In general, the more than 1,000 cases involving student activities over the past 10 years focus on two specific areas. The first deals with students' rights to participate in cocurricular activities (e.g., transfer rules in athletics). The second, which is the primary purpose of this article, addresses administrators' legal responsibilities in their roles as the educational and supervisory leaders of schools. A principal's failure to successfully fulfill that role can result...
in litigation against the principal for negligence. Principals who successfully prevent students from being harmed—an ultimate good—are simultaneously protecting themselves from unwarranted litigation.

Negligence is part of a broad context of laws called torts, which are "wrongful acts, not including a breach of contract or trust, which result in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation" (Black's Law 1996). Torts can be intentional (e.g., forcing a student to do something that is likely to cause injury), but these are rare in litigation against an administrator. By far the most common tort action sought against an administrator is an allegation of unintentional negligence. Negligence has a number of definitions under the very broad scope of the law. The most common definition is "the failure to exercise that degree of care which, under the circumstances, the law requires for the protection of other persons" (Strope 1998). For the administrator, it is essential to recognize that a successful negligence suit can arise out of an act of omission (not doing something you should do) or commission (doing something you are not supposed to do).

To litigate successfully against an administrator, a person must establish evidence in four separate areas: recognizable legal duty, breach of a recognizable duty, proximate cause, and injury. Lack of evidence in any one of these areas will result in a claim's dismissal. For principals, the prevention of a successful negligence suit lies in their understanding of these elements and how they apply to principals' direct responsibilities regarding student activities.

A Recognizable Legal Duty

Perhaps the most important of the four areas for the principal to understand is the area of legal duty. Under law, the concept of legal duty suggests that there is a relationship between two parties in which one is obligated to protect the other from injury. It is clear from state statutory laws that administrators have certain legal responsibilities to protect students and personnel.

The school administrators' legal duties regarding student activities are almost the same as they are for all areas of student conduct. The differences are related to a specific student activity (e.g., a field trip), its clear relationship to the education mission of the school, and its potential for risk for individual students. In general, the administrator holds legal responsibility for four interrelated functions: to adequately supervise, to use competent and efficient personnel, to adequately instruct, and to furnish and maintain safe equipment and safe premises.

Supervision is the most encompassing and central of the legal obligations and can include all the others, because negligence can be defined as a lack of supervision. A principal should carefully review the following three issues before deciding whether he or she is comfortable with supporting an activity as a school-sponsored function.

A principal is responsible for the development of appropriate rules of conduct for the successful operation of a school. Whether a principal or a committee develops rules in concert with state and federal law, school board policy, or other governing bodies, the ultimate responsibility for the rules lies with the school administrator. In questioning whether a
student activity was carried out in accordance with the law, the administrator will be asked what kinds and types of rules have been made to protect the students from harm.

Those writing rules for student activities need to pay particular attention to important guiding principles. The greater the potential risk to students, the greater the standard of care. Because of the increased prospect of danger, rules must be developed to anticipate problems and to respond to a problem if prevention does not work. For example, if students perform a play, rules must be created to ensure that the theater equipment is safe, potential hazards (e.g., loose electric wires, unstable ladders) are eliminated, and students are supervised during practice. Although the specifics may be drafted under the direction of the theater instructor, it is the legal duty of the principal to see that the rules are written and obeyed. In addition, if an injury should occur during the activity, teachers and personnel should have clear guidelines to follow, including whom to call, how to act, and how to provide documentation of the incident.

Another very important principle is that the younger the age of the student, mentally or chronologically, the greater the standard of care. In general, elementary and middle level students and students with special needs require more attention than high school students. This generality is based on the understanding that younger students may not realize the consequences of their actions. Under a number of legal tenets, including the doctrine of in loco parentis, in which school employees stand in place of the parent, the overarching responsibility for establishing the rules is a school administrator’s. Although an administrator cannot be all places at all times, the legal assumption appears to be that his or her “mental supervision” is established in large part by the rules that ensure student health, safety, and welfare. The courts recognize that teachers and advisers are more likely duty than principals to be physically present, but this recognition does not abrogate the legal duty of an administrator.

The principal is responsible for the promulgation of appropriate rules of conduct for the operation of the school. When rules are established to advance and enhance the health, safety, and welfare of students, with particular accent on activities where the risk of harm might be higher than normal, a clear duty should be the promulgation of relevant rules. Promulgation means more than just handing out a list of rules; it carries the additional responsibility of ensuring that the rules are understood. This is one of the reasons that many schools ask parents and students to sign statements indicating that they understand the written rules of the school.

For the principal, promulgation of the rules involving student activities should include a periodic meeting with activity advisers to review the rules of conduct for the activities. Meetings should include discussions of supervision; student participation; updated laws; and potential areas of concern, including the anticipation of and the immediate supervisor’s response to problems. Athletic directors, class advisers, and field-trip supervisors are examples of who should attend these meetings, but activities during which the potential risk for students is the highest should be emphasized.

