

## *Educator Resources*

### *Tort Liability101: When are Teachers Liable?*

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The purpose of this article is to provide stimulating thought regarding the legal tort exposure to which teachers are subject. It is in no way intended to serve as legal advice pertaining to the content or examples used. State laws vary, and a slight difference in facts can affect the outcome of a lawsuit.

#### **Introduction**

As a teacher, could you face personal liability in a school-related lawsuit? For most professional educators, the answer is simple: *Your risk is minimal if you exercise common sense and good judgment.* However, the issue of teacher and school liability in today's litigious society tells us that anyone can be subject to a lawsuit. The professional teacher should be educated as to his/her liability in the classroom, and be mindful of how to minimize exposure to lawsuits and student/parent complaints.

Barring a discussion on contract law, there are two broad areas of the law pertinent to educators in the United States. The first, *Criminal Law*, addresses the wrongs against society in general. For example, if a substitute teacher drives to school under the influence of alcohol or drugs, then he/she is subject to state criminal laws and may be punished accordingly (i.e., fined, arrested, placed in jail or on probation). The second area, *Tort Law*, concerns civil wrongs and addresses the duty, breach and injury sustained to one individual as a result of another's conduct. For example, a science teacher allows a student to operate lab equipment unsupervised while he/she attempts to gain a quiet moment to finish a lesson plan. The student's lack of supervision and instruction results in injury to other students watching. The teacher can be held individually liable for the students' injuries and risks a court award of monetary damages.

Tort law is based on the legal premise that individuals are liable for the consequences of their own conduct (or lack of conduct) when such actions result in injury to others. In a school/classroom setting, tort law is the most common area of the law that subjects teachers to personal liability.<sup>1</sup> In most education-related civil lawsuits there are two main categories of tort liability relevant to the professional educator—*Intentional* and *Negligent Torts*.

#### **Intentional Torts**

**Scenario 1:** *A Teacher's Aid is trying to calm an agitated student in your classroom when the student suddenly turns over his desk, throws a book and strikes back at the Aid in a fit of anger. In an attempt to restore order, you pick up the book, raise it above your head and slam it down on the desk in front of the child to get his attention. You then grab the student by the arm and lead him to the "time-out" area. The student struggles, curses, and screams that you are a child abuser and that his parents will sue. That evening, at the Parent/Teacher Association meeting, you casually describe the incident to several parents, remarking how unprofessional and inept the Aid was in resolving the situation. The next day the principal calls you and tells you that a policeman is at school to take a statement from you regarding a possible incident of child abuse. Is there a possible tort law liability?*

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<sup>1</sup> Alexander, K. & Alexander, M.D. (1992), American Public School Law. St. Paul, MN: West Publishing Company.

In schools across the United States, teachers and students alike have been found liable for committing intentional torts. As the name implies, intentional torts occur when an individual attempts or “intends” to cause harm to another. For intent to exist, the individual must be aware that injury will, or could, be the result of the act.<sup>2</sup> There are four common types of intentional torts that are seen in educational settings—*Assault, Battery, False Imprisonment and Defamation.*

### **Assault and Battery**

*Assault* refers to an overt attempt to physically injure a person or create a feeling of fear/apprehension of injury. There does not need to be actual physical contact in order for an assault to occur. For example, a student picks up a book and threatens to throw the book at another student. The threat could be in the form of (1) verbally expressing that he is going to throw the book, or by (2) creating the fear/apprehension in the other student that the book is going to be thrown at him through physical gestures of attempting to throw the book in his direction.

*Battery* is the actual physical deed that is threatened by the assault. In the example above, a battery occurs when the first student actually throws the book at the second student and hits him. Battery can be as simple as a slight “touching” or as forceful as a punch or direct contact from an object that is thrown.

