

Understanding Liability in School Cases

Edward F. Dragan, Ed.D.

Principal Consultant, Education Management Consulting, LLC, Lambertville, N.J.

INTRODUCTION

It is commonly accepted that school liability has increased over the past several years, especially in the area of tort liability. Wrongful death, serious injury, sexual harassment, and bullying all present opportunities for large settlements or jury verdicts. However, an analysis of recent decisions in negligence cases brought against schools indicates that the frequency of lawsuits generally has not changed over the past two decades. Moreover, the majority of outcomes have been decided conclusively in favor of the school.

Tort liability is a staple of education law. Government immunity generally protects schools from most issues of liability. There are, however, exceptions — which vary from state to state — that can leave schools vulnerable to liability. To that end, it is incumbent upon attorneys to learn how the elements that must be proven in negligence cases apply to schools and upon educators to understand these elements to foresee potential liabilities and avert them.

This article will review the statistical data regarding school-related injuries, the frequency and outcomes of recent published decisions, the expanding universe of duties placed on schools, and a framework for assessing a school's liability if a duty to protect is breached.

NATURE OF SCHOOL INJURIES

Because more than 53 million children in the United States spend almost one fourth of their waking hours in school or on school property (NSKC 2004) the potential scope of school liability is broad. Public perception, however, tends to distort both the extent of school liability and the nature of injuries that children sustain while at school or when engaged in school-based activities.

The vast majority of injuries to children at school are accidental. Public attention on student injuries often focuses on school violence because that is what the media report. However, studies indicate that school-aged children are 9 times more likely to sustain an unintentional injury than to be the victim of an intentional injury while at school. Children under the age of 15 sustain more than 14 million unintentional injuries each year. It is estimated that 10 to 25 percent of these injuries occur in and around schools. In all, 1 in 14 students suffers a medically attended or temporarily disabling injury at school (NSKC 2004).

Among elementary school students, playgrounds are associated with the majority of injuries. In secondary schools, athletics — including both physical education classes and organized sports — account for the majority of injuries among students (NSKC 2004).

EXTENT OF SCHOOL LIABILITY

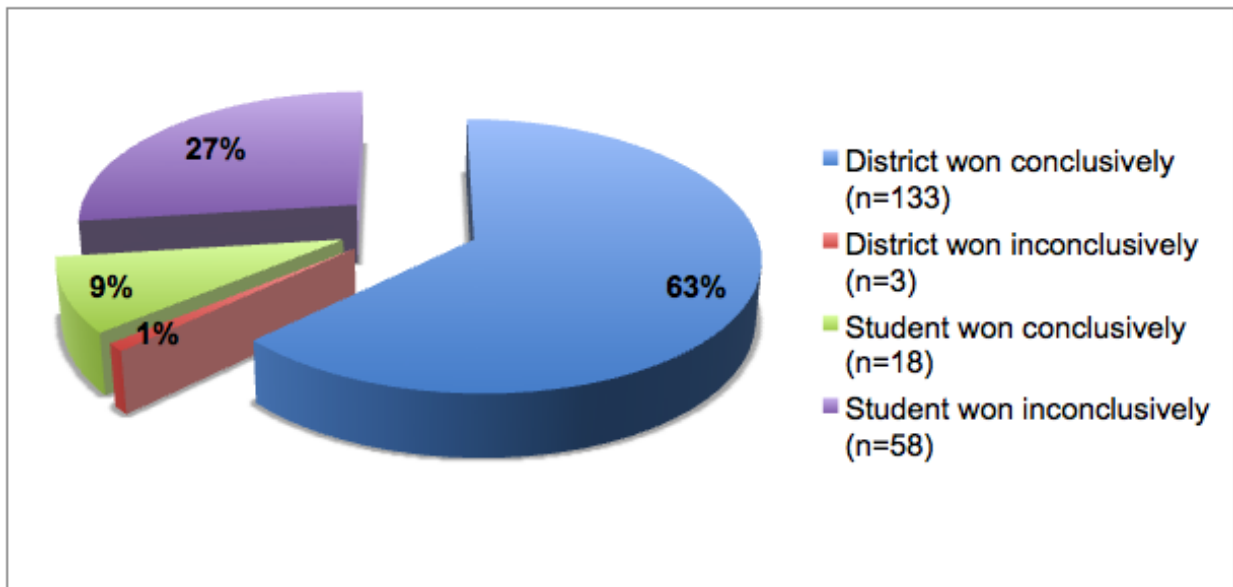
Zirkel and Clark (2008) published an analysis of trends in the frequency and outcomes of published decisions of student-initiated negligence claims in K–12 public schools. In each of these cases, districts and/or personnel were named as defendants. The researchers analyzed a representative sample of 212 published decisions involving personal injuries to students during a 15-year period from 1990 to 2005.