A second requirement of promulgation is informing students of the rules and regulations that encompass a student activity event. Information should be given early enough for modifications to the rules to be made, if necessary. Information can be disseminated in a general assembly (e.g., an announcement that students will be allowed to participate without the written authorization of their parents and the school but in connection with a discipline code) or by a responsible activity director or teacher. The principal is not responsible for reading the rules to everyone but for ensuring that the rules are presented.

The principal is responsible for the enforcement of appropriate rules of conduct for the successful operation of the school. Administrators are responsible for enforcing the rules that have been developed for the health, safety, and welfare of the students and the school. Some questions principals can ask themselves are: If a student violates a rule during an activity, are the rules followed or forgotten? If a teacher or activity director fails to perform under the rules of the school, are the rules regarding personnel followed? Rules can be permissive (e.g., a student not attending a required event may be suspended) or mandatory (e.g., a student not attending a required event will be suspended), but principals should enforce whatever rules their schools have developed.

If a rule is consciously overlooked or not adhered to, principals might consider eliminating it. The administrative team and other key personnel should review all handbooks and conduct codes yearly to assess adherence, revision, or elimination of the rules.

**Breach of a Recognizable Legal Duty**

A person who litigates against the principal in an issue of negligence must prove that the principal had a recognizable legal duty and breached or violated that duty in some manner. A litigant might suggest that the principal, in anticipating or responding to a problem, violated his or her legal duty by failing to develop, promulgate, or enforce appropriate rules of conduct for the operation of the school. For example, a litigant might charge a principal with failing to have understandable rules developed to prevent injuries at an curricular event or failing to have rules and procedures available to respond to an injury once it occurred.

Crucial to this analysis of anticipation and response is the concept of foreseeability and the doctrine of the “reasonable man,” which means that the action of the principal is assessed by the courts against the standard of what a reasonably
A prudent administrator of like background and experience would do under the same or similar circumstances. Negligence litigation against a principal may well charge that the administrator should have foreseen certain types of problems and, thus, should have developed, promulgated, and enforced rules that prevented the problems before they occurred. Inherent in this analysis would be specific circumstances of the activity, its potential risk, and the standard of care the school owed to younger students. It is always wise for a principal to ask, “How would others with my basic training and role likely act in this set of circumstances or respond to the actions I take?” Although questions of negligence are always focused on specific circumstances, imagining how other administrators might act can help guide your actions.

Proximate cause is a crucial element of negligence litigation. To substantiate a negligence claim against a principal, a claimant would have to establish that the principal had a legal duty and that the principal violated that duty. The issue of proximate cause, which must be proven to establish negligence, would be an attempt to show that the failure of the principal was the “primary and moving” cause without which a subsequent injury might not have occurred. In other words, a principal’s act of omission (e.g., lacking rules regarding what to do if someone is hurt on a field trip) or commission (e.g., putting students in dangerous situations) had direct bearing on the injury, which might not have occurred had the principal acted differently. The legal language on this issue asks, Did the action or inaction of the principal serve as the proximate cause (in time, place, or order) between the breach of a recognizable legal duty and the injury of a student?

Central to the commentary on proximate cause is the understanding that educators are not the literal ensurers of safety for their students at all times, but because of their role, they have certain obligations to fulfill regarding the safety of their students. As such, a negligence suit that establishes the teacher as the first person to be litigated against for failure to perform a supervisory function can be extended to the administrator, alleging that the principal did not train or instruct the teacher correctly. Litigation against any member of a school staff may well extend to the principal because of his or her supervisory function.

Injury
The final part of a negligence allegation is establishing that the principal’s violation of a recognizable legal duty was the proximate cause of an injury (e.g., actual loss or damage to another person). Actual loss or damage can be physical, psychological, monetary, or even related to property, but it must be measurable. Although it is difficult to establish the cause of emotional or psychological injuries and courts will not compensate a victim for perceived injuries, prudent principals should carefully consider the risk of physical or emotional injury in any potentially negligent situations to protect their students and to protect themselves and their schools. Failure to do so can result in a successful claim of negligence and obligate a principal to pay often significant dollar amounts to an injured party.

A Final Statement
Although student activities play a crucial role in education, they can be risky and require an administrator’s special attention, particularly in an administrator’s legally bound duty to supervise those under his or her care. Although there are a number of potential protections (e.g., homeowner insurance), a principal’s best defense is to develop, promulgate, and enforce rules for the school’s operation; to involve stakeholders in all parts of the development and enforcement of the rules; to scrutinize activities for potential problems; and to develop clear directions for what to do if problems occur.

References

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