In a classroom setting, Assault and Battery charges that are made against teachers are generally a result of a teacher’s attempt to exercise discipline or while breaking up a fight. For this reason, courts have historically given a great deal of latitude to teachers who are charged with either Assault or Battery during the course of their school day.<sup>3</sup>

However, courts have found teachers guilty of Assault and Battery when the degree of their discipline rises to the level of brutal, cruel or excessive, or is administered with malice and the clear intent to injure. While the main focus of courts appears to be on the teacher’s egregious behavior, there are several factors that the courts tend to consider. The age of the student, the disciplinary instrument (if any) that was used by the teacher, the gravity of the student’s offense and the discipline history of the student are examples. A court in Connecticut found a teacher guilty of Assault and Battery when the teacher slammed a student against a chalkboard and then against a wall. The teacher used excessive force, displayed a clear lack of self-control and severely injured the student.<sup>4</sup> Remember, Assault and Battery charges can be alleged by either the student or the parents (acting in the best interest of a minor), so it is always wise to have another school official present if physical discipline ever becomes necessary.

### **False Imprisonment**

In an educational setting, *False Imprisonment* can be defined as intentional confinement by direct physical means, threats or by the assertion of legal authority. Teachers have been found guilty of False Imprisonment (detaining students against their will) for tying students to chairs if they would not stay seated; locking children in “time-out” closets, and even for taping a talkative student’s mouth shut.<sup>5</sup> Confining children in the ordinary course of teaching (i.e., sending them to the administrator’s office, detention hall, or after-school suspension) does not subject teachers to liability. It is when the act of confinement causes physical or mental stress that teachers need to be careful.

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<sup>2</sup> Emanuel on Torts: Capsule Summary (1994). Emanuel Publishing Corp.

<sup>3</sup> Alexander, K. & Alexander, M.D. (1992).

<sup>4</sup> Sansone v. Bechtel, 429 A.2d 820 (Conn. 1980).

<sup>5</sup> McCarthy, M.M. & Cambron-McCabe, N.H. (1992). Public School Law: Teachers’ and Students’ Rights (3rd ed.). Boston: Allyn and Bacon.

The tort of False Imprisonment can easily be avoided with a simple dose of common sense. A child who may be claustrophobic should never be disciplined by being placed in a small room or closet. While this seems to be obvious on the surface, many teachers fail to discover a child’s fear of confinement before exercising discipline.

### **Defamation**

Under civil tort law, a person can be held liable for false statements that tend to harm another person’s reputation. Statements are defamatory in nature if they tend to expose one to hatred, shame, disgrace, contempt or ridicule. When such statements are verbal, they are referred to as *Slander*. When statements are written, they are referred to as *Libel*.

Since Defamation deals with a person’s reputation, cases of libel or slander can only occur when the statements are made to a third party. In other words, a principal may write a defamatory letter to a teacher (about that teacher), but no libel is present unless the principal copies the letter to other parties. Statements may be “defamatory on their face.” This has great legal significance because if an individual can prove that a statement was made falsely and was defamatory *on its face*, damages are automatically awarded.

Historically, courts have ruled that any statement that falsely criticizes a teacher’s professional competence is defamatory on its face. For example, the president of the Board of Education (Ohio) was found liable for the following defamatory statement about a teacher: “*He is not a fit person to teach in any school. He is no good as a teacher, and he will not get the school another year. He plays for dances and then goes to sleep in the school room during school hours.*”<sup>6</sup>

If a false statement is not defamatory on its face, the injured person must show that he has been directly harmed in order to receive damages. Examples of harm commonly include loss of salary and mental/physical illness.

While Defamation cases are often difficult to litigate and result in small damage awards, teachers should be extremely mindful to avoid sharing information about student (or co-teacher) behavior, academic performance or a student or co-teacher’s personal characteristics with other teachers, parents or students.

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### **Scenario 1 Wrap-up**

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*In Scenario 1, possible charges of all the intentional torts discussed above could be made against the teacher.*

- *The act of gaining the student’s attention by slamming a book down in front of him could easily have led to Assault and Battery charges if the book slipped and hit the student. And, the creation of a feeling of fear/apprehension could definitely have occurred. Physically grabbing the student—if done in a brutal, cruel or excessive manner (i.e., leaving marks and bruises while the child struggles)—could also lead to allegations of Battery. However, in Scenario 1, courts would most likely give wide latitude to the teacher since she was acting in the course of her duties.*

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<sup>6</sup> Mulcahy v. Deitrick, 176 N.E. 481, 482 (Ohio Ct. App. 1931).

