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Key Legal Issues for Schools: The Ultimate Resource for School Business Officials

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EIGHT

Negligence

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A major challenge facing educators, whether at the building or district level, is how to create and maintain safe, risk-free learning environments for students. Whether students are in class, playing in school yards, or participating in extracurricular activities, educators worry about the risk of liability for injuries that children suffer if they breach their duty to protect the youngsters from unreasonable risks of harm.

The task of insulating educators and their school systems from liability is certainly daunting. Yet, awareness of the principles constituting the legal duty to supervise students properly and the defenses to the tort of negligence can go a long way toward protecting school boards and their personnel. Insofar as negligence can result in potentially costly litigation, school business officials (SBOs), their boards, and other educational leaders can help to protect themselves and their systems by familiarizing themselves with the basic elements of this important topic.

Negligence is a common law tort, meaning that it is typically rooted in case law and depends heavily on the facts of specific situations, often involving fault when the unintentional conduct of individuals breaches their duty of care and causes injuries to others. In school settings, boards and their employees have a duty to protect students, visitors, staff, and others from reasonably foreseeable risks of harm.

The duty of educators to supervise students, in particular, aside, neither boards nor teachers are insurers of student safety since most injuries in schools arise from accidents such as where children were unintentionally injured while playing soccer,[1] dodgeball,[2] or field hockey[3] during physical education class. Even so, educators are not insurers of student safety since most injuries in schools derive from what the law calls unavoidable, or pure, accidents, meaning those for which no legal fault lies and for which they cannot reasonably be expected to supervise and control students continuously.[4]

For school boards or their employees to be liable for negligence, injured parties must prove that educators failed to meet the elements of negligence: duty and the related concept of foreseeability, breach, injury, and causation. Insofar as duty and breach involve the largest part of negligence claims, they receive the lion's share of attention in this chapter. Further, for plaintiffs to prevail, education officials must not have been able to assert a defense such as immunity, assumption of risk, and or contributory/comparative negligence, which can help to reduce, or even eliminate, liability.

In reviewing the elements of negligence it is important to realize that, since they are not mutually exclusive, any number of the cases discussed herein can be used to demonstrate multiple points of law. Moreover, since, as noted, the facts are essential in deciding whether a party was negligent, the following discussion and use of exemplary cases that best represent the issues in dispute, regardless of when they were litigated, help to illustrate some of the wide array of issues that arise in school settings.[5]

ELEMENTS OF NEGLIGENCE

Duty

In the law of negligence, absent the existence of legal relationships, individuals have no duty to act. Put another way, no relationship, no duty. It is thus important to recognize, when a sufficient relationship is present, individuals have a duty to act. In this regard, educators who act within the scope of their duties, whether in classrooms, at other schools in their districts, or as part of cocurricular or extracurricular activities, on campus or off, have a duty to assist all students in a group even if they do not know individuals or children personally. This duty arises based on educators' legal relationships with their school boards and is not limited to children (or others) from the building where they work. Given the significance of the element of duty, it is safe to say that most negligence cases can be viewed in the broad context of adequacy of supervision. Insofar as adequate student supervision should prevent injuries from reasonably foreseeable dangers, all activities must be supervised depending on such factors as their nature and the ages of the children involved.

Once the law recognizes the existence of legal relationships, educators have the duty to anticipate reasonably foreseeable injuries or risks to students and take reasonable steps to try to protect them from harm. In acknowledging foreseeability as a highly flexible concept that varies based on students' ages and physical conditions as well as the degrees of danger inherent in situations, the law does not expect educators to foresee all harm that might befall children. Rather, educators are responsible for only those mishaps that can reasonably be anticipated or of which they are actually aware.

If educators at the building level take reasonable precautions but intervening acts that could not have been foreseen occur, then they are unlikely to be liable. For example, where teachers in New York could not have anticipated that students were going to pull chairs out from peers as they attempted to sit down, courts have refused to impose liability.[6] Other courts refused to render boards liable for such unanticipated events as when a student in Mississippi slipped and was injured during a classroom skit[7] and when spontaneous fighting erupted between students in New York[8] unless one child was clearly the aggressor and school officials failed to intervene as happened in another case from New York.[9] Still, depending on the circumstances, not all courts agree on whether boards should be liable if children are injured while using playground equipment.[10]

