# Giving Teachers the Tools to Teach

Training in Liability Issues and its Potential for Enhancing
Working Conditions and
Reducing the Nationwide Teacher Shortage

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# **INTRODUCTION**

Over the past ten years the field of education has fought to withstand incredibly trying times, with large teacher shortages, greater pressure from the public for accountability and higher achievement, and increased violence on campuses nationwide. In addition to shortages of qualified educators, the attrition rate for teachers entering the field for the first time can be as high as 50% in the fifth year of teaching. A number of studies reveal that the high attrition rate among new educators is likely less related to low salaries than working conditions. The recent increases in school violence and litigation have increased the daily challenges, both academic and disciplinary, that K-12 educators face. When coupled with high stakes testing, increased public scrutiny and cut-backs in funding, issues of maintaining order and control in the classroom while avoiding personal and professional liability are among teachers' most prevalent concerns.

This paper will focus on teacher liability as it relates to duties performed within the scope of employment and will suggest that school districts should take a more active role in decreasing violence on campuses by providing teacher training and information on a regular basis. Current legal trends in the areas of negligent supervision and school officials' duty to provide teachers with access to student's disciplinary records will also be discussed. I will suggest that the inclusion of basic legal guidelines and frameworks as part of teacher licensure and continuing education programs is vital to enhancing students' educational experiences insofar as it allows teachers and schools to work toward creating safe and effective learning environments. The paper will also touch on a number of legal trends in both statutory and case law across various jurisdictions to illustrate examples of helpful and harmful policy with respect to the aforementioned goal. Lastly, the issues examined will elucidate how better training and support on the part of school districts and administrators will ameliorate not only the working conditions in American schools by lowering the teacher attrition rate, but will have a positive influence on academic achievement as well.

#### A SCHOOL DISTRICT'S DUTY TO ITS STUDENTS

Because of the important role of education and the function of schools in modern society, it is not surprising that courts have uniformly held that school districts owe a duty of care to students with regard to safety and well-being on campus and during certain off-campus and

extra-curricular activities. The standard of care varies somewhat among jurisdictions, but generally, courts have held that a special relationship exists between "a school district and its students who are on campus for a school-related function."

Although schools are not considered dangerous places per se, a California court has held in Constantinescu v. Conejo Valley Unified School Districtiv that a special relationship exists between students and schools that generally creates a duty of care similar to that which exists between a parent of ordinary prudence and his or her child. In fact, the Constitution of the State of California includes a provision for the "right to safe schools" which states that "all students and staff of public, primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful," vi suggesting a duty of care toward persons employed by districts as well as students. While the duty of care for employees is not as clearly articulated in most jurisdictions, current case law and statutes confirm that schools' duty to students derives from "the simple fact that a school, in assuming physical control over its students, effectively takes the place of parents and guardians." While the standard for students in a K-12 setting is no higher than that for adults and post-secondary students, courts have historically placed special emphasis on the school to student relationship, which has, under certain circumstances, enabled parents to prevail on claims of negligence and breach of duty. Despite this emphasis, school districts have a number of protections and mechanisms for avoiding liability, especially in cases where no willful or wanton negligence or recklessness can be shown.

## COMMON DEFENSES TO TORT CLAIMS

Public school districts are most often classified as municipal or government entities. As such, they are often able to use two key defenses in many tort cases involving negligence and breach of duty: the doctrine of sovereign immunity which safeguards a school district and its employees in their official capacity from tort liability, and state tort statutes barring suits for simple negligence. For the most part, the doctrine of sovereign immunity has been replaced by statutes granting similar protection in all but a handful of jurisdictions. Where it exists, acts of willful and wanton negligence will almost always survive challenges based on sovereign immunity. A school

district can also waive its right to sovereign immunity by the purchase of liability insurance viii or by a finding of inherently dangerous premises. Many large metropolitan school districts maintain a higher level of liability coverage due to the increased chance of tort actions which arises as a result of the sheer number of students they service.

Where successful, sovereign immunity defenses generally apply to discretionary functions carried out by a school district, school board, or employee. In Ware v. Turner, a junior high school assistant principal successfully argued that his restraint of a student who was attempting to force her way past him in the hall, which led to an accidental injury when the student fell to the ground, was not actionable due to the fact that hallway duty and supervision of students' whereabouts was a discretionary function protected by the doctrine of sovereign immunity. The Ware court defined a discretionary function of a municipal or state employee as one involving the exercise of "judgment in the discharge of duties imposed by statute, rule or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students."xi This definition is important as it protects agents of school districts, namely educators, who become the subject of lawsuits simply by way of performing their basic supervisory function of adult role model. Unfortunately, many educators and paraprofessionals are unaware of the protections afforded them in the course of carrying out their discretionary functions. This can lead to fear and reluctance to act when in the course of a school day, normal occurrences such as passing in the hallways to get to class escalate into fights and dangerous outbreaks of violence. More dissemination of information and training with respect to teacher duties, responsibilities and protection from liability is needed in the area of discretionary functions, as it affects virtually all teachers working on school campuses.

Frequently plaintiff students will bring a §1983 civil rights action in connection with tort claims, either to counter a sovereign immunity defense, or to buttress traditional tort claims. In most cases the plaintiff claiming a §1983 violation must demonstrate that a special relationship exists between the state (through the school) and the student that gives rise to a deprivation of protected rights. Several other tests, to be discussed below, must also be satisfied. 42 U.S.C. §1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom,

or usage, of any State..., subjects or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding ...."

The requirements for the first hurdle, the special relationship, are relatively difficult to prove because they require a showing that the individual depends wholly on the state for basic needs and is unable to act on his own behalf. In B.M.H. v. School Board of the City of Chesapeake, Virginia, a minor who was sexually assaulted by a fellow student brought an action under §1983 for deprivation of a Fourteenth Amendment liberty interest insofar as the school, through its teachers, failed to affirmatively protect the student after she informed two teachers of a threat she had received. The alleged inaction of the teachers, characterized by their failure to discipline the offending student or seek action from school administrators also gave rise to state law tort claims for negligence, gross negligence and recklessness.