- The “timeout” room incident could give rise to liability if the student had a propensity for deep claustrophobia. It can be easy for a teacher to overlook or simply not yet know that a child suffers from being claustrophobic.
- By far, the most dangerous tort charge that could be brought against our teacher in Scenario 1 is the charge of slander. Frustrated by the day’s events, the teacher could have easily exaggerated the abilities of the Aid and subjected herself to liability. Tort liability is not always related solely to the relationship of teacher to student. Be mindful of the other teachers and staff when participating in gossip or critical conversations.
- While not seen in the first Scenario, the tort of sexual battery is unfortunately a common liability seen in schools today. Teachers must always be careful of inappropriate “touching” in the form of hugs, pats, kisses on the head, and the like, especially when involving the opposite sex.

## **Negligent Torts**

**Scenario 2:** Susan had been teaching second grade for ten years. One day during recess she noticed that several third graders were playing hide and seek near the school gymnasium. While they shouldn’t have been playing in the janitor’s closet, a broken lock provided the three younger boys an excellent hiding place. Knowing that the third grade teacher would soon be back to lead the students into class, and distracted by a large commotion in the faculty parking lot, Susan allowed the boys to have their fun and casually walked up the hill (just for a second) to see what was going on in the parking lot. The church van had accidentally backed into Susan’s car and smashed her front windshield. As Susan talked to the apologetic Pastor, one of the boys hiding in the closet reached up onto a shelf and tipped over a container of professional strength floor cleaner which splattered into the boy’s eyes and severely burned his skin. Can the school be held liable for the student’s injuries? Can Susan be held personally liable?

Being called into the school administrator’s office and questioned for negligence in your duties as a teacher can be a most disheartening experience. Being served with an order to appear in front of a court to answer charges of negligence, which could result in personal liability, is downright scary. To understand negligence in an educational setting, it is important first to analyze the four elements of a negligent tort. They are *Duty, Breach, Proximate Cause and Injury*.

### **Duty (The Duty to Protect)**

The first element of negligent torts concerns the “duty” a teacher owes to the students entrusted in his/her care.

Outside of the classroom, courts look to whether a *special relationship* exists between two individuals in order to define the duty that one owes another. Special relationships are an important element of defining the duty that exists. For example, a swim team instructor and an Olympic diver were walking by the community pool and observed a child drowning. The swim team instructor may have had an obligation to attempt to save the child if that child was on her swim team and if the swim instructor knew the child personally. On the other hand, even though the Olympic diver may be a much stronger swimmer, because no special nexus or relationship exists between the child and the diver, he has no “duty” to act to save the drowning child.

In a school setting, the duty a teacher owes to students is a foregone conclusion that is summarized in the legal doctrine of “*In Loco Parentis*.” Literally defined as “in the place of the parents,” this legal theory

has historically been used to justify the power and authority that school officials have over students.<sup>7</sup> At the same time, this theory accounts for a heightened degree of responsibility for the care and well being of students under the control of a teacher, just as if the teacher were acting in the capacity of a parent. The student/teacher relationship by definition is a special relationship.