While the requisite level of supervision may decrease before the opening of a school day and after students are dismissed, once officials know, or should know, that children are present, they must act to ensure their safety. For instance, where a principal was aware that students were playing football before classes began because he directed them to do so in the specific location where a child was injured, the supreme court of Idaho held that a trial was necessary to consider whether he breached his duty to supervise the children.[11]

On the other hand, where a child called his mother on a cell phone as he left school and she waved to him from across the road, an appellate court in New York affirmed that

the board was not liable when he was struck by a vehicle as he attempted to cross in the middle of a block, under her direction, rather than at a designated, supervised location on school grounds.[12] The court pointed out that insofar as the board did not owe a custodial duty of care to the student, it could not be liable for his injuries. Earlier, the supreme court of Kansas affirmed that a board was not liable for injuries that a child sustained when he was struck by a car after being chased off of school grounds by a peer before classes started.[13] The court agreed that the board could not be liable absent evidence that officials affirmatively assumed a duty to protect or supervise the child before classes began since he was not in their custody or control.

Admittedly older, but still good, cases stand for the proposition that boards are not always liable for "flying" objects in and around schools. Accordingly, where a child was struck in the eye by a paper clip that a classmate shot from a rubber band, the supreme court of New Jersey found that the principal was liable for his injuries.[14] The court noted that insofar as the principal was at school but had not set rules for children as they gathered before starting classes, had not assigned teachers or others to assist him in supervising the children at that time, and was not looking after the students when the accident took place, he was liable.

The supreme court of Wyoming reached the opposite result in deciding that neither a school board nor a teacher's aide was liable where a seven-year-old was partially blinded by a small rock thrown by a peer that bounced off a larger rock while they were at recess.[15] The court observed that, since the teacher's aide who was supervising the playground where the accident occurred walked by the students approximately thirty seconds before the accident took place but did not see anything out of the ordinary and the injury was not foreseeable, neither she nor the board was responsible. Similarly, an appellate court in Ohio affirmed that a board was not liable for a first grader's injuries after he was struck in the eye by a dirt ball thrown by a fourth grader since the older child's action was not foreseeable.[16]

In a case involving sports in which a sixteen-year-old female high school football player suffered serious internal injuries as a result of being tackled cleanly by a player from the other team, she and her mother sued their school board for negligent supervision.[17] Even in conceding that the student suffered serious injuries, an appellate court in Maryland affirmed that the board did not have a duty to warn the student or her mother of the obvious risks posed by her voluntary participation in interscholastic football because the foreseeable risk of injury was normal and obvious.

As violence continues in and around schools, parties are increasingly filing suit in attempts to render boards and educational officials liable for student deaths and injuries. By way of illustration, the tragic shootings at Columbine (Colorado) High School in April 1999 that left fifteen people dead, including a teacher and the two students who undertook the rampage, and injured others, gave rise to a series of unsuccessful lawsuits against the board and other public officials.[18]

Two other cases illustrate the types of issues that educators face with regard to violence in and around schools. In Louisiana, the mother of a student who was shot and killed in a parking lot after a school-sponsored dance sued the board and the club where the event occurred over an alleged lack of security. An appellate court ruled that the board had not breached its duty of care since officials lacked the requisite degree of foreseeability that would have imposed a duty on them to provide additional security in the parking lot.[19] The court also explained that the club owner was not liable for the student's death since there was only slight foreseeability and gravity of harm from the criminal acts of a third party in the parking lot. In a similar vein, where a student was shot by an unknown assailant while leaving a dance at his high school cafeteria, an appellate court in New York affirmed a grant of summary judgment in favor of a board in his suit,

which sought to recover for his injuries.[20] The court agreed that the student's claim of inadequate supervision lacked merit since officials could not reasonably have foreseen that the shooting would take place.

In the first of a pair of tragic cases, when a high school student with a history of truancy and drug abuse returned to school following a visit to the doctor but did not check back in, she was subsequently murdered in a premeditated act after she left campus without permission. The supreme court of Vermont, in the face of a wrongful death action filed by the deceased student's mother, affirmed a grant of summary judgment in favor of school officials.[21] The court thought that insofar as educators lacked the requisite notice or knowledge of the student's premeditated murder, it was not within the realm of foreseeable actions for which they could be liable. In like fashion, the supreme court of Idaho affirmed the dismissal of charges in a case where a high school student was shot and killed by two of her male peers.[22] The court agreed that insofar as the risk of harm that the males presented to the deceased female was not foreseeable, the board did not have a duty to protect her from the shooting, which took place at night and off school grounds.