With respect to the §1983 claim, the plaintiff in <u>B.M.H.</u> argued that a state mandatory attendance law, coupled with the fact that the plaintiff had made teachers aware of the threat to her safety, created a special relationship which imposed upon the defendant school district an affirmative duty to protect her under the Fourteenth Amendment Due Process Clause. The court did not accept this argument, relying on precedent<sup>xiv</sup> and defining the factors necessary for a special relationship to arise as a state's "affirmative exercise of its power [which] so restrains and individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs, e.g. food, clothing, shelter, medical care, and reasonable safety." The court further noted that the affirmative duty to protect "arises not from the state's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf." Thus even in the face of severe injury to the plaintiff, where she undertook to inform her teachers of a threat and asked for help, mandatory attendance and the placing of the child in care of the school was not enough to create the special relationship necessary to sustain a §1983 claim. While the <u>B.M.H.</u> case illustrates an unfortunate series of events, it is important to note that the threshold for

satisfying a §1983 claim appears to be significantly higher than that of a traditional state tort claim, thus explaining why §1983 claims are less successful on the whole. While <u>B.M.H.</u> did not prevail on the §1983 claim, she did prevail on the issue of sovereign immunity. The court recognized that the degree of care exercised by the teachers who were aware of the threats made to her fell well below the reasonable standard, and in fact, their inaction was found to be willful and wanton.

An example of a successful §1983 claim can be seen in the case of Nicol v. Auburn-Washburn Unified School District. xvii The case serves as an excellent basis for distinguishing gross negligence from ordinary negligence in the context of discretionary functions. In that case the plaintiff, a high school student, suffered multiple injuries after she was restrained by a school security officer who was summoned to escort her off campus after she had been suspended. Here the plaintiff prevailed on a §1983 claim, arguing that her Fourth Amendment constitutional right to be free from unreasonable seizure had been violated, given the circumstances and the excessively brutal measures employed to remove her from the school grounds. The school district argued that it was protected under the state sovereign immunity statute which granted qualified immunity to "state actors when acting within the scope of their employment." The Kansas statute, xix designed to shield government officials from civil liability for their discretionary acts, applied only where the officials' conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known."xx As is the case with most state statutes involving sovereign immunity, the Kansas statute applied only to simple negligence, while acts involving "more than the lack of ordinary care and diligence, such as willful or wanton acts of negligence and recklessness" did not fall under the umbrella of protected acts. xxi

The <u>Nicol</u> court used a two-pronged test to determine whether the sovereign immunity statute would in fact protect the school district from liability for the student's injuries. The court first determined that the security officer's method of restraining the student, in particular the placing of his forearm across her throat, shutting off her air supply, and the slamming of her face and head into a wall, violated a clearly recognized constitutional right; namely the student's right to enjoy liberty of movement and be free from unreasonable seizure. \*xxii\* Secondly, the court found

that the rights violated by the security guard acting in his official capacity were so clearly established that "reasonable school officials would have understood that their conduct violated" those rights. \*\*Xiiii\*\* Specifically, the court noted that a reasonable officer in the defendant's position "should have known that the use of excessive force in response to a student's non-compliant actions would violate well-known constitutional principles," thus finding that the school district and its agent were not qualifiedly immune. \*\*Xiiv\*\*

#### CLASSROOM DISCIPLINE AND HALLWAY/RECESS DUTY

Classroom discipline and the maintenance of order on school campuses is an important subject about which teachers rarely receive adequate guidance from school districts, ironically, at a time when violent acts on campuses are on the rise. The lack of communication between teachers, administrators and school boards creates problems for teachers and students on two fronts: protecting the personal safety of staff and students and avoiding needless threats and actual instances of litigation. A majority of school handbooks deal with emergency evacuation procedures and bell schedules, rather than with day-to-day classroom monitoring and management issues, as discussions of the latter would consume entire textbooks. Nonetheless, faculty members and other school personnel could benefit immensely from training seminars or regular meetings where a basic framework for what constitutes proper execution of a "discretionary function," and what is considered acceptable with regards to maintenance of order in the classroom, are explained. All too often schools instruct their staff to use their best judgment and discretion to de-escalate student conflicts, while at the same time instilling a fear of personal liability and damage to their professional careers if situations get out of hand in the course of regular supervisory and instructional duties.

In 2000 the Commonwealth of Massachusetts enacted a restraint training program which requires staff members to undergo training within one month of the start of the school year which includes instruction in conflict de-escalation and physical restraint of students, yet the vast majority of those trained thus far have been administrators, not the classroom teachers who face potential student conflict on a day to day basis at recess, passing periods and in physical education and extra-curricular activities. XXVIII Hence educators receive mixed messages insofar as

they are told that supervision and violence prevention are an integral element of their responsibilities, but are warned against actively de-escalating student conflicts for fear of liability. xxxiii

The basic premise that teachers have the duty and the right to exercise their supervisory powers to maintain order in classroom and school settings is well articulated in the doctrine of in loco parentis. Originally used as a basis for defending the right of a teacher to use corporal punishment on a limited basis, xxviii in loco parentis simply means the teacher stands "in the shoes of" a reasonably prudent parent when exercising his or her right to discipline students at school. Today, there is ample case law to support the notion that teachers "may exercise such powers of control, restraint, and correction as may be reasonably necessary to enable [them] properly to perform [their] dut[ies] as teacher[s] and to accomplish the purposes of education."xxix It therefore seems logical that using reasonable force to protect fellow students or to de-escalate violence, when carried out with the sole purpose of keeping the focus on schools as educational facilities is fully justified. Unfortunately, regulations such as that enacted in Massachusetts do little to assist teachers in fulfilling their responsibilities for making schools safe. Rather, the message educators receive is one of intimidation, for the state basically sends a message that when a school does not comply with statutory deadlines for training, as is often the case, teachers become vulnerable to personal attack because they lack the legal basis and support from school districts to carry out their most basic responsibilities.

Fortunately, the model adopted in Massachusetts has not yet become the majority standard. Approximately half of all jurisdictions, to include states with large city districts such as California, New York, Massachusetts and New Jersey<sup>xxx</sup> have banned all forms of corporal punishment and many large metropolitan school districts around the country have codified the circumstances in which the use of force is acceptable in their district handbooks.<sup>xxxi</sup> The Baltimore City Schools regulations specifically ban corporal punishment, while providing clear examples of situations in which a teacher's use of physical contact is permissible, such as "intervening in fights, preventing accidental injury, protecting oneself, providing appropriate care to disabled students, moving through a crowd to address an emergency, and employing passive

restraint with students with emotional disabilities." On the whole, however, policies relating to restraint and discipline are rarely spelled out and not readily accessible to educators.

A common question asked by teachers is "what type of physical contact constitutes acceptable restraint or exercise of control when carrying out instructional and discretionary functions?" While a few states have enacted statutes explicitly granting the use of reasonable force to maintain order and protect students, most have not. A Nebraska statute, "xxxiii" relied upon in <u>Daily v. Board of Education</u>, "xxxiiv" holds that "school teachers and administrators may use physical contact short of corporal punishment to the degree necessary to preserve order and control in the school environment." In <u>Daily</u> a teacher was found guilty of corporal punishment for one type of physical contact and was exculpated for another type, the latter having been found to relate to the maintenance of control and order in the classroom.