Teachers have a duty to anticipate foreseeable dangers to students and to take steps to minimize those dangers. Specifically, a teacher's duties always include the following broad elements: adequate student supervision; responsibility to report the need for maintenance of equipment and facilities; heightened supervision of high-risk activities; or looking after the well being of students with special needs. In most negligence cases brought against teachers, the duty element is easily proven.<sup>8</sup>

### **Breach (of Duty)**

The second element of negligence found in cases against educators occurs when teachers fail to exercise a standard of reasonable care, and, therefore, breach their duty to protect the well being of students. The breach of a teacher's duty, which causes liability, turns on the definition of "standard of reasonable care." In other words, courts will judge a teacher's conduct based on how a reasonable teacher would have acted under similar circumstances. Factors that help to determine the standard of reasonable care exercised by a "reasonable" teacher include the following: (1) the training of the teacher in charge; (2) the experience of the teacher in charge; (3) the student's age/grade level; (4) the environment in which the injury occurred; (5) the type of instructional activity; (6) the proximity (presence or absence) of the teacher in charge; and (7) the special needs (disability) of the student if they exist.<sup>9</sup>

Common sense tells us that kindergarten students will need closer supervision than high school students. In addition to the close supervision of younger students, teachers should always exercise heightened care in the instruction of vocational or hands-on classes (science lab, woodshop, culinary arts, etc.). Injuries are more frequent in these settings, and, subsequently, courts apply a higher standard of care doctrine toward the teachers involved. Additionally, students with special needs or disabilities always hold teachers to the highest of reasonable care standards.

### **Proximate Cause**

The third element of negligent torts cases revolves around showing that there is a connection (proximate cause) between the breach of a teacher's duty (Element 2) and the student's injury that occurs because of that breach (Element 4). In other words, showing that the teacher failed to exercise a standard of reasonable care.

To analyze proximate cause, courts look to the issue of "foreseeability." Was the injury something that could have been anticipated by the teacher? If the injury could have been foreseen and prevented by a teacher exercising a standard of reasonable care, negligence could exist. However, there must be a logical connection between the injury and the standard of care. For example, failure to supervise the activities of young children during recess may prove to violate the standard of reasonable care. Should an injury occur that could have been prevented if a teacher were present to stop whatever activity lead to the injury, liability could exist against the teacher.

Liability will not exist on the shoulders of a teacher if the injury could not have been prevented using a standard of reasonable care. In the example above, if the teacher were present during recess and if the

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<sup>7</sup> Fischer, L., Schimmel, D., & Kelly, C (1999). Teachers And The Law (5<sup>th</sup> edition). White Plains, NY: Addison Wesley Longman, Inc.

<sup>8</sup> Ibid.

<sup>9</sup> McCarthy, M..M. & Cambron-McCabe, N.H. (1992).

injury that occurred resulted from a student's falling off a swing, no liability would exist if the student were swinging in a safe manner. However, if the swing were not properly maintained (worn or broken chains/seat) and if the teacher were aware of the condition of the swing, the teacher could be found liable for the student's injury.

### **Injury**

The fourth element that must be shown in a negligence case is that a student sustained actual physical or mental injuries. No matter how great the duty (Element 1), how egregious the breach of that duty (Element 2), or how foreseeable the consequences and proximate cause of the teacher's standard of care (Element 3), there is no liability if actual injuries cannot be proven.

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### **Scenario 2 Wrap-up**

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*In Scenario 2, our teacher (Susan) is placed in a situation that could result in charges of negligence being filed against her. To analyze her liability, let's look at the four elements.*

- *Element one commands that we show a special relationship exists that would create a duty on Susan's part. Despite the in Loco Parentis doctrine, Susan is acting in the capacity of the playground supervisor. The student injured may not be in her class, but she is responsible for the well being of all the students on the playground while she is in charge. In addition to the responsibility of supervision, Susan failed to report the inadequate maintenance of facilities or equipment. Even though others most likely knew the janitor's closet lock was broken (which could place the school and administrators at risk for liability), Susan has a duty to report such observations as an acting supervisor in an area where children play.*
- *Element two turns on the failure of Susan to exercise reasonable care. Observing the boys playing in the closet and leaving the playground area unsupervised weigh unfavorably for Susan. The fact that she has been teaching for ten years holds Susan to the standard of a seasoned teacher and the level of care that such a professional would exercise.*
- *Element three deals with the proximate cause of the injury. Susan's failure to supervise (not stepping in to remove the boys from the janitor's closet where almost anyone would know that dangerous chemicals exist) and the resulting accident that caused a burning injury clearly show a nexus between Susan's actions and the resulting injury.*
- *Element four is automatically proven with the severe physical injury that occurred.*

### **Additional Liability Situations**

Tort liability derived from student injuries is the most common risk teachers face.<sup>10</sup> Regular inspection of school grounds and equipment should be a routine task for every teacher. Adhering to teacher guidelines set forth by the school, always seeking guidance and the presence of another school official when physical discipline becomes necessary, and using written discipline, incident, or maintenance reports are the best ways teachers can reduce their exposure to liability.