Breach

There are two important elements that must be taken into account when considering whether educators breached their duty of care. The first relates to the fact that educators can breach their duties in one of two ways. First, they can breach their duty by not acting when there is a duty to act; this is referred to as nonfeasance. Second, educators can breach their duty by failing to act properly when there is a duty to act; this is known as misfeasance. In addition, where educators act improperly or with evil intent, they commit malfeasance, more properly an intentional tort that is mentioned here because it sounds much like the names of the negligence torts, as in cases involving sexual misconduct with students. Further, if school officials are aware that employees are failing to meet their responsibilities, whether due to nonfeasance, misfeasance, or, for that matter, malfeasance, then they, and their boards, may be liable for the tortious conduct of staff members.

The second major consideration under breach is the standard of care that educators must follow. In evaluating whether individuals have met the requisite level of care, courts have adopted a common law standard of reasonableness. Courts typically instruct juries to consider the behavior of school personnel in light of the legal fiction known as the reasonable person, also known as the reasonably prudent person. While stopping short of establishing a clear hierarchy, based on education and years of experience working with children, a reasonable teacher is likely to be expected to provide a higher standard of care than a reasonable person but not to the same level as a reasonable parent. In other words, courts have tried to create an objective standard that requires teachers to provide the same level of care as reasonably prudent professionals based on equivalent age, training, education, experience, maturity, and other relevant characteristics.

A sports case illustrates the significance of applying the proper standard in negligence cases. When a high school football player who was being considered for an athletic scholarship to college broke his neck while correctly executing a block, the New York's highest court declared that the coach should not have been judged under the same standard of care as a reasonably prudent parent and that he satisfied the less-demanding standard of ordinary reasonable care associated with educators.[23] Moreover, the court declared that insofar as the student voluntarily participated in the game, the coach could rely on the assumption of risk defense to avoid liability.[24]

In another football game involving an injury, a high school player sued his school board and others after his coaches, both of whom had teaching certificates and coaching endorsements, allowed him to return to a game in which he had suffered a head injury.

The supreme court of Nebraska held that the proper standard of care for the coaches was that of a reasonably prudent person with a teaching certificate and coaching endorsement rather than the lower standard of the reasonable person who did not possess such credentials.[25] The court explained that since coaches with coaching endorsements received specialized training in athletic injuries, including head injuries, they should have met the heightened standard of care. The court remanded for a determination of whether they acted in accord with this higher standard, but there are no further reports of litigation in this controversy.

Injury

For aggrieved parties to prevail, injuries must be those for which compensation can be awarded. For instance, if a student who was running through a school hallway slipped and fell on water that leaked from a drinking fountain and that had been accumulating on the floor for some time, three factors would come into play. The first question is whether school officials had a duty to keep the floor safe and clean. Assuming the obvious, that officials had such a duty, the related question of foreseeability comes into play. To the extent that officials should have foreseen that such an incident could have occurred, they should have had it cleaned up reasonably quickly. Second, the issue of the duty by school officials and possible breach, in terms of supervising the area, must be reviewed. The third concern focuses on the nature of the child's injuries. If the student's only injury was a wet pair of pants, then it is highly unlikely that his claim will proceed. However, if the child broke his leg on falling, then there is a greater likelihood that this may be deemed an injury for which compensation can be awarded.

To the extent that the existence of a physical harm is present in most of the cases discussed in this section, one additional, unusual case from Louisiana exemplifies causation by illustrating the nature of an injury. An appellate court affirmed that a school board was liable for the emotional injuries that a kindergarten-aged child suffered when a physical education teacher told him that he hanged his friends with a jump rope.[26] The court agreed that in light of evidence that revealed that the child was a well-adjusted five-year-old before the teacher pretended to have hanged his friends, he and his parents were entitled to remuneration for his injuries.

Causation

The final element in establishing liability for negligence is that school personnel must be the legal, or proximate cause, of the injuries brought about by their breaches. This means that as situations evolve, the last person or persons in a temporal chain of events who could have acted to prevent injuries from occurring are typically considered as at least contributing to the legal cause.