Methods. The sample included only student claims of simple negligence and excluded actions that alleged gross negligence, intentional torts, and educational malpractice. The sources of the data were the Sports and Torts sections of the *Education Law Yearbook* (ELA 1991–2006). The authors selected every fourth case within these boundaries to develop their sample.

Results. In almost two thirds of the cases in this sample, the district won conclusively. The student won conclusively in less than one tenth of them (Figure 1).

FIGURE 1

Distribution of Published Outcomes



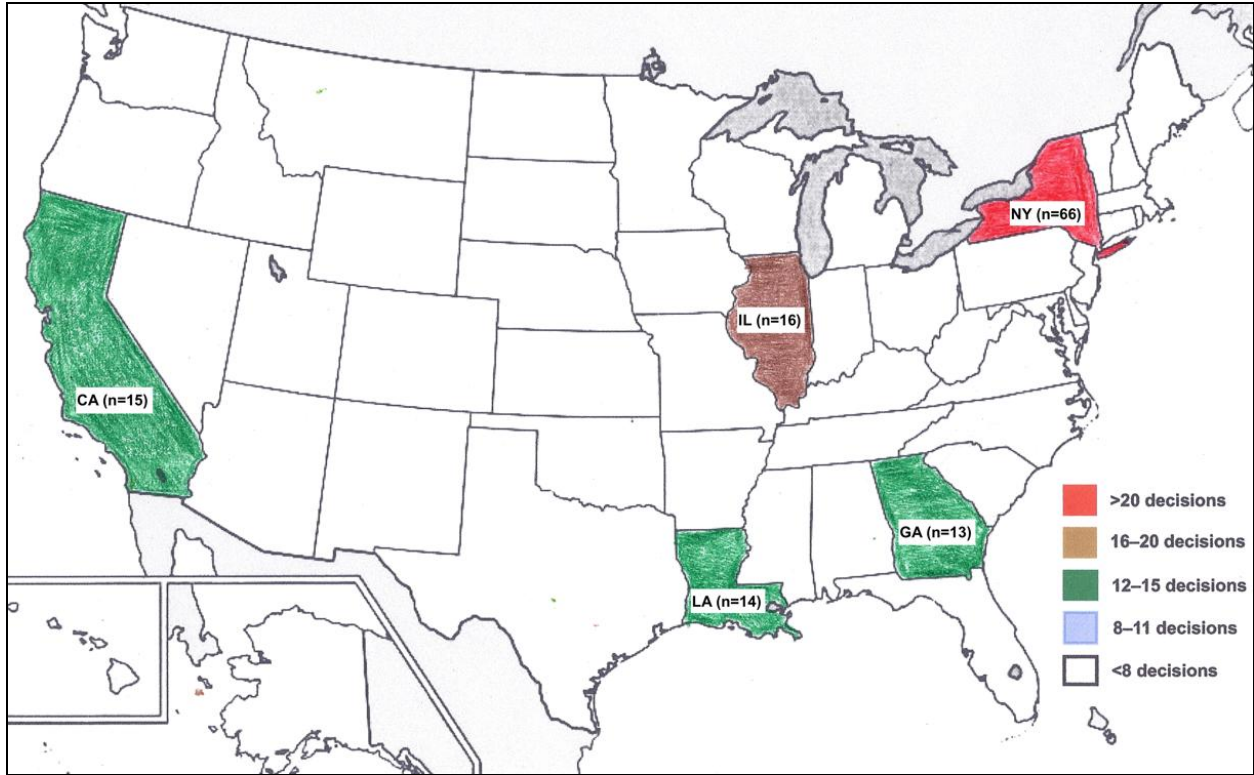
Source: Zirkel 2008

The 212 decisions ranged across 40 states, with the largest number of total decisions in New York (n=66) (Figure 2A). On a per-capita basis, New York again led the nation, with 23 decisions per 1 million students (Figure 2B). Among the 24 decisions (11%) in which student plaintiffs won conclusively or otherwise were awarded damages, Louisiana recorded the most (n=9), while New York (n=3) was the only other jurisdiction with more than one decision in the student's favor. Louisiana, therefore, had the highest rate of decisions against schools, with students winning damages in 9 of the 14 cases during the study period (64%).