Two other key cases outline the parameters of acceptable maintenance of order in classroom settings. The first, Fredrickson v. Denver Public School District No. 1, xxxvii deals with a teacher's appeal of a termination decision by her governing school board after an incident in her classroom tested the limits of acceptable maintenance of discipline, personal safety and order. In Fredrickson, the teacher was conducting her middle school class when she confiscated a note being passed from one student to another. As she was walking between a row of desks, with the note in her hand, the student from whom she had confiscated the note "lightly struck or slapped [her] in the back."XXXVIII When the teacher turned around she found the student standing in the aisle with her hands in the air, as if to deny having struck her. Feeling that her control of the classroom was being challenged, the teacher responded by hitting the student on the shoulder using a "light tap, push or shove" as described in the record. xxxix While the teacher admitted at trial that she had not felt physically threatened by the student's act, the court still ruled in her favor, affirming the school district's policy that "authority to use reasonable and prudent force and restraint for the purposes of maintaining order" where the student behavior represents a "breakdown in, breach of, or serious threat to, a state of order in the classroom or school" requiring a teacher to maintain order is permissible.xl The Fredrickson decision is important as it recognizes a teacher's right to take necessary steps to protect his or her personal safety and that

of fellow students when a student "without reasonable provocation, touches a teacher in a hostile, angry, refractory, or otherwise unconsented to manner on or within school property during school hours, or during school sponsored activities." XII

A similar finding resulted in <u>Boone v. Reese</u> where a physical education teacher made contact with a student after he refused to comply with instructions regarding leaving the bleacher area and participating in a class activity. While the plaintiff in <u>Boone</u> argued that the teacher's contact constituted a battery, the court held that the teacher's actions were not excessive, and that they were "necessary to maintain control of the classroom." Moreover, the court noted that as a means of fulfilling the obligations vis-à-vis students in a school's charge, there are "occasions when it is necessary for school personnel to administer discipline in order to fulfill the obligation." Given the holdings in <u>Fredrickson</u> and <u>Boone</u>, which is clear that despite the lack of statutory authority in many jurisdictions, current legal trends seem to favor granting some degree of latitude with respect to teachers' need to maintain order and promote safe learning environments for all. Ironically, however, few teachers are aware of the current state of the law, much less the language articulated in these cases which supports their basic right to effectively carry out their responsibilities.

# <u>DISCRETIONARY FUNCTIONS, NEGLIGENT SUPERVISION AND PLAINTIFF STUDENT CLAIMS</u>

Perhaps the grayest area of school tort law is that body of case law that deals with teachers' duty to supervise and prevent harm to students during the course of non-instructional activities. Virtually all K-12 educators carry out some form of non-instructional supervision on a daily basis. Examples of such activities include playground, recess and lunch periods, hallway passing periods, assemblies and other supplemental activities, and the movement of groups of students to and from given areas on a school campus. The concept of supervision as a discretionary function going to the heart of a teacher's duty was first recognized in Hoose v.

Drumm. \*\*IVIII\*\* Here, a plaintiff sued for injuries sustained when a fellow student, during a recess period, threw a stalk of goldenrod at him, permanently damaging his eye. The court unequivocally affirmed a duty on the part of teachers, both in the classroom and during day-to-day school functions. \*\*IVIII\*\* Specifically, the court stated that "at recess periods, not less than in the

classroom, a teacher owes it to his charges to exercise such care of [students] as a parent of ordinary prudence would observe in comparable circumstances." Evidence that liability in the context of non-instructional supervision is a hot-button issue in the field of education can be found in the sheer volume of cases dealing with the subject. Despite the plethora of litigation on this issue, teacher licensure programs do not require satisfactory completion of coursework or training in education law. By entering the field without a basic sense of their rights and responsibilities, many new teachers are setting themselves up for challenges that go above and beyond those already faced with regard to academics.

The issue of contractual duties and teacher liability during non-instructional supervision was revisited more recently in the case of NEA-Goodland v. Board of Education, U.S.D. No. 352 when a teacher's union, on behalf of one of its members, argued that supervision during extracurricular activities and non-instructional activities necessitated a supplemental contract in order for a duty of care to arise. The NEA court rejected this argument, finding that "any supervising which is entwined with the duty of educating should be considered a part of the teacher's primary teaching obligation. Noon recess duty is intricately related to the education process and as such is controlled by the teacher's primary contract." It thus appears that if teacher training is to be mandated by regulation, teachers' unions may have more success lobbying their state legislatures, rather than appealing to the courts for redress.

## A SCHOOL'S DUTY TO ACT WHEN THERE IS NOTICE OF IMMINENT HARM

Courts have generally held that where a school has actual or constructive notice of foreseeable harm to a student, it will be held liable for injuries sustained. Introducing the concepts of notice and foreseeability through teacher training and at school-wide meetings can equip teachers with basic guidelines on how to best prevent student injury and unnecessary litigation. At a minimum, districts should prepare informational pamphlets that explain this issue to new hires. Actual or constructive notice arises when a teacher or other school employee becomes aware of or is made aware of potential harm, either directly by the victim, as in B.M.H., if or by others who have information regarding the specific harm or threat to the student's safety or well-being, or by the employee's own observations. Courts have traditionally made use of a two-

pronged test to determine school liability. The first prong includes an examination of whether there was actual or constructive notice as defined above. If the school is determined to have been on notice, the inquiry proceeds to the second prong, which requires a showing that the negligence of the school was the proximate cause of injury.

The holding in Mirand v. City of New York, decided in 1994, remains the current state of the law in this area. In Mirand, a high school student received a death threat from a fellow student during the hallway passing period. The student first told her sister about the threat and then proceeded directly to the school security office where she knocked on the door but received no response. You have way to the security office the student had encountered a teacher and had reported the threat to the teacher, who did not follow up by reporting it to school administrators or security personnel. The student returned to the security office a second time, still finding no one present. She then went to the school's main entrance and exited to wait for her sister, in the hopes of finding a security officer, as officers were typically stationed there at dismissal time. None were present, and on her way down the stairwell, the student was confronted by the offending student who struck her on the elbow and the head with a hammer. The student's sister was also stabbed through the wrist when she tried to intervene. Both suffered multiple injuries requiring hospitalization.