Two cases from New York illustrate judicial reasoning in this regard. As two middle school students engaged in physical play during recess, shortly after they stopped doing so, one child threw a stick and injured the eye of the other. When parents filed a negligence claim, an appellate court ruled that since there was insufficient actual or constructive notice of dangerous conduct that such an injury would have occurred, educators did not breach their duty of adequate supervision.[27] The court added that any negligence on the part of educators did not proximately cause the student's injury because the time span between the fight and the stick-throwing incident was so short that greater supervision could not have prevented the injury. The court also noted that the student's supervisory negligence claim was without merit since he was a willing participant in the incident.

At issue in New York was whether a board was at fault in a case filed by a high school student who was assaulted in school after school hours by a former student. An appellate court in New York maintained that the board was not liable absent evidence that the attack was foreseeable.[28] The court posited not only that, although there were previous trespassing incidents by former students after school hours, none involved physical violence against students but also that any negligence by the school officials was not the proximate cause of the students' injuries.

Off of School Grounds

The duty to supervise students on school grounds is clear. Amid efforts to extend the scope of duty beyond school grounds, it is important to emphasize that the common law sets the duty of school officials as coextensive with their physical custody and control over children.

When boards provide transportation for children, they extend their boundaries via the bus to the bus stops where students board and leave their buses.[29] As can be expected, the use of school buses to transport students has generated a fair amount of litigation. As noted in chapter 5, on transportation, as long as bus stops are not located in unreasonably dangerous places, boards are unlikely to be liable for injuries to children that occur there.[30] Further, boards have no duty to ensure that students reach designated bus stops safely prior to the arrival of school buses,[31] and, as long as the distance from their homes is reasonable, children can be required to walk to bus stops.

On homeward trips, the duty of bus drivers is to see that children have crossed roads to the opposite sides of streets if necessary.[32] In such a case, an appellate court in Georgia rejected a board's motion for summary judgment in the wrongful death action a mother brought against it, the school bus driver, and another driver after the other driver struck and killed her daughter.[33] After the mother and other driver reached a settlement agreement, the court affirmed that material issues of fact existed as to whether the bus driver initiated the boarding procedure for children. In a case from New York, parents of a student who was injured when struck by a car as he exited a bus sued the bus company, driver, and school board. An appellate court affirmed that the bus company's failure to equip the vehicle as a school bus did not violate a law regulating school buses since it was inapplicable to a bus that was not used solely to transport students.[34]

Where a second-grade student who was dropped off early by his school bus driver died as a result of injuries that he sustained while attempting to climb into his house through a window, his parents sued the board for negligence. The supreme court of Ohio held that, while the board waived its right to statutory immunity, a genuine issue of material fact existed as to whether the driver violated the statute prohibiting school bus drivers from starting their vehicles until after the children leaving them have reached places of safety.[35]

In a case that also concerns field trips, the parents of first graders and chaperones who were injured when a school bus driver lost control of his vehicle sought further review of a jury verdict in favor of the board and driver. Reversing in favor of the plaintiffs, an appellate panel in Indiana was of the opinion that the trial court committed a reversible error in not instructing the jury that it reasonably could have inferred that the driver should not have lost control of her bus as much as she did on a clear, dry spring day.[36]

School-sponsored field trips require special supervisory precautions because children are taken to unfamiliar places. While there are no specific rules, the younger the students are, the greater the amount and degree of supervision that educators must provide. When a sixth grader was raped by acquaintances after she left the park where a class field trip was taking place, the supervising teacher had left the park without her, stopped by her

house, and returned to school. Although the teacher contacted the child's mother, she did not disclose the incident to officials at the school. New York's highest court decided that the board was liable since evidence supported the jury's verdict that the rape was a foreseeable result of the danger created by the failure of educators to adequately supervise the outing.[37]

On a field trip to a zoo, a parent whose son was assaulted by children from another school sued their board for negligent supervision. The federal trial court in the District of Columbia rejected the board's motion to dismiss the claim on the basis that its staff owed a duty to supervise its students in order to prevent foreseeable harm such as the type that befell the child.[38]

Difficulties can often arise when students are permitted, as part of open campus policies, to leave school. In Louisiana, after a junior high school student checked herself out in violation of a school policy that authorized only the principal or vice principal to allow a child to leave during regular class hours, she was sexually molested by a stranger while walking home through a bad neighborhood. An appellate court affirmed that the board and officials breached their duty since the scope of their supervisory responsibilities encompassed the foreseeable risk that a female walking through a bad neighborhood might fall victim to a criminal in the area.[39]

