

### NSBA's *Leadership Insider* additional resources

Schimmel, D. & Militello, M. (2009). The dangers of not knowing: Why your teachers should be legally literate. *NSBA's Leadership Insider*.

Below we provide two on-line resources in association with our "Dangers of not knowing" article.

1. A **bibliography** to publications and additional on-line legal resources.
2. A **prototype lesson plan** designed for use by school principals with their teachers. We are currently creating a set of 10 such lesson plans for a forthcoming book by Schimmel, Eckes, & Militello (Corwin Press) tentatively titled, "Principal as Chief Law Instructor: Ten Lesson Plans for Teacher Legal Literacy." The lessons will cover a variety of legal topics including: Teacher Academic Freedom, Student Freedom of Expression, Harassment and Bullying, and Liability for Student Injury. In this on-line resource we provide our current draft of a lesson plan on teacher liability for student injury. We welcome you comments on the lesson plan. We invite your comments and suggestions.

#### ***Send correspondence to:***

David Schimmel, Professor, University of Massachusetts at Amherst  
[schimmel@educ.umass.edu](mailto:schimmel@educ.umass.edu)

Suzanne Eckes, Assistant Professor, Indiana University  
[seckes@indiana.edu](mailto:seckes@indiana.edu)

Matt Militello, Assistant Professor, North Carolina State University  
[matt\\_militello@ncsu.edu](mailto:matt_militello@ncsu.edu)

## Educational Law Resources

### ***School Law Books***

Alexander, K. & Alexander, M.D. (2003). *The law of schools, students and teachers in a nutshell* (3<sup>rd</sup> ed.). St. Paul, MN: West Group.

Bloomfield, C. (2007). *American public law education*. New York: Peter Lang Publishing.

Cambron-McCabe, N., McCarthy, M., & Thomas, S. (2004). *Public school law: Teachers' and students' rights* (5<sup>th</sup> ed.). Boston: Pearson/Allyn Bacon.

Dunklee, D. & Shoop, R. (2006). *The principal's quick-reference guide to school law: Reducing liability, litigation, and other potential legal tangles*. Thousand Oaks, CA: Corwin Press.

Essex, N. L. (2006). *School law*. Boston: Pearson.

Fischer, L., Schimmel, D., & Stellman, L. (2007). *Teachers and the law* (7th ed.). Boston: Allyn and Bacon.

Imber, M., & Van Geel, T. (2005). *A teacher's guide to education law* (3rd ed.). Mahwah, NJ: Lawrence Erlbaum.

McCarthy, M., Cambron-McCabe, N., & Thomas, S. (2004). *Legal rights of teachers and students*. Boston: Pearson.

Schimmel, D., Fischer, L., & Stellman, L. (2008). *School law: What every teacher needs to know*. Boston: Allyn and Bacon.

### ***Other References***

Bon, S., Schimmel, D., Eckes, S., & Militello, M. (2008). School law for teachers: What every preservice teacher should know. *Education Law Association Notes*. 43(2), 18, 20.

Eberwein, H. J. (2008). *Raising legal literacy in public schools, a call for principal leadership: A national study of secondary principals' knowledge of public school law*. Unpublished Dissertation. Amherst, MA: University of Massachusetts at Amherst.

Gullatt, D., & Tollett, J. (1997). Educational law: A requisite course for preservice an inservice teacher education program. *Journal of Teacher Education*, 48(2), 129-135.

- Militello, M. & Schimmel, D. (2008). The principal as law instructor: A lesson plan for reducing your teachers' fear of liability. *Principal View*, 23 (1). 8-11.  
<http://mespa.org/publications/principal.html>.
- Militello, M. & Schimmel, D. (2008). Toward universal legal literacy in American schools. *Action in Teacher Education*. 30(2), 98-106.
- Schimmel, D., & Militello, M. (2007). Legal literacy for teachers: A neglected responsibility. *Harvard Educational Review*, 77(2), 257-284.
- Schimmel, D. (2006). Classroom management, discipline, and the law: Clarifying confusions about students' rights and teachers' authority. In Evertson, C. & Weinstein, C. (Eds.). *Handbook of classroom management* (pp. 1005-1019). Mahwah, NJ: Erlbaum.
- Schimmel, D. & Militello, M. (2008). Legal literacy for teachers. *Principal Leadership*. 9(4). 54-58.
- Schimmel, D. & Militello, M. (2008). The principal as law instructor: A lesson plan for reducing your teachers' fear of liability. *Principal Leadership On-Line Resources*.  
<http://principals.org/declpresources>.
- Teacher Liability Protection Act, 20 U.S.C., 6731-6769, 2001.
- Underwood, J., & Noffke, J. (1990). Good news. The litigation scales are tipping in your favor. *Executive Educator*, 12(3), 16-20.
- Zirkel, P. A. (2006). The Effect of Law on Education: The Common Ungoodness of Paralyzing Fear? *Journal of Law and Education*, 35(4), 461-495.