Despite the student's report of the threat to a teacher, and the school's maintenance of thirteen trained security officers, no officers were present at the school's main entrance during the entire incident, or during the immediately preceding dismissal time. The court properly found that the school had breached its duty to the student when it failed to take action following the actual notice of sufficiently specific information by way of the student's reported threat. Moreover, the lack of adequate supervision in light of both the specific threat, and of the heightened need for security at dismissal time, led the court to conclude that the school's negligence was indeed the proximate cause of both students' injuries.

The <u>Mirand</u> case illustrates the integral role notice plays in creating a breach of duty on the part of schools. Specifically, the court found that "the violent acts which caused the plaintiff's injuries were sparked by a prior altercation and death threat of which [the] defendant, through one

of its teachers, was expressly made aware; yet no action was taken to prevent escalation of the incident by the teacher [who was in] a position to assist [the student]." The court also affirmed that "supervision of students is obviously needed at dismissal time, when the largest number of students congregate and fights are most likely to occur...the complete absence of security or supervisory personnel at a time and place when vigilance was absolutely essential constituted the proximate cause of [the] plaintiff's injuries."

The notice requirement can also be used to avoid liability where a school can show it had neither actual nor constructive notice of specific danger to a student and that employee negligence was not the proximate cause of injury. In Nocilla v. Middle Country Central School District, x a student was in a hallway when he was punched in the mouth by a fellow student. The plaintiff argued that his injuries resulted from a lack of adequate supervision and that the injuries were foreseeable insofar as the school was on constructive notice of a threat to his safety because the offending student was in the hallway without permission. Following the standard announced in Mirand, the court ruled in favor of the defendant school district, concluding that the "sudden unprovoked nature of the attack, as well as its extremely short duration" suggested that it could have occurred "regardless of the District's level of supervision in the hallway area." As to the issue of notice, the court also found unpersuasive as a defense, the mere fact that the student was in the hallway without authorization. Ixii This is illustrative of the well-recognized premise that it is virtually impossible to monitor a student's every move, even when the best policies for school safety are in place. The issue of notice and foreseeability will also determine a plaintiff's success with respect to claims of negligence pertaining to sexual assaults occurring on school campuses as well. lxiii lxiv

# PROVIDING ADEQUATE SECURITY

Yet another issue which gives rise to claims of negligent supervision is that of school security plans and placement of security officers throughout schools. Several states, including Massachusetts, have statutes which require school districts to adopt and publish specific security policies. Ixv In Brum v. Town of Dartmouth, a parent brought a wrongful death action alleging negligent supervision due to lack of adequate security. The defendant school district sought relief

under the Massachusetts Tort Claims Act<sup>lxvi</sup> which provides immunity to state employees who carry out a discretionary function in the course of employment without the exercise of willful or wanton negligence or recklessness. With respect to the school's claim for relief under the Tort Claims Act, the court held that "discretionary function immunity does not apply in cases in which a government official's actions are mandated by statute or regulation." Interestingly, the court declined to take up the issue of whether there was adequate security in the school but chose instead to focus its discussion on the issue of proximate cause, finding for the defendant.

In Mosley v. Portland School District No. 11, laix a student brought suit for injuries sustained when he was stabbed at school, again, alleging a lack of adequate security. In the absence of a state statute mandating security plans in schools, the Oregon court noted that the choice by a school district regarding the number and allocation of security personnel involved matters of discretion, thus holding that the school district was immune from liability under the state statute on discretionary immunity. Dixx Given these two opposing outcomes, the pivotal factor in determining liability seems to be whether a statute exists that mandates creation of a school-wide or district-wide security plan. Conversely, where no statute exists, schools can avoid liability by claiming immunity and proving only simple negligence, or no negligence at all. It is interesting to note that the Mosley case also turned on whether the defendant school district had "specific knowledge [notice] concerning the incident.....that, if acted on in a timely manner, would have enabled the defendant to protect the student."

# FIGHTS, PHYSICAL CONTACT AND TEACHER LIABILITY

Physical fighting in the corridors of K-12 schools is an unfortunate, but regular occurrence. We have seen how hallway monitoring is intertwined in teachers' regular job responsibilities, as maintaining order is at the crux of creating a safe and effective educational environment. When fighting does occur, it usually involves sudden, impulsive action, lasting seconds or minutes at the most. While the general expectation is that schools will have a designated supervision plan laxiii and that teachers will be assigned to supervise students during passing periods, often times even the most vigilant level of supervision cannot prevent a fight or resultant injury.

For this reason courts have held that where fighting is involved, in order for a plaintiff to prevail on a negligent supervision claim, he or she must show that the school had actual or constructive notice that a fight was foreseeable, that the incident was not sudden or unexpected, and that it could have been anticipated and avoided through closer supervision. It has been recognized that "rough housing or even fighting ... are reasonably foreseeable and can be relatively easily controlled through adult supervision" however, "unthinking" actions of students carried out in a matter of seconds are nearly impossible to halt or curtail. Such was the case in Guthrie v. Irons, where a student was injured when attacked by another student in the hall during passing period. The teacher charged with supervising the particular area in question had moved a few feet down the hall from her classroom to "move a group of students along" when the fight, which lasted seconds, occurred. Although the teacher responded immediately after being made aware of the situation, she was unable to prevent the contact which led to the injury. The court acknowledged the need for supervision in these circumstances, but refused to rule in favor of the plaintiff, affirming that "in exercising their professional judgment [teachers] should not be deterred or intimidated by the constant threat of personal liability, as long as they act within the scope of their authority, and without willfulness, malice or corruption." laxvi

The more difficult question regarding fighting in schools revolves around teacher liability when a student sustains injuries as a result of the physical contact used to break up the fight. In <a href="Cabrera v. Werley">Cabrera v. Werley</a>, bxxvii the defendant, a physical education teacher, was accused of assault and battery, negligence and gross negligence, after he stepped in to restrain a student involved in a fight. In the course of restraining the student, who was kicking to free herself from the teacher's grasp, the teacher fell backward. As the teacher fell, "the two became entangled and [the plaintiff student] struck the gym floor on the right side of her face," backward a broken nose and dislocated jaw.

The defendant prevailed, pursuant to a Michigan statute which permits the use of "reasonable physical force on a student to maintain order and control in a school setting." The statute authorizes the use of physical force, if it is determined that the teacher exercised "reasonable good faith judgment" for the purpose of, among other things, "quell[ing] a disturbance

that threatens physical injury to any person." The <u>Cabrera</u> decision suggests that where student injury results after a teacher uses physical contact to break up a fight, in the absence of excessive force and judgment lacking good faith, he or she, together with the school district, will usually avoid liability, as this type of contact is necessary to maintain a safe and orderly school environment. The Michigan approach which represents the state of the law in a majority of jurisdictions, appears to be much more in line with the day-to-day realities of school campuses when compared to the aforementioned Massachusetts approach which invites difficulty in both compliance and practical application, given the number of employees requiring training in physical restraint techniques and the backlog in training which already exists.