On the other hand, another appellate court in Louisiana reviewed whether a board owed a duty to ensure the safety of a child who ordinarily walked home alone from school after an extracurricular activity. The board stationed crossing guards at the highway where the student was injured at the end of the school day but not at the completion of after-school activities. The court affirmed that insofar as the one-hour time period that the guard was on duty was appropriate, it would have been unreasonable to impose a duty on school officials to require them to have students walk home in groups.[40]

As a final concern involving out-of-school activities, it is understandable that educators seek to limit liability for student participation in activities, such as sports, that can cause injuries. As long as officials carefully craft release forms, courts are unwilling to impose liability.[41] Yet, courts are likely to invalidate releases that are too broad or vague. In such a case, the supreme court of Washington vitiated release forms that officials in different districts required students to sign before engaging in school-related activities, such as interscholastic athletics. The court held the releases, which were designed to protect the boards from all future negligence, violated public policy.[42] Similarly, an appellate court in New York invalidated a release form executed by parents of a child who participated in youth wrestling activity that stated that they absolved only the president of the tournament and head coach of all risks beyond those inherent in wrestling.[43] The court affirmed that the release was void ab initio and did not bar their negligence action because it failed to limit liability plainly and precisely.

Defenses

Even if injured parties established that the elements of negligence are present, school boards and their employees have three primary defenses available to limit or eliminate liability. The defenses recognize that even though boards and officials have the duty to look after students, they cannot be accountable for all possible harms that occur during school hours.

Immunity

Immunity is the most frequently used defense by school systems. Immunity is based on the common law principle, now supplemented by state statutes dealing with such

aspects as recreational[44] and discretionary function[45] immunity laws that the government, in and through its various branches and departments such as school boards, cannot be liable for the tortious acts of their officers or employees.

Contributory/Comparative Negligence

Both contributory and comparative negligence are premised on parties' having played a part in causing their injuries. Yet, the difference between these similar-sounding defenses, which now apply in an almost equal number of jurisdictions, can be profound. Contributory negligence completely bars individuals from recovering for their injuries if they contributed in any way to the harm that they suffered.[46]

As courts and legislatures realized that the contributory negligence defense often led to inequitable results, an increasing number of jurisdictions turned to the defense of comparative negligence. Comparative negligence permits juries to apportion liability based on percentages of relative fault between the parties, as most states that rely on this defense allow plaintiffs to recover for the harm that they suffered if they are not more than 50 percent liable.[47] Some states may apply pure comparative negligence, which permits plaintiffs to recover even if they contributed to more than 50 percent to their injuries.[48]

In a related concern involving liability, issues arise as to the appropriate standard to apply when children contribute to their injuries. Rather than expecting children to meet the same standard of adults, courts take their age and physical condition into account when the defense of comparative negligence is raised. As a general rule, courts agree that children under the age of seven are incapable of negligence for their own behavior while those over the age of fourteen may be accountable on a case-by-case basis. In such a case, an appellate court in Louisiana ruled that a six-year-old child did not negligently cause his own injury even though he ran out into the street into the side of a car while returning to school to wait for his mother.[49] The court observed that the six-year-old did not share in the fault for his injury because he acted in the manner that could have been expected of a child of his age.

Assumption of Risk

Assumption of risk, which is also based on comparative fault, can reduce the recovery of injured parties in proportion to the degree to which their culpable conduct contributed to accidents if they voluntarily exposed themselves to known and appreciated risks of harm. As noted, this defense frequently applies involving students and sports.

In New York, for example, an appellate court affirmed that a cheerleader who was injured during practice could not recover from her school board since she assumed the risks of her sport and was practicing voluntarily under the supervision of her coach.[50] Earlier, another appellate court in New York ruled that where a ninth-grade student voluntarily participated in a basketball game in a school yard where a hole on the playing surface was clearly visible, he knowingly assumed the risk of injury such that the board was not liable for the injuries he sustained when he fell.[51] Other courts reached similar results in agreeing that assumption of risk prevented suits from continuing where plaintiffs were injured while participating in interscholastic baseball,[52] basketball,[53] cheerleading,[54] equestrian activities,[55] field hockey,[56] football,[57] gymnastics,[58] ice hockey,[59] lacrosse,[60] soccer,[61] softball,[62] swimming,[63] track and field,[64] tennis,[65] wrestling,[66] and weight lifting.[67]