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<sup>10</sup> McCarthy, M..M. & Cambron-McCabe, N.H. (1992).

There are several additional sub-categories of tort and civil (in the educational setting constitutional) liability that are worth discussing.

### **Corporal Punishment**

The old adage, “*spare the rod and spoil the child*” has clashed head-on with US courts in the area of teacher liability. Corporal punishment, when it becomes a teacher liability, is generally seen in charges of Assault and Battery or Child Abuse.

While many states have specifically enacted legislation that allows for corporal punishment (most often spanking) in schools, the majority of states in the US specifically prohibit corporal punishment.<sup>11</sup> Regardless of the current state of acceptability, one should always exercise the greatest of care and diligence when advocating spanking at school. Again, the focus of most courts comes down to the reasonableness of the punishment provided and the manner in which it was administered. To be reasonable, punishment must relate to an educational purpose and not to the expression of a teacher’s anger or frustration. The severity of the punishment (spanking) should always relate to the following: (1) the gravity of the offense, and (2) the ability of the student to bear the punishment. Therefore, the size, age, sex and physical/emotional condition of the child must always be considered.<sup>12</sup>

Practicing corporal punishment will certainly not gain the adulation of students and parents. However, ironically, in states and public school districts that allow corporal punishment, school administrators cannot bar a teacher from exercising discretion to implement corporal punishment.<sup>13</sup>

While corporal punishment is a practice still alive in the private school system, it is a practice that is increasingly exposing teachers to liability. While most courts would find in favor of a teacher and although most state agencies that investigate charges of child abuse would clear a teacher from liability, the stress of defending one’s actions in court and the permanent record on file with a state child abuse agency serves as good reason for teachers to insist that administrators handle all corporal punishment, if it is deemed necessary.

### **Duty to Report Child Abuse**

Every state, including all US territories, requires that teachers, administrators and school counselors report known or suspected cases of child abuse or neglect. Failure to do so can subject educators to criminal penalties under the law. Even though the federal government spurred on the laws for reporting child abuse and neglect with the passage of the 1974 National Child Abuse Prevention and Treatment Act, criminal and civil liability for child abuse reporting laws is governed by each state according to that state’s definition of child abuse. Educators should always consult a school’s local attorney if child abuse is suspected.<sup>14</sup>

Naturally, charges of child abuse should never be alleged unfounded. Serious accusations against parents automatically tend to get a negative response towards the accuser. However, as long as the charges are made in “good faith” and “without malice,” every state in the US protects individuals by granting civil or

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<sup>11</sup> As of 1997, the following states prohibit Corporal Punishment by law, regulation or by rescinding laws allowing it: AK, CA, CT, HI, IL, IA, MA, ME, MD, MI, MN, MT, NE, NV, NH, NJ, NY, ND, OR, RI, SD, UT, VT, VA, WA, WV, WI. Fischer, et. al. (1999).

<sup>12</sup> Ibid.

<sup>13</sup> Frederickson v. Denver Public School District No. 1, 819 P.2d 1068 (Colo. Ct. App. 1991).

<sup>14</sup> When child abuse is suspected, it is advisable to consult local counsel. With laws rapidly changing, educators can always contact the American Bar Association’s National Legal Center on Child Advocacy and Protection at 1800 M St., NW, Washington, D.C. 20036, or (202) 662-1000.

criminal immunity from liability associated with the reporting.<sup>15</sup> Educators should always create a detailed written report of facts and suspicions that lead up to the reporting of the alleged child abuse.

