropriate education, they are not required to sit on their hands when a disabled student's behavioral problems present both him and those around him from learning."

It is interesting to note that there is at least one case whereby the school district was found negligent when a student with a disability injured a visitor (Garufi v. School Board of Hillsborough County, 1993). A student with a long history of disciplinary problems struck a parent in the mouth as she walked down the school corridor to get her son's assignments. She sued the school board claiming breach of duty to protect her from a known or foreseeable threat of violence by the student. On appeal, the court established that School Boards are required to supervise students. School boards had a duty to protect from assaults by other students, assaults on teachers, and other school personnel. In this case, the School Board had a duty to protect parents and other visitors from reasonably foreseeable student attacks. The court of appeal reversed and remanded.

Another twist of liability occurred when a teacher sued a parent's insurance company for negligence because of injury by their ADHD child (Nieuwendorp v. American Family Ins. Co., 1995). The parents took their child off Dexedrine for hyperactivity without consulting the psychologist, teachers, or any special education staff. The student became disruptive. Then one day he pulled a teacher's hair, causing her to fall down a flight of stairs and suffer a herniated disc. The teacher sued the parents and their homeowner's insurance alleging that the parent were negligent in failing to inform

anyone at the school that had had removed the student from medication. On appeal to the Supreme Court of Wisconsin, the parents were found negligent in failing to control the student, and their negligence was a substantial factor in causing the teacher's injuries.

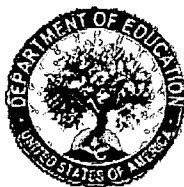
Implications for School Districts

School districts in general owe a duty under traditional concepts of liability to provide for students' safety in school. The four elements that must be present for negligence to occur are: 1) duty to protect students from unreasonable risks, 2) breach by not exercising a reasonable standard of care, 3) causal connection between breach and injury, and 4) actual physical or mental injury resulting from negligence (Mawdsley, 2000; Yell, 1999).

Two tests must be applied to determine the schools responsibility. These two tests are "reasonable person" and "foreseeability". In negligence cases, courts will look at how a reasonable teacher in a similar situation would have acted. Factors that may be taken into consideration are the training and experience of the teacher, student's age and disability, type of activity, and the environment in which the injury occurs. For students with disabilities, courts have held that the student's IEP, nature of disability, and their needs are relevant factors in determining the reasonableness of supervision. In addition, teachers, school officials, and schools may have a heightened standard of care for students with disabilities, especially students with cognitive disabilities and problem behaviors.

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