# SUDDEN AND IMPULSIVE ACTS AT RECESS, LUNCH AND OTHER NON-INSTRUCTIONAL ACTIVITIES

As discussed above, a court will generally decline to hold a school district liable for injuries sustained as a result of sudden, impulsive and unanticipated acts. The absence of both notice, and foreseeability, will generally outweigh any argument of negligent supervision, due to the established notion that even the greatest degree of supervision will fail to prevent certain incidents. The same premise has been applied when the injury occurs during a non-instructional activity, such as recess, lunch, pep rallies, assemblies, etc. Ample case law exists to support the notion that "all movement of pupils need not be under constant scrutiny." IXXXIII

In Hauser v. North Rockland Central School District No. 1, hoxxiii a sixth grader was injured when struck with a rock thrown by a fellow student during a recess period. The court found for the defendant school, classifying the act causing the injury as "spontaneous and unanticipated." The 1949 case of Ohman v. Board of Education affirmed that a school is "only under a duty to exercise the degree of reasonable care that a parent of ordinary prudence would have exercised under comparable circumstances." The principles set forth in Ohman, including the premise that "proper supervision depends largely on the circumstances attending the event," have been upheld time and time again in subsequent legal actions involving claims of negligent supervision. In some cases involving playground injuries, a school may be required to show that the site of the injury was maintained in a reasonably safe condition in order to overcome any claims that the injury was foreseeable or proximately caused by the condition of

the premises. It the school district can demonstrate that neither lack of supervision, nor lack of safe premises was the proximate cause of injury, liability will be avoided.

Frequently, sudden, spontaneous acts occur in classroom-like settings during non-instructional activities involving movement and socializing among students. In most of these cases the same principles apply with respect to school liability. In Tomlinson v. Board of Education of the City of Elmira, boxxxiii a school district was not liable for negligent supervision when a sixth grader sustained injuries as a result of having his chair pulled out from under him. During lunch, a classroom aide was assigned to monitor two rooms while students were permitted to read books and listen to tape recordings. The victim stood up to adjust the volume on the tape player and as he sat down, another student pulled his chair out from under him, causing him to fall and hit his head. At the very instant in which he fell, the classroom aide was not present. Notwithstanding this, the court found "no convincing evidence that defendants were negligent in having only one classroom aide monitoring two different classes, especially in the absence of any [specific notice] of behavioral problems." The injury was deemed to have been caused "solely by a sudden and unexpected prank on the part of one of the students that could not be realistically anticipated or prevented, even had an aide been in the classroom."

In cases involving analogous situations where "children in the immediate area were not being rowdy or misbehaving," courts have reached the same conclusion with regard to the proximate cause of injury where a sudden, unexpected act preceded by "no fight or unruly behavior" occurs: schools will usually avoid liability due to the recognized inability to prevent many such injuries, no matter how intense the level of supervision.

# ADMINISTRATORS' DUTY TO INFORM TEACHERS OF PREVIOUS ACTS OF VIOLENCE

Teachers' ability to structure learning activities and lessons in a manner that fosters safety and community is integral to the learning process. Of central relevance to this goal is the access to information which can help teachers to prevent unnecessary conflicts which have the potential to result in injury to both students and staff on school campuses. At present, there are only a few jurisdictions with statutes on the books requiring school districts and administrators to

notify teachers of students' previous acts of violence or to expressly disclose students' disciplinary records.

An example of such a statutory requirement can be found in California Educational Code §49079. \*\*Ciiii\* The statute requires a school district to "inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in any of the acts [for which grounds for suspension or expulsion exist]." The grounds for suspension and expulsion are outlined in §48900. A school may suspend or expel a student from a California school for the following acts:

"[c]ausing or attempting to cause, or threatening to cause physical injury to another person; willful use of force or violence upon the person of another, except in self-defense; possession, sale or other furnishing of a firearm, knife, explosive, or other dangerous object, unless the student obtained written permission; unlawful possession, use or sale of any controlled substance; commission of or attempted commission of robbery or extortion; attempt to cause damage to school property or private property; theft or attempted theft of school property or private property; commission of an obscene act or engaging in habitual profanity or vulgarity; unlawful possession or offers to sell drug paraphernalia; and disruption of school activities or willful defiance of the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties."

The important benefits to be reaped when teachers are granted the legal right to gain access to the aforementioned information, in particular the last subset which involves disruption of school activities and defiance of authority, cannot be emphasized enough. By enacting §49079 in 1989, the California legislature effectively took the first step toward making schools safer and providing teachers with vital information to better anticipate and prevent injuries and violence on school campuses. While the language in §49079 may appear broad and difficult to enforce, there are many practical methods by which schools have the ability to ascertain and disclose pertinent information in student disciplinary records. Some of these include issuing notices of newly arrived students with corresponding information as to who shall be the custodian of their cumulative records, providing teachers with updated daily lists of students who are suspended (as is typically done with attendance) allowing teachers to seek further details from the administrator responsible for those students, delegating the dissemination of student disciplinary information to guidance counselors and requiring them to contact all of a student's

teachers in a timely manner to inform them of disciplinary incidents, and holding meetings specifically to update faculty on student suspensions and expulsions on a regular basis.

Since its enactment, courts in California have upheld §49079 in a number of cases. Among the most noteworthy is the case of Skinner v. Vacaville, xcv in which a plaintiff sued for personal injuries sustained when she was attacked by a fellow student during a volleyball game in physical education class. In that case, students were playing volleyball when an argument arose between the plaintiff and her fellow student over the latter's deliberate attempts to make his team lose. The teacher in question was supervising a class of forty to fifty students and was standing "in a central location at a distance of about 20-30 feet from [the plaintiff's] volleyball court." No one complained to the teacher and she did not notice any imminent disruption until the plaintiff had already been thrown to the ground. When the student fell, the teacher "was the first to arrive at her side and immediately took charge of the situation by sending [the perpetrator] to the office and arranging for [the plaintiff] to be taken to emergency care." The plaintiff sued for damages. alleging negligent supervision and failure on the part of the district to inform the teacher of the offending student's record of violence pursuant to §49079. Interestingly, the court ruled in favor of the defendant school district after determining that the injuries suffered by the plaintiff were the result of a sudden, unanticipated attack lasting seconds, which could not have been prevented by more vigilant supervision. xcviii