### **Suspension & Expulsion (Due Process)**

Suspension and expulsion liability cases focus on the constitutional right granted all individuals under the 14<sup>th</sup> amendment to the US Constitution. Among other areas, the 14<sup>th</sup> amendment has been held to create a property right in education for which states shall not deprive of any person without due process. It is generally not the expulsion or suspension itself that creates liability; rather, it is the process that leads up to the expulsion.

Tort liability for suspension and expulsion issues does not tend to apply to educators in the private school sector. Due process violations stem from public school systems, which are a natural extension of state governments.

### **Search & Seizure**

In recent years, students have objected to locker searches under the theory that since the searches were unauthorized and conducted without a warrant, they violated the 4<sup>th</sup> amendment right against illegal search and seizure. Again, this area of the law is most applicable to the public school sector, but it provides an interesting perspective on the physical search of students and student's lockers that private school officials can learn from.

In the landmark Supreme Court case *New Jersey v. T.L.O.*, a divided court determined that school searches were justified "when there are reasonable grounds for suspecting that the search will turn up evidence that a student has violated or is violating either the law or the rules of the school."<sup>16</sup> From additional ruling (stemming from lower courts using the T.L.O. opinion), the area of search and seizure has generally broken down into two areas. First, educators do not have to meet the criteria that police do (even police who want to search a school locker) or obtain a warrant to do so. Reasonable suspicion will justify searching a school locker. Second, educators are held to a higher standard for searching a student's person (i.e., clothes). Some states, such as Oklahoma, by statute forbid student strip searches without a warrant, while other states impose a high degree of reasonable cause to physically search a student.

### **Conclusion**

Common sense and good judgment will always protect professional educators from placing themselves in a position of personal liability. However, there is no substitute for always properly documenting (in writing) situations and seeking the guidance of another school official before acting in a manner that could result in liability.

Keeping the following tips in mind will help keep educators in the classroom and out of the courtroom.

1. **Perform Your Duties** – even when they seem boring or repetitive. If you are assigned to monitor the hall during lunch, make sure you do it. The day you miss will be the day an injury occurs.
2. **Provide Appropriate Instructions** – If you are a science teacher or teach a subject that involves students' use of equipment or tools, make sure you take the time to thoroughly review safety procedures. Have these procedures written out and posted. Review the procedures often.

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<sup>15</sup> Fischer, et. al. (1999).

<sup>16</sup> 105 S. Ct. 733 (1985).



3. **Adhere to School Discipline Rules; Don't Make Up Your Own** – Use common sense and a levelheaded approach to discipline. Students that are so unruly that they need harsh discipline should always be referred to the administrator.
4. **Keep Private Information Private** – Do not discuss the performance of a student with anyone other than the student or the student's family. Frustration with co-workers is bound to happen from time-to-time. Do not get caught up in revenge-oriented gossip that can come back to haunt you.
5. **Avoid "Touchy" Situations** – Use extraordinary caution when touching students in any fashion. It is a sad reality that in today's environment, caring gestures can be construed the wrong way.
6. **Keep Written Discipline Reports** – Document, document, document. Keeping a log of student incident reports establishes a pattern of thoroughness and may be the important bit of evidence needed to defend your reputation when bogus charges are filed against you.
7. **Document Reports of Maintenance Issues** – Keeping a simple journal of concerns you report to school administrators can absolve you from liability should attorneys ever point the finger at you.
8. **Punish in Pairs** – Always have another school official present when disciplining a student if necessary. Discuss the nature of the conduct and reasoning for your discipline method with another person before carrying out the discipline.
9. **Maintain your Classroom/Lab** – Make it a habit to check the physical plant of any room or lab you work in on a regular basis. Having a checklist of areas to inspect can be valuable evidence and show your propensity for safety.
10. **Do What is Best for the Student** – If you always act in the best interest of your students and make sure you do not let personal frustration or anger effect your decisions, liability is greatly diminished.

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