### ***On-Line Resources***

Education Law Association's *School Law Reporter*

<http://www.educationlaw.org>

View a recent issue at:

<http://www.educationlaw.org/images/PDFs/2007/July07SLR.pdf>

Education Law Association's *ELA Notes*

<http://www.educationlaw.org>

View a recent issue at:

<http://www.educationlaw.org/images/PDFs/2007/July07ELANotes.pdf>

National School Board Association's *Legal Clips*

<http://www.nsba.org/LegalClips>

National Association of Secondary School Principals A *Legal Memorandum*

[http://www.principals.org/s\\_nassp/sec\\_inside.asp?CID=46&DID=46](http://www.principals.org/s_nassp/sec_inside.asp?CID=46&DID=46)

National Association of Secondary School Principals *On-Line Law Guide*

[http://www.principals.org/s\\_nassp/sec\\_inside.asp?CID=1632&DID=58566](http://www.principals.org/s_nassp/sec_inside.asp?CID=1632&DID=58566)



## Legal Lesson Plan for School Principals to Use in In-service/Professional Development Sessions

### Liability for Student Injuries: Protecting Your Teachers, Your Pupils and Your School

#### Background on the Issue

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

This lesson will clarify many of these confusions and misunderstandings. It will outline what an injured student has to prove to hold teachers or schools liable for their injuries. These principles are part of the law of torts. **Torts** are civil (as contrasted with criminal) wrongs and are primarily an area of state law, rather than law made by the federal government.

Tort law imposes a **duty of care** on educators. This means that educators must use **reasonable care** not to injure their students and to protect their students from **foreseeable dangers**. If educators fail to use reasonable care, they are considered **negligent**. If their negligence is the cause of a student's injury, they or their school may be held liable in money **damages** to compensate the student for his or her injuries. To determine whether an educator is negligent, courts ask if he or she acted as a **reasonably prudent educator (RPE)** should have acted under the circumstances. If a teacher did act as a RPE should have under the circumstances, the teacher is not negligent. If circumstances are more dangerous or students are younger, closer supervision and/or clearer instructions are required.

If an injured student was also negligent, courts in most states will apply the standard of **comparative negligence**. In other words, courts will compare the student's negligence with the negligence of the educator, and they will reduce the award to the injured student proportionate to his or her negligence. If students are very young, courts will not allow evidence of their negligence. However, older students are expected to act as a reasonably prudent student should have acted under the circumstances.

One outcome of this lesson is that it will enable teachers and administrators to have a common understanding of the law that applies to student injuries and would enable them to collaborate in practicing preventive law. As practitioners of preventive law, they will be able to protect themselves, their students and their schools.

In sum, the basic standards - that educators have a duty to act with reasonable care, that they are negligent if they fail to do so and that they can be held liable if their negligence causes injury - apply in all states. These basic standards are relatively easy to understand and with practice in applying these standards, teachers and principals can anticipate and prevent problems that can lead to lawsuits.

**Activator**  
**Motivator**  
**LESSON PLAN**

Individually (or in small groups) ask participants to indicate whether they think educators can be held liable for student injuries in the following cases.

Hypothetical Cases	Is the Teacher Liable?		
CASE #1: As a result of Mr. Big's breaking up a fight in the hallway, one of the students hits head on the floor and has a serious concussion	YES	NO	Don't Know
CASE #2: After a play rehearsal, Mrs. Care gives a student a ride home without parental permission, and the student is injured, but not because of the teacher's negligence.	YES	NO	Don't Know
CASE #3: Although Mr. Carefree is supposed to be on duty in the gym at 1 pm, he drinks another cup of coffee in the teachers' room until 1:15 before strolling to the gym. During this time, a high school student is seriously injured when he bumps heads with a classmate while jumping for a rebound during a friendly basketball game.	YES	NO	Don't Know
CASE #4: Miss Busy leaves her class for 10 minutes to duplicate science worksheets. She tells the students to work quietly while she is gone. When she leaves, some students begin to throw spitballs, pencils and paper planes. After 6 or 7 minutes, a girl is struck by a pencil and blinded in one eye.	YES	NO	Don't Know
CASE #5: As the bus was leaving the high school on a field trip, 16 year old Flo Friendly suddenly reached out of the window to waive at a friend and broke her arm when it hit a	YES	NO	Don't Know

Hypothetical Cases	Is the Teacher Liable?		
lamppost. She sued teacher Tripper for failing to adequately supervise and for not warning students not to open the bus windows.			
CASE #6: Instead of observing the students when she was on playground duty, Mrs. Lesscare was gossiping with another teacher. During this time, Sue Sadly, ran for a ball, tripped, fell on her face, broke 3 teeth, and received 6 stitches.	YES	NO	Don't Know
CASE #7: Despite repeated warnings to Bob Bobbing to stay in his seat, he continued to jump out of his seat, disrupt the class and perhaps injure himself. As a result, teacher Strictman puts a restraining hand on Bob's shoulder against the advice of his colleagues to never touch a student.	YES	NO	Don't Know



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

**Goals:**

- 1) To understand what an injured student must prove in order to hold teachers and/or schools liable.
- 2) To understand and be able to apply the “reasonably prudent teacher” standard in order to “practice preventive law.”
- 3) To understand how insurance as well as state and federal laws might protect educators from personal liability.
- 4) To understand the similarities and differences between legal duties and school policies.