As to the issue of causation, the court noted that the proximate cause of the plaintiff's injuries was not the school's failure to inform the teacher of the perpetrator's previous offenses, as the teacher had been placed on constructive notice with respect to the student's propensity toward violence, based on a conflict the student had had two weeks prior while in the teacher's physical education class. Hence, the claim of breach of duty with respect to the statutory duty to inform the teacher of the student's prior suspensions and violent acts was not central to the issue of causation. The Skinner decision is nonetheless extremely important insofar as the court's language recognizes that California school districts have a statutory duty to inform teachers and other school personnel of previous acts committed by students which may suggest a propensity toward future incidents involving injury to others. Specifically, the court stated that "a

school district may breach its duty of care under appropriate circumstances where administrators fail to give teachers information they need to protect students under their supervision from attacks by other students."<sup>c</sup>

At present, the California approach, which creates a duty on the part of districts to inform school personnel and allow access to critical information, is a minority view. Unfortunately, a more recent decision handed down in Tennessee indicates that courts are not yet ready to move in the direction of the Skinner holding. In Warren v. Metropolitan Government of Nashville and Davidson County, if a teacher attempting to break up a fight suffered a permanent head injury when she was struck in the face by a student. The teacher brought suit against the county alleging negligence and two instances of breach of contract. The agreement between the school district and the teachers' union contained a specific provision requiring the district to work in collaboration with teachers to "create a safe and orderly learning environment." The agreement further stated that the intent on the part of the parties to foster such an environment "creat[ed] a duty on the part of the [district] and/or administration to provide teachers and faculty with information about a student's background ... sufficient to let them make [an] informed judgment on how to interact with that student ... "civ

The student responsible for striking the teacher had a "history of criminal activity and a propensity for violence, including hitting a fellow female student in the face, shoplifting, burglary into [one of the district's middle schools] (for which a police report was filed and charges brought), malicious destruction of property and receiving and concealing stolen property." The plaintiff's theory with regard to causation was based on both the lack of information about the student's propensity toward violence and the district's failure to impose a mandated ten day suspension after the student attempted to break into the middle school. The teacher argued that had the student been disciplined according to the published discipline policy of the school, he would not have been present on the day the fight occurred and the teacher would not have had to intervene." Moreover, the teacher argued that if she had had specific knowledge as called for in the agreement, she would have been better equipped to make an "informed judgment on how to interact with [him]." The teacher also argued that the district had breached the agreement by

failing to provide her with "specific training to handle student fights and/or failing to provide trained security personnel to assist [her] in maintaining discipline."

As to the failure to inform the teacher of the student's previous violent acts, the court arrived at a different interpretation of the language in the teachers' contract. The court noted that the clause in question provided for "concise information [regarding] individual student discipline records [to be conveyed] to those teachers 'concerned' with determining disciplinary recommendations for particular students." The court found that this language did not require "that individual student discipline records [be] made available to all teachers as a matter of routine, but to only those "concerned" teachers in aiding a determination of disciplinary recommendation for specific pupils." Perhaps if the plaintiff had been one of the offending student's regular classroom teachers she may have prevailed on this portion of the claim, for one can infer that providing student discipline records for every student with a history of violence to every teacher on campus can be an ominous, at times fruitless task. As to the failure to provide specific training for intervention in fights, the court relied on another clause in the agreement which stated only that the administration was obligated to "take positive steps to assist teachers in ascertaining the appropriate personnel for those students in need of specialized attention." cxi The court also construed the district's duty to create a safe work environment much more vaguely, noting that the agreement stated only that the administration had the "responsibility to support teachers in all reasonable disciplinary measures." cxii

The plaintiff's claims in <u>Warren</u> failed on all three counts. There are several possible interpretations for why the holding with respect to the district's duty to inform teachers differed from that in <u>Skinner</u>. First, the duty in <u>Skinner</u> was based on a state statute which listed specific penalties for failing to inform school personnel of student's previous violent acts. CXIV The statute also enumerated specific acts for which a student could be suspended or expelled from California schools which imposed a duty on districts to inform their personnel. In <u>Warren</u> the plaintiff's argument was based on language in a collective bargaining agreement between a school district and its teachers' union which gave only general guidelines for dissemination of

information with no set criteria for what constituted a "concerned" teacher, or for the types of remedies available to partied injured as a result of a breach.

While the court in <u>Warren</u> did concede that provisions requiring individual training of teachers for student fight intervention and "routine notice to teachers of children with propensities for violence" would "undoubtedly benefit the public education system and go further in promoting a safe and orderly learning environment," it was not willing to find any elements in the agreement to legally bind the district to perform such duties. Thus the somewhat troubling holding in <u>Warren</u> serves to illustrate that perhaps the most prudent path to achieving the goal of safer learning environments and better working conditions can be found through state legislatures, as opposed to professional associations. Following the statutory route, similar versions of the California Education Code, <sup>cxvii</sup> which has already withstood legal challenges, should be adopted in other jurisdictions.

## SELF-DEFENSE AND TEACHER LIABILITY

Often times the question is raised as to how teachers should react when faced with a student attack or hostile physical contact. Administrators and district officials are at times reluctant to inform teachers of their rights, choosing instead to recommend that the individual summon for help, or attempt to avoid the contact through passive resistance. The reasons for dispensing this type of advice are obvious: the avoidance of litigation and unwanted escalations of conflict are top priorities. In keeping with the goal of fostering safe and effective learning environments, passive resistance is not always practicable and there are many occasions where maintenance of order and rapid de-escalation using appropriate contact would limit injuries, decrease the extent of damages and limit those affected.

In actuality, teachers are entitled to the same right to defend themselves as that which applies to others in society. While many state statutes lack language conferring the right to use reasonable force to maintain classroom order, most do include the right to "restrain or remove a pupil" for "self defense or the defense of another." Even in Massachusetts, where restraint training is mandated, a teacher may use "such reasonable force as is necessary to protect pupils, other persons, and themselves from an assault by a pupil." Where a teacher has resorted to

the use of force in self-defense or in defense of another, the factors for determining liability will include whether the action was reasonable in light of the circumstances and whether the force used was excessive in nature, given what was necessary to repel the assailant.