FIGURE 2A

Number of Published Decisions*, Unadjusted

**Within the Zirkel sample*

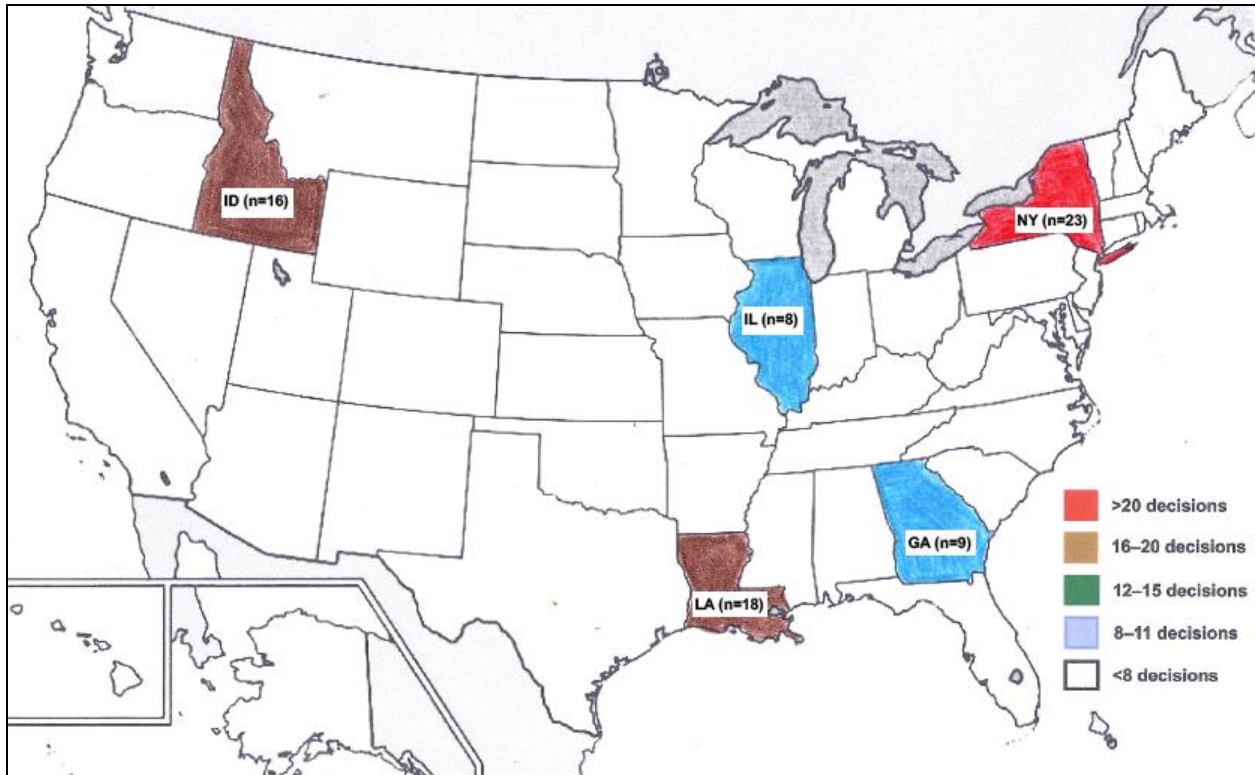


Source: Zirkel 2008

FIGURE 2B

Number of Decisions Per 1 Million Students*

**Within the Zirkel sample*

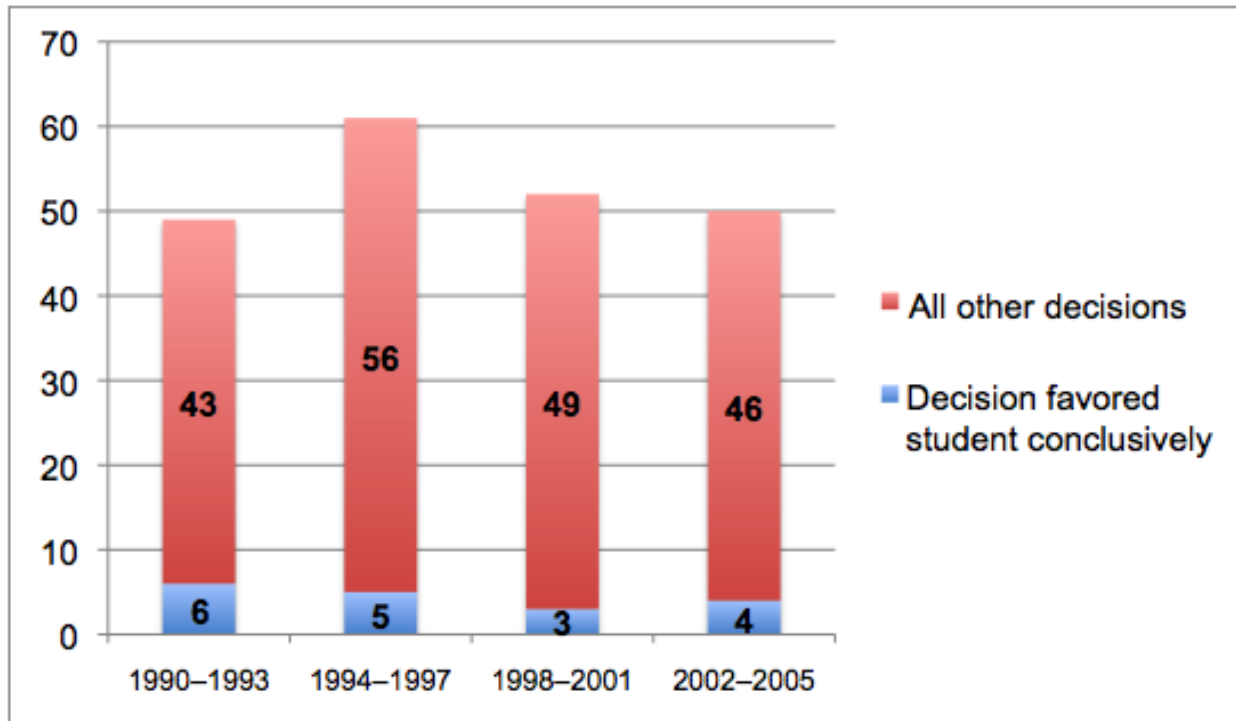


Source: Zirkel 2008

The authors found that the frequency of published negligence decisions remained relatively stable during the period of this study, and that the outcomes overwhelmingly favored school district defendants (Figure 3).

FIGURE 3

Frequency and Distribution of Outcomes, by 4-Year Periods



Source: Zirkel 2008

Among the various bases for decisions in this study, government and official immunity was the most prominent factor (46 percent) in district-favorable outcomes. The plaintiff's failure prove breach of duty — one of the elements of negligence to be discussed below — was the key element in 41 percent of cases decided in favor of school districts (Zirkel 2008).

Secondary schools accounted for a notably higher frequency of published negligence decisions — a greater than 2-to-1 ratio. The authors attributed this to several factors that typically distinguish high schools from elementary schools: the greater availability of risky specialized activities; a larger proportion of students who are prone to violence; and generally larger student bodies. Primary schools accounted for a significantly higher proportion of conclusive decisions in the plaintiff-students' favor (16% vs. 7% for secondary school students) (Zirkel 2008). In large part, the authors note, this is likely

because younger students are considered more vulnerable, which places a higher duty of care on the school and contributes to a lower incidence of contributory negligence.

Among cases either decided conclusively in favor of student plaintiffs or where students were awarded damages, the most frequently named negligent individuals were coaches (n=5). Teachers were the source of the negligence in only two decisions, and in both cases, the teachers were not found personally liable. Other decisions were attributable to transit-related activity (n=12) — defined as the student riding on a school bus, walking to or from a bus, or walking between home and school; negligence in maintaining the premises (n=3); supervisory failure to prevent a student-teacher sexual relationship (n=1); and student bullying (n=1) (Zirkel 2008).