Courts have been unwilling to apply the assumption of risk defense in such school settings as where coaches had students warm up for games in hazardous locations prior to the start of a volleyball game,[68] for conducting a track practice in a high school hallway

that unreasonably increased a student's risk of injury,[69] and in interscholastic sports such as football[70] and softball.[71] When dealing with physical education classes, as opposed to extracurricular athletic events, courts rejected board attempts to rely on the assumption of risk defense when educators failed to provide appropriate safety equipment for such activities as in-line skating[72] and softball.[73]

CONCLUSION

Compliance with the rules of negligence and adequate supervision do not guarantee SBOs, their boards, and other educational leaders that they will have perfectly safe schools or that they will enjoy complete immunity from litigation. However, the more carefully that SBOs, their boards, and other educational leaders impress the need to follow these directions on board employees, they are to have safe schools that are not subject to costly, yet avoidable, litigation.

NOTES

1. *Paca v. City of N.Y.*, 858 N.Y.S.2d 772 (N.Y. App. Div. 2008).
2. *Knightner v. William Floyd Union Free Sch. Dist.*, 857 N.Y.S.2d 726 (N.Y. App. Div. 2008).
3. *Odekirk v. Bellmore–Merrick Cent. Sch. Dist.*, 895 N.Y.S.2d 184 (N.Y. App. Div. 2010).
4. *Mirand v. City of N.Y.*, 614 N.Y.S.2d 372 (N.Y. 1994).
5. It is also important to keep in mind that while many of the cases discussed herein can be used for multiple issues of law, this chapter typically, but with exceptions, uses dispute only once.
6. *Tomlinson v. Board of Educ. of Elmira*, 583 N.Y.S.2d 664 (N.Y. App. Div. 1992).
7. *Jones v. Jackson Public Schs.*, 760 So.2d 730 (Miss. 2000).
8. *Johnsen v. Carmel Cent. Sch. Dist.*, 716 N.Y.S.2d 403 (N.Y. App. Div. 2000); *Dadich v. Syosset High Sch.*, 717 N.Y.S.2d 634 (N.Y. App. Div. 2000).
9. *Shoemaker v. Whitney Point Cent. Sch. Dist.*, 750 N.Y.S.2d 355 (N.Y. App. Div. 2002).
10. For cases rejecting board liability *see, e.g., Navarra v. Lynbrook Pub. Schs.*, 733 N.Y.S.2d 730 (N.Y. App. Div. 2001); *Sinto v. City of Long Beach*, 736 N.Y.S.2d 700 (N.Y. App. Div. 2002).
11. *Bauer v. Minidoka Sch. Dist. No. 331*, 778 P.2d 336 (Idaho 1989).
12. *Vernali v. Harrison Cent. Sch. Dist.*, 857 N.Y.S.2d 699 (N.Y. App. Div. 2008).
13. *Glaser ex rel. Glaser v. Emporia Unified School Dist. No. 253*, 21 P.3d 573 (Kan. 2001).
14. *Titus v. Lindberg*, 228 A.2d 65 (N.J. 1967).
15. *Fagan v. Summers*, 498 P.2d 1227 (Wyo. 1972).
16. *Allison v. Field Local Sch. Dist.*, 553 N.E.2d 1383 (Ohio Ct. App. 1990).
17. *Hammond v. Board of Educ. of Carroll County*, 639 A.2d 223 (Md. Ct. Spec. App. 1994).
18. *See, e.g., Ruegsegger v. Jefferson County Sch. Dist. R–1*, 187 F.Supp.2d 1284 (D. Colo. 2001); *Rohrbough v. Stone*, 189 F.Supp.2d 1088 (D. Colo. 2002), *reconsideration denied*, 189 F.Supp.2d 1144 (D. Colo. 2002); *Schnurr v. Board of County Comm'rs*, 189 F.Supp.2d 1105 (D. Colo. 2001).
19. *Lee v. B & B Ventures*, 793 So.2d 215 (La. Ct. App. 2001).
20. *Jimenez v. City of N.Y.*, 738 N.Y.S.2d 380 (N.Y. App. Div. 2002).
21. *Edson v. Barre Supervisory Union #61*, 933 A.2d 200 (Vt. 2007).
22. *Stoddart v. Pocatello Sch. Dist. #25*, 239 P.3d 784 (Idaho 2010).
23. *Benitez v. New York City Bd. of Educ.*, 543 N.Y.S.2d 29 (N.Y. 1989).
24. Following *Benitez*, courts in New York have applied the reasonably prudent parent standard for young children. *Doe v. Lorich*, 788 N.Y.S.2d 754 (N.Y. App. Div. 2005) (allowing a case to proceed to trial where a principal failed to conduct an investigation into whether a teacher sexually abused a third-grade student on the issue of whether he acted with the same duty of care as a reasonably prudent parent); *Enright by Enright v. Busy Bee Playschool*, 625 N.Y.S.2d 453 (N.Y. Sup. Ct. 1995) (ruling that a jury was properly instructed that officials in a preschool owed children the duty of a prudent parent rather than that of ordinary reasonable care). *See also Paragas v. Comsewogue Union Free Sch. Dist.*, 885 N.Y.S.2d 128 (N.Y. App. Div. 2009) (affirming that although a board owed the higher standard to a six-year-old first grader, it was not liable because it met its duty of care).
25. *Cerny v. Cedar Bluffs Junior/Senior Pub. Sch.*, 679 N.W.2d 198 (Neb. 2004).
26. *Spears on Behalf of Spears v. Jefferson Parish Sch. Bd.*, 646 So.2d 1104 (La. Ct. App. 1994).
27. *Janukajtis v. Fallon*, 726 N.Y.S.2d 451 (N.Y. App. Div. 2001).
28. *Nossoughi v. Ramapo Cent. Sch. Dist.*, 731 N.Y.S.2d 78 (N.Y. App. Div. 2001).