#### TEACHER CLAIMS FOR INJURY GENERALLY UNSUCCESSFUL

Courts have generally been reluctant to award damages to a teacher who suffers personal injury while supervising students. The defendant school district will usually escape liability unless extreme recklessness can be shown. As in the cases where students seek damages for injuries resulting from a school's negligent supervision, notice is a key element in determining whether a teacher will prevail. Where a teacher brings an action for negligence, the parents will generally be the party required to defend the action, unless the student is no longer a minor at the time the incident occurs. It is a well settled principle in a majority of jurisdictions that "a parent's liability for the torts of his her child does not arise merely from the parental relationship itself." Liability may, however, arise where a parent fails to supervise a child after being placed on notice of the child's propensity to commit violent acts.

In <u>Armour v. England</u>, <sup>cxxi</sup> a teacher attempted to break up a fight and was injured when the defendant, a student, "caused a pile of books to strike [the teacher's] left cheek and wrist." The court ruled in favor of the defendant after determining that the student "had never been the subject of a restraining order for violent behavior" and that the only disciplinary action taken against her was for an altercation "in which another student struck her and she defended herself." The court also relied on the parent's testimony which alleged that school officials had never "notified them of any vicious or violent behavior on [the student's] part." CXXIII

It is interesting to note that while teachers rarely recover damages for negligence on the part of schools, many jurisdictions have enacted statutes creating criminal penalties for violence perpetrated against them. It is likely that the reluctance of courts to allow teachers to prevail on claims of negligence stems from strong public policy notions that view physical risk and protection of students' personal safety as an integral part of teachers' duties. Overall, most would agree that school handbooks are written with students' interests, not teachers', in mind. Thus damages,

even in circumstances where schools may not have equipped teachers with the tools to protect themselves, cxxv may not be endorsed by the public at-large.

As a consequence, many states have opted to criminalize violent acts against teachers as a method of deterrence. Some courts have declined to apply these statutes due to perceived imbalances between the penalty for a student who strikes a teacher and the lesser penalty for a student who strikes a fellow student. As is often the case, teacher training in this area of the law is lacking, as is student education, ultimately leading to a lower level of deterrence. Contributing to this problem is the reluctance on the part of many teachers to bring charges, for fear of damage to their professional reputations. This represents yet another area where school districts should do more in the way of violence prevention. By providing information and training to teachers on a regular basis, school districts would help to create an environment in which teachers' personal safety is valued to a greater extent.

## **CONCLUSION**

Today's teachers face a milieu of non-academic challenges, including threats to their personal safety requiring them to develop skills in conflict de-escalation in addition to devising thoughtful ways to raise student achievement. School violence and litigation are on the rise, while districts across the nation face a shortage in qualified teachers. It is well documented that many teachers cite poor working conditions as a primary reason for leaving the profession. If public school districts are to meet the needs of a student population that faces high stakes testing, increasingly high expectations for college admission, and an overarching need to develop strong character and interpersonal skills, they must work to provide staff members with the tools to succeed on the job.

The first step toward decreased litigation and improved teacher training must occur at the licensure level. Colleges must design courses in education law that prepare teachers for the responsibilities they will face as practitioners. Moreover, teachers already in the field need hands-on instruction in conflict de-escalation coupled with in-servicing on current legal trends, including a framework for understanding negligence actions and liability. If districts take a more active role in preparing and supporting their personnel, the overall climate in America's public

schools can only improve. Most importantly, teachers should be given the opportunity to learn from day-to-day incidents. Where a violent outbreak occurs, either between fellow students or against a teacher, school personnel should be quickly debriefed, and their role in preventing future outbreaks should be reviewed. If teachers are reassured by supportive and practical training programs, they will be less preoccupied and frustrated with their working conditions and will be far better equipped to handle the most pressing issues affecting academic achievement.

i Richard Ingersoll and Jeffrey M. Kralik. "The Impact of Mentoring on Teacher Retention: What the Research Savs" Education Commission of the States (February 2004).

ii Joan Montgomery Halford. "Easing the Way for New Teachers." Educational Leadership (vol. 55, no. 5, February 1998)

Leger v. Stockton 249 Cal. Rptr. 688, 694 (Cal. Ct. App. 1988)

Constantinescu v. Conejo Valley Unified School District 20 Cal Rptr. 2d 734 (Cal Ct. App. 1993)

<sup>&</sup>lt;sup>v</sup> Hoose v. Drumm 22 N.E. 2d 233, 234 (N.Y. 1939)

Ann. Cal. Const. Art 1, §28

vii Pratt v. Robinson 39 NY 2d 554 at 560. (N.Y. 1976)

viii Ripellino v. North Carolina School Boards Association 581 S.E.2d 88 (N.C.Ct.App. 2003)

ix Id. In Ripellino a student was injured while leaving school at dismissal time. The court found the school had waived its right to sovereign immunity to the extent it had purchased liability insurance for negligent acts, and due to the inherently dangerous condition of the premises and the layout of the pick-up and drop off area where cars entered and exited from at entry and dismissal time.

Ware v. Turner 840 So.2d. 132 (Ala. 2002)

<sup>&</sup>lt;sup>xi</sup> Ware v. Turner 840 So.2d. 132 (Ala. 2002) at 135. In determining that a school district or its agent are protected by the doctrine of sovereign immunity a court must also conclude that the agent was following a course of action established by policy, regulation, or statute. When violations are alleged, the moving party has the burden of showing that the actor knew or should have known that his action violated the policy. regulation, or statute in question. B.M.H. v. School Board of the City of Chesapeake, Virginia 833 F. Supp. 560 (E.D.Va. 1993)

xii *Id.* at 563.

B.M.H. v. School Board of the City of Chesapeake, Virginia 833 F. Supp. 560, 574 (E.D.Va. 1993)

viv DeShaney v. Winnebago County Dept. of Social Services 489 US 189 at 200 (1989)

xv B.M.H. v. School Board of the City of Chesapeake, Virginia 833 F. Supp. 560 (E.D.Va. 1993) at 566. xvi Id. at 566.

Nicol v. Auburn-Washburn Unified School District 231 F. Supp. 2d 1092 (D.Kan. 2002) xviii *Id.* at 1097.

xix Kan. Stat. Ann. §75-6104(e) grants sovereign immunity to state agents......in Nicols the agent should have been carrying out a discretionary function; that of escorting a suspended student off school grounds. The brutal measures used, including cutting off the student's air supply, smashing her head into a water fountain and forcibly dragging her in a bear hug down the hallway, were clearly illustrative of security and discipline gone awry.