Significance. The key findings of this analysis — that the frequency of published decisions remained stable and that school districts won the large majority of cases — are contrary to the general perception that school negligence is a major and increasing source of liability for boards of education. In fact, it is neither. This is a perception that is fueled by a number of factors, such as campaigns by the American Tort Reform Association and the liability insurance industry. It is also fed by the news media, which report on a handful of high-profile cases showcasing emotionally charged people. In truth, most cases that are similar to those reported by the media never make it as far as a courtroom.

It should be noted, however, that in the small sample cases in which students won conclusively or received partial damages, the average known award was significant — \$430,000 (Zirkel 2008).

The importance of these findings is that attorneys who bring a case against a school or who must defend a school should understand what juries look for when determining a school's liability.

ELEMENTS OF TORT LAW

Tort law provides a framework for determining school liability. Courts have acknowledged that schools cannot guarantee the safety of all students (Mawdsley 1993). School administrators and teachers, however, may be legally liable when a student is injured either because of an intentional action against the student or because of negligence. Courts will consider each of the elements of negligence in the context of education law when determining a school's liability. Such considerations include:

- Did the school have a duty to protect the student?
- What was the "reasonable standard of care" to apply under the circumstances, and did the school apply that reasonable standard of care?
- If there was a breach of that reasonable standard, was it a significant factor in causing a student's injury?
- Did the victim contribute to the injury through his or her own negligence?
- Was there an actual injury that can be substantiated?

Tort claims are based on the premise that an individual is liable for the consequences of his conduct if it results in injury to another person. *Intentional torts* and *negligence torts* are most typically seen in education-related cases; of these, the majority of student-injury suits involve claims of negligence. Tort claims are usually governed by state laws, but as with any negligence claim, each of the following elements must be proven in a case against a school: duty to protect, failure to exercise a reasonable standard of care, proximate cause, and actual injury. (Table 1 lists these elements, along with key considerations for educational and legal personnel.)

Duty to protect. The first element that must be determined in a negligence case is "duty to protect," which is part of a teacher's responsibilities. Teachers and administrators have a responsibility to anticipate potential dangers and to take precautions to protect their students from those dangers. Specifically, those duties include (McCarthy 1992):

- Adequate supervision
- Close supervision of students who are engaged in high-risk activities
- Maintenance of equipment and facilities

With respect to activities that take place during the school day, the duty to protect is usually easy to prove. Courts, however, have also held that this duty may apply beyond school hours and off school grounds (Fischer 1994). For instance, the school may have a duty to protect children on a school bus. A teacher may have a duty to protect a student whom he drives to football practice on Saturday morning.

Failure to exercise a reasonable standard of care. If a school employee fails to take reasonable steps to protect a student from injury, the employee can be found negligent. In negligence cases, courts will weigh the actions of a teacher or an administrator against how a “reasonable” teacher or administrator would have acted in a similar situation. “Failure to exercise a reasonable standard of care” is a second element that must be proven in a negligence case.

For instance, would it be reasonable for a teacher to hand a pair of sharp scissors to a third-grader and ask her to scrape hardened clay from a wall? What precautions or level of supervision should the teacher consider to protect this student from injury? The degree of care exercised by a “reasonable” teacher or administrator is determined by such considerations as (Mawdsley 1993):

- The teacher’s training and experience
- The age of the student
- The type of activity
- Whether the supervising teacher was present
- The environment in which the injury occurred

The environment in which the injury occurred is an important consideration. An elementary school student will require more supervision than a high school student. Students in a physical education class will require closer supervision than those who are reading quietly in the library.

A student's disability, if one is present, provides additional layers to the definition of reasonable standard of care. A student with a known behavioral disability, for instance, will require closer supervision than one without. Moreover, courts have held that several factors, such as a student's individualized education plan and unique needs, are relevant in determining a reasonable level of supervision (Daggett 1995).

Proximate cause. The third element that must be proven in a school negligence suit is a connection between the employee's breach of duty and the student's injury. In other words, did the employee (the teacher, bus driver, cafeteria aide, administrator, etc.) fail to exercise a reasonable standard of care, and if so, did it result in injury to the student?