# Legal Content

## LESSON PLAN

In considering whether to hold teachers and/or schools liable for a student's injuries, judges would ask 5 questions:

### 1. Was there a duty of care?

Educators have a duty not to injure their students and to protect them from known or foreseeable dangers.

### 2. Was there negligence?

Teachers are negligent when they fail to act as a hypothetical *reasonably prudent teacher* (RPT) should have acted under the circumstances. If they do act as a RPT under the circumstances, they are not negligent. When circumstances are more dangerous (e.g., on field trips, in chemistry class, or when working with young children), a reasonably prudent teacher should provide clearer warnings and closer supervision.

### 3. Did the negligence cause the injury?

The plaintiff (or injured student) must prove not only that the defendant teacher who is being sued is negligent but also that the negligence was the proximate cause of the injury. (Plaintiffs usually sue for a dollar amount for medical expenses, lost wages, and/or pain and suffering to compensate them for the injury.)

### 4. Was there contributory negligence?

Adults and most high school students are expected to exercise ordinary care and not to expose themselves to known or obvious dangers. Therefore, in most states, if an injured person's own negligence contributed to her injury, courts would usually reduce the amount of the dollar award to the injured person in proportion to her negligence. This is known as *comparative negligence*. For example, an older student might have her award reduced by 40% if the judge concluded that she was 40% responsible for her own injury. However, in all states different standards apply to children. Generally, children under the age of 7 cannot be charged with contributory negligence. Children between 7 and 14 are presumed incapable of contributory negligence. And beyond the age of 14, students are

expected to act as reasonably prudent students of their age and maturity should act under the circumstances.

### 5. Am I personally liable or do I have any protections?

Teachers who belong to organizations such as the National Education Association or the American Federation of Teachers, are provided liability insurance as part of their union dues (usually \$1,000,000) for negligence claims that might be made against them. This policy costs the NEA less than \$20 per year. Since the premium is based on the likelihood of being sued, this indicates that the chances of a teacher being held liable for a student's injury is extremely low. In addition, many school districts also provide liability insurance for their employees.



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Participant activity. In small groups of 3-5, participants will return to discuss the hypothetical cases that they considered at the start of this session. The goal is to determine whether it is likely that the teachers in the scenarios would or would not be held liable by applying the principles we have explained to the facts of the cases. That is, in each case we would ask:

1. Was there a duty of care?
2. Was the teacher negligent? i.e., Did the teacher fail to act as a reasonably prudent teacher should have under the circumstances?
3. Did the teacher's negligence cause the injury?
4. If so, was there contributory negligence that might reduce the award to the plaintiff?

After the small groups report the results of their discussion of the cases, the principal can use the following answers to summarize and clarify how the principles of law would likely apply.

Case	Result
Case #1	Mr. Big has a duty to protect students from being injured. If, pursuant to that duty, he tries to break-up a fight, and he unintentionally injures

	<p>a student, he probably would not be held liable for the student's injury. This is because a teacher who uses reasonable force to protect himself or a student is not negligent even if a student is injured in the process. Furthermore, even if the teacher was negligent, some state laws and the federal Teacher Liability Protection Act would probably protect him from liability if his action was carried out to "maintain order or control in the classroom."<sup>5</sup></p>
Case #2	<p>Mrs. Care cannot be held liable for the student's injuries if they were not caused by her negligence. The fact that Mrs. Care did not have a parent's permission may or may not have violated a school policy. But even if Mrs. Care did violate school policy (or administrative advice), this would not make her a negligent driver, and if she was not a negligent driver, she cannot be held liable for the student's injury.</p>
Case #3	<p>In this case, Mr. Carefree cannot be held liable for the student's injury. By drinking coffee when he should have been supervising the gym, Mr. Carefree was negligent and violated his contractual duties. But if bumping heads in a friendly game is an accident that would not have been prevented even if a reasonably prudent teacher would have been present, then Carefree would not be liable for the injury because his negligent absence was not the cause of the accident. Carefree should be disciplined for not being on duty when he should have been supervising the students. But he could only be held liable if the facts of the case were different and the injured student could have proven that a teacher's presence would have prevented the injury.</p>
Case #4	<p>Miss Busy would probably be held liable for the injury of the blinded student. Miss Busy had a duty to protect her students from injuries caused by other students when such injuries could have been prevented by reasonable supervision. If, under the circumstances of this case, a reasonably prudent teacher would not have left the classroom unattended for 10 minutes, then Busy was negligent for doing so. And if a reasonably careful teacher would have stopped the students' misconduct before it caused the injury, then a judge or jury could conclude that Busy's negligence caused the injury.</p>
Case #5	<p>In this case it is doubtful that Mr. Tripper would be held liable since a judge or jury would probably conclude that Miss Friendly was negligent in failing to act as a reasonably prudent high school student should have under the circumstances. High school students have a duty to exercise ordinary care and not to expose themselves to obvious dangers. Even if Mr. Tripper was not watching Miss Friendly when she suddenly reached out of the bus, her negligent behavior was the proximate cause of the injury – not the action or inaction of Mr. Tripper.</p>
Case #6	<p>Mrs. Lesscare was negligent for not paying attention to the students when she was on playground duty and perhaps should be disciplined for her failure to carry out her duty of care. But she could not be liable for the injury to Sue (which was an accident that was caused by her</p>