29. *Pratt v. Robinson*, 384 N.Y.S.2d 749 (N.Y. 1976).
30. *See, e.g., Moshier v. Phoenix Cent. Sch. Dist.*, 605 N.Y.S.2d 581 (N.Y. App. Div. 1993).
31. *Cavalier v. Ward*, 723 So.2d 480 (La. Ct. App. 1998).
32. *Johnson v. Svoboda*, 260 N.W.2d 530 (Iowa 1977).
33. *DeKalb County Sch. Dist. v. Allen*, 561 S.E.2d 202 (Ga. Ct. App. 2002).
34. *Sigmond v. Liberty Lines Transit*, 689 N.Y.S.2d 239 (N.Y. App. Div. 1999).
35. *Turner v. Central Local Sch. Dist.*, 706 N.E.2d 1261 (Ohio 1999).
36. *Aldana v. School City of E. Chicago*, 769 N.E.2d 1201 (Ind. Ct. App. 2002).
37. *Bell v. Board of Educ. of the City of N.Y.*, 665 N.Y.S.2d 42 (N.Y. 1997).
38. *Thomas v. City Lights Sch.*, 124 F.Supp.2d 707 (D.D.C. 2000).
39. *D.C. v. St. Landry Parish Sch. Bd.*, 802 So.2d 19 (La. Ct. App. 2001).
40. *Jackson v. Colvin*, 732 So.2d 530 (La. Ct. App. 1998).
41. *Aaris v. Las Virgenes Unified Sch. Dist.*, 75 Cal.Rptr.2d 801 (Cal. Ct. App. 1998); *Sharon v. City of Newton*, 769 N.E.2d 738 (Mass. 2002).
42. *Wagenblast v. Odessa Sch. Dist. No. 105–157–166J*, 758 P.2d 968 (Wash.1988).
43. *Alexander v. Kendall Cent. Sch. Dist.*, 634 N.Y.S.2d 318 (N.Y. App. Div. 1995).
44. *See, e.g., Auman v. School Dist. of Stanley–Boyd*, 635 N.W.2d 762 (Wis. 2001).
45. *See, e.g., Arteman v. Clinton Community Unit Sch. Dist.*, 763 N.E.2d 756 (Ill. 2002).
46. *See, e.g., Daniel v. City of Morganton*, 479 S.E.2d 263 (N.C. Ct. App. 1997).
47. *See, e.g., Millus v. Milford*, 735 N.Y.S.2d 202 (N.Y. App. Div. 2002); *Johnson ex rel. Johnson v. Dumas*, 811 So.2d 1085 (La. Ct. App. 2002).
48. *Church v. Massey*, 697 So.2d 407, 412 (Miss. 1997) (criticizing improper jury instructions on pure comparative negligence); *Jennings v. Southwood*, 521 N.W.2d 230 (Mich. Ct. App. 1994).
49. *Sutton v. Duplessis*, 584 So.2d 362 (La. Ct. App.1991).
50. *Lomonico v. Massapequa Pub. Schs.*, 923 N.Y.S.2d 631 (N.Y. App. Div. 2011).
51. *Casey v. Garden City Park–New Hyde Park Sch. Dist.*, 837 N.Y.S.2d 186 (N.Y. App. Div. 2007).
52. *Godwin v. Russi*, 879 N.Y.S.2d 567 (N.Y. App. Div. 2009).
53. *Lincoln v. Canastota Cent. Sch. Dist.*, 861 N.Y.S.2d 488 (N.Y. App. Div. 2008); *Ribaudo v. La Salle Instit.*, 846 N.Y.S.2d 209 (N.Y. App. Div. 2007), *leave to appeal denied*, 862 N.Y.S.2d 469 (N.Y. 2008).