The ability to prove this element, called "proximate cause" in the United States (or "causation" in Canada and "remoteness" in the United Kingdom), depends on establishing that a student's injury could have been foreseen and prevented. If the injury could have been anticipated and possibly prevented by an employee through the exercise of a reasonable standard of care, legal causation may exist.

The standard for determining whether proximate cause exists is whether the injury was "a natural and probable [result] of the wrongful act and should have been foreseen in light of the circumstances" (*Scott v. Greenville* 1965). "Wrongful act" could be described as failure to supervise, for instance, or could involve a deliberate action — however well intentioned — that leads to an injury. A hypothetical instance might involve a woodshop teacher who replaces a broken bolt for a protective device on a table saw with a bolt he finds in a desk drawer. The teacher knew that the bolt didn't meet the manufacturer's specifications but decided this was an adequate solution until the correct bolt could be obtained. Three days later, the protective device came loose and a student was injured

while using the table saw. A jury could determine that the teacher's decision to use a nonstandard bolt was a proximate cause of the student's injury.

A negligence claim will not be successful if an accident that results in injury could not have been prevented, even when reasonable care is exercised. The inevitability of an accident, in other words, nullifies proximate cause. This may hinge in part on whether the student contributed to his or her own injury. Returning to our example, did the woodshop teacher caution the student to use the saw in a certain way, and did the student disregard those instructions before being hurt?

Contributory negligence. If it can be shown that a student contributed to the injury, the school may invoke "contributory negligence," a common defense against liability. If the court holds that contributory negligence was a factor in the student's injury, the school may be held only partially liable or not liable at all, depending on the jurisdiction.

It is difficult to prove contributory negligence against children under the age of 7 because, in many states, tort laws hold that young children are incapable of contributory negligence. If, for instance, a pothole in the playground blacktop is marked off with orange cones, contributory negligence may not be a factor if a young child walks through the cones, trips in the pothole, and breaks his ankle. Even with adequate supervision on the playground, a young child may not be expected to understand the danger. In an instance such as this, a student can collect damages even if she contributed to her own injury.

Contributory negligence is also difficult to prove among students between the ages of 7 and 14, unless it can be shown that a student is unusually intelligent and mature.

Actual injury. The presence of an actual injury is the final element that must be proven in a school negligence case. The injury does not have to be physical — it can be emotional — but it must be documented. Without a provable injury, damage suits will not be successful — even when negligence is involved.

TABLE 1**Review and Evaluation System for Determining Liability for Student Injury**

Element of negligence	Legal considerations for educators
Duty to protect	Does the board of education have a duty to protect students in this situation?
Reasonable standard of care	What is the appropriate and reasonable standard of professional practice under the specific circumstance? Was that breached? If yes, did the person(s) in charge exercise reasonable care under the circumstances? Did those in charge consider the age of the student, the type of activity, the location of the activity, provision of safety instructions, maintenance of equipment, etc?
Proximate cause	If there was a breach, did that breach cause the injury? If the person(s) in charge breached a duty to supervise, according to the “reasonable person” standard, was that breach a proximate cause of injury? Did the plaintiff act in a manner that contributed to his or her injury? Could the plaintiff have been expected to know that his actions could lead to injury?
Actual injury	What was the actual injury, and can it be substantiated? Was there a physical or psychological injury, and to what extent?

Source: Author analysis

SUMMARY

The extent of claims against schools for negligence has remained fairly constant for most of the past two decades. Overwhelmingly, published decisions in simple negligence cases have favored school district defendants. A large proportion of these decisions have hinged on government and official immunity and on failure of plaintiffs to prove breach of duty.

Among cases that have been decided in favor of students, the average award was significant. Courts have examined the key elements of negligence in the context of educational law. It is important for attorneys who seek to bring a case against a school, as well as for school administrators and attorneys who defend schools against negligence claims, to understand these elements to determine the extent of a school's liability.

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ABOUT THE AUTHOR

Edward F. Dragan, Ed.D., a litigation consultant to attorneys and a school safety expert, is founder of Education Management Consulting, LLC (www.edmgt.com). He provides expert witness testimony on cases involving school accidents, bullying, sexual harassment, school evaluations in custody matters, and special education. He may be contacted at (609) 397-8989 or edragan@edmgt.com.