	running) if it would not have been prevented if Lesscare was supervising and not gossiping.
Case #7	Mr. Strictman may have ignored the advice of his colleagues, but this does not mean he could be held liable for preventing Bob from repeatedly jumping out of his seat and disrupting the class. Although many educators tell teachers, “never touch a student,” this is overly broad advice and in some situations is poor advice. Certainly sexual touches of students by teachers is always illegal. But there are many situations where the law permits teachers to use reasonable force to protect themselves or their students and use reasonable restraint to enforce discipline. In fact, the purpose of the Teacher Liability Protection Act is to protect teachers from frivolous lawsuits and the fear of liability for their reasonable actions to maintain order in their classrooms.

## Questions

## Answers

### LESSON PLAN

1. Are teachers liable for ANY injury that occurs if they leave their classroom unattended?

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

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

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

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

Not necessarily. It depends on the circumstances. For example, a female teacher has no duty to physically intervene in a fist-fight between 2 high school students and risk injury. In many situations, teachers simply have the duty to seek help when circumstances are beyond their control.

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

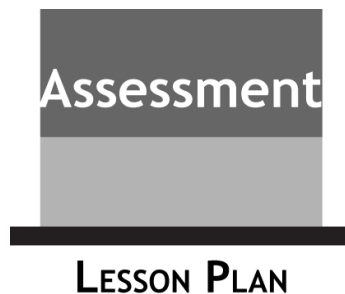
Teachers would be covered by their medical insurance for short and long-term disability as well as workman's compensation for a serious injury.

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

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

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

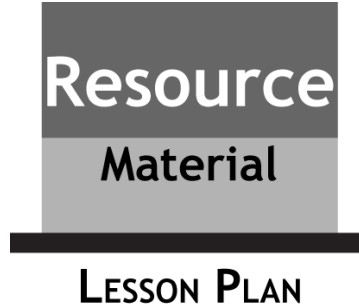
Not necessarily. In many states, courts construe such waivers very strictly or rule that waivers of responsibility in school activities are against public policy. In a few states, such as Massachusetts, courts uphold waivers in extra-curricular activities – especially those that students and parents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



One way to assess student understanding is to ask them to apply the legal principles they learned to 2 or 3 of the following variations of the cases we have discussed.

1. While Mr. Carefree was having coffee instead of supervising the gym, some of the students started a rough basketball game that included pushing, elbowing and cursing. After 10 minutes of increasingly unsportsmanlike conduct, one of the students intentionally tripped another player who was seriously injured just as Mr. Carefree entered the gym. Is the teacher liable? Why or why not?
2. Just before Miss Busy returned to her classroom after duplicating worksheets for 10 minutes, a student threw a baseball from the playground that shattered a window and sprayed glass that blinded one student's eye. Is the teacher liable?

Note: In these cases, Mr. Carefree would be liable and Miss Busy would not be.

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**Resource**  
**Material**  
**LESSON PLAN**

This section *will* include references to the most widely used texts for teachers that discuss liability for student injury.

### **Final Thoughts**

As we have noted, there is little chance of reasonably prudent teachers being held personally liable for student injuries. However, knowing this will not make competent teachers less careful. Instead, this knowledge should:

- 1) Reduce misinformation and misunderstanding about teacher liability,
- 2) Enable teachers to enforce reasonable discipline and order without unfounded fear, and
- 3) Enable teachers to collaborate with their principals and colleagues in applying the “reasonably prudent teacher” standard to issues of supervision and safety. As a result of this knowledge, teachers will be less likely to view law as a source of anxiety, and instead feel empowered to be practitioners of preventive law when confronting legal issues.