54. *Christian v. Eagles Landing Christian Acad.*, 692 S.E.2d 745 (Ga. Ct. App. 2010); *DiGiose v. Bellmore–Merrick Cent. High Sch. Dist.*, 855 N.Y.S.2d 199 (N.Y. App. Div. 2008).
55. *Papa ex rel. Papa v. Russo*, 719 N.Y.S.2d 723 (N.Y. App. Div. 2001), *leave to appeal denied*, 757 N.Y.S.2d 817 (N.Y. 2003).
56. *Sandler ex rel. Sandler v. Half Hollow Hills West High Sch.*, 672 N.Y.S.2d 120 (N.Y. App. Div. 1998).
57. *Hammond v. Board of Educ. of Carroll County*, 639 A.2d 223 (Md. Ct. Spec. App. 1994); *Benitez v. New York City Bd. of Educ.*, 543 N.Y.S.2d 29 (N.Y. 1989).
58. *Weber v. William Floyd Sch. Dist.*, 707 N.Y.S.2d 231 (N.Y. App. Div. 2000).
59. *Greenberg by Greenberg v. North Shore Cent. Sch. Dist. No. 1*, 619 N.Y.S.2d 151 (N.Y. App. Div. 1994).
60. *Ciccone v. Bedford Cent. Sch. Dist.*, 800 N.Y.S.2d 452 (N.Y. App. Div. 2005), *leave to appeal denied*, 810 N.Y.S.2d 416 (N.Y. 2005).
61. *Ballou v. Ravena-Coeymans-Selkirk Sch.*, 898 N.Y.S.2d 358 (N.Y. App. Div. 2010).
62. *Hyde v. North Collins Cent. Sch. Dist.*, 927 N.Y.S.2d 677 (N.Y. App. Div. 2011).
63. *Aronson v. Horace Mann–Barnard Sch.*, 637 N.Y.S.2d 410 (N.Y. App. Div. 1996), *leave to appeal denied*, 651 N.Y.S.2d 15 (N.Y. 1996).
64. *Gerry v. Commack Union Free Sch. Dist.*, 860 N.Y.S.2d 133 (N.Y. App. Div. 2008).
65. *Bendig v. Bethpage Union Free Sch. Dist.*, 904 N.Y.S.2d 731 (N.Y. App. Div. 2010).
66. *Lilley v. Elk Grove Unified Sch. Dist.*, 80 Cal.Rptr.2d 638 (Cal. Ct. App. 1998).
67. *American Powerlifting Ass'n v. Cotillo*, 934 A.2d 27 (Md. 2007).
68. *Gilbert ex rel. Gilbert v. Lyndonville Cent. Sch. Dist.*, 730 N.Y.S.2d 638 (N.Y. App. Div. 2001).
69. *Kane ex rel. Kane v. North Colonie Cent. Sch. Dist.*, 708 N.Y.S.2d 203 (N.Y. App. Div. 2000).
70. *Harvey v. Ouachita Parish Sch. Bd.*, 674 So.2d 372 (La. Ct. App. 1996).
71. *Zmitrowitz ex rel. Zmitrowitz v. Roman Catholic Diocese of Syracuse*, 710 N.Y.S.2d 453 (N.Y. App. Div. 2000).
72. *Jackson v. Lawrence Public Sch. Dist.*, 735 N.Y.S.2d 570 (N.Y. App. Div. 2001). *But see Arteman v. Clinton Community Unit Sch. Dist.*, 763 N.E.2d 756 (Ill. 2002) (refusing to impose liability for a rollerblading accident in a physical education class based on discretionary function immunity).
73. *Muniz v. Warwick Sch. Dist.*, 743 N.Y.S.2d 113 (N.Y. App. Div. 2002).