\*\*X Nicol v. Auburn-Washburn Unified School District 231 F. Supp. 2d 1092 at 1097. (D.Kan. 2002)

xxi Kan. Stat. Ann. §75-6104

xxii Nicol v. Auburn-Washburn Unified School District 231 F. Supp. 2d 1092,1095. (D.Kan. 2002)

xxiii *Id.* at 1100.

xxiv Id. at 1100.

xxv 603 C.M.R. 46

xxvi 603 C.M.R. 46 requires educators in Massachusetts to undergo training with regard to their school's restraint policy. Training must occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment. Pursuant to the regulation, training shall include

information on the following: "(a) The program's restraint policy; (b) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors; (c) Types of restraints and related safety considerations, including information regarding the increased risk of injury to a student when an extended restraint is used; (d) Administering physical restraint in accordance with known medical or psychological limitations and/or behavioral intervention plans applicable to an individual student; and (e) Identification of program staff who have received in-depth training pursuant to 603 CMR 46.03(3) in the use of physical restraint.

xxvii The purpose of 603 C.M.R. 46, according to the Massachusetts Department of Education, reads as follows: "...to ensure that every student participating in a Massachusetts public education program is free from the unreasonable use of physical restraint. Physical restraint shall be used only in emergency situations, after other less intrusive alternatives have failed or been deemed inappropriate, and with extreme caution. School personnel shall use physical restraint with two goals in mind:(a) To administer a physical restraint only when needed to protect a student and/or a member of the school community from imminent, serious, physical harm; and(b) To prevent or minimize any harm to the student as a result of the use of physical restraint.

xxviii In the case of Ingraham v. Wright 430 US 651 (1977) two plaintiff students challenged a Florida statute allowing corporal punishment, contending that it constituted cruel and unusual punishment. The Supreme Court of the United States held that state tort measures would adequately protect students from cruel and unusual punishment of the type that may violate the Eighth Amendment, while choosing not to strike down the Florida statute.

xxix NEA-Goodland v. Board of Education, U.S.D. No. 352 775 P.2d 675, 678 (Kan.Ct.App. 1989)

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xxxi M.G.L. Ch. 71 §37G, Cal Ed. Code 40090, NJ Rev Stat §18A: 6-1, NY Comp Cods R & Regs, title 8
xxxii Tall v. Board of School Commissioners of Baltimore City 706 A.2d 659,662 (Md.Ct.Spec.App. 1998)
xxxiii Neb. Rev. St. §79-258
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Daily v. Board of Education of Morrill County School District 588 N.W.2d 813 (Neb. 1999) zxxv *ld.* at 815.

The defendant teacher in *Daily* was found liable for striking a student on the head to get his attention after he had already misbehaved, and when he was alone in the classroom with only one other student. The teacher had initially placed his hands on the student's shoulders to guide him back into his seat when he had become uncooperative and unresponsive to requests to remain in his seat. The court found that the act of restraining the student did not violate the Nebraska statute prohibiting corporal punishment, and went on to espouse the following definition of corporal punishment as distinguished from maintaining order: "Corporal punishment [...] does not include physical contact that is not intended to punish a student for disapproved behavior but is instead intended to preserve order in the schools or intended to protect persons

or property from harm."

xxxviii Fredrickson v. Denver Public School District No. 1 819 P.2d. 1068 (Colo.App.Ct. 1991) xxxviii Id. at 1070.

xxxix *Id.* at 1071.

xl Id at 1072.

xli Id.

Boone v. Reese 889 So.2d 435 (La.Ct.App. 2004)

id at 440.

Id at 441.

xlv The Fredrickson decision was handed down in Colorado, one of approximately 25 jurisdictions with statutes forbidding corporal punishment in schools.

xivi The Boone decision was handed down in Louisiana, a jurisdiction where corporal punishment is

statutorily permissible in certain circumstances.

ii Hoose v. Drumm 22 N.E.2d 233 (N.Y. 1939)

xlviii Id at 234.

xlix Id.

<sup>1</sup>NEA-Goodland v. Board of Education, U.S.D. No. 352 775 P.2d 675 (Kan.Ct.App. 1989)

B.M.H. v. School Board of the City of Chesapeake, Virginia 833 F. Supp. 560 (E.D.Va. 1993)

Mirand v. City of New York 637 N.E. 2d 263 (N.Y. 1994)

liv Id. at 265.

<sup>I∨</sup> *Id.* 

lvi Id. at 267.

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<sup>lvii</sup> Id.
lviii Id at 266.
lix Id at 267.
Nocilla v. Middle Country Central School District 757 N.Y.S. 2d 300 (N.Y.App.Div. 2003)
lxi Id at 302.
lxii Id.
In Logan v. N.Y. 543 N.Y.S. 2d 661 (N.Y.App.Div. 1989) the mere presence of security on campus placed
school on constructive notice that a child was at risk of attack if left unescorted to travel between classes.

| kiv | See also | Doe v. | Board of Education City of New Haven 819 A.2d 289 (Conn.App.Ct. 2003) and Frederick
V. Vermilion Parish School Board 772 So.2d 208 (La.Ct.App. 2001)
lxv M.G.L. Ch. 71 §37H
lxvi M.G.L. Ch. 258
Brum v. Town of Dartmouth 704 N.E.2d 1147,1152 (Mass. 1999)
lxviii In Brum the court focused on the original cause of the injury, finding that the school was not responsible
for the plaintiff's death because it was not in control of the non-student perpetrators who came on campus
and committed the murder. The court also found that there was no special relationship, thus striking down
the plaintiff's §1983 claim, since notwithstanding mandatory attendance laws, the student was over the age
of sixteen, and thus not required to attend school.
Mosley v. Portland School District No. 11 843 P.2d 41,420 (Or. 1992)
lxx ORS 30.265(3)(c)
Mosley v. Portland School District No. 11 843 P.2d. 415 (Or. 1992)
Daily v. Los Angeles Unified School District 470 P.2d 360 (Cal. 1965)
Malik v. Greater Johnstown Enlarged School District 669 N.Y.S. 2d 729 (N.Y.App.Div. 1998)
lxxiv Id at 731.
<sup>lxxv</sup> Guthrie v. Irons 439 S.E.2d 732 (Ga.Ct.App. 1993)
lxxvi Id at 736.
Cabrera v. Werley 2001 WL 1464635 (Mich.Ct.App.)
lxxviii Id at 1.
lxxix M.C.L.A. §380.1312(4)
lxxx M.C.L.A. §380.1312(4)(d)
603 C.M.R. 46 which requires teacher training in how to physically restrain a student.
IXXXII Conway v. Board of Education of the City of New York 171 N.Y.S.2d 162 (N.Y.Gen.Term 1958)
lxxxiii Hauser v. North Rockland Central School District No. 1 560 N.Y.S.2d 835 (N.Y.App.Div. 1990)
lxxxiv Id at 836.
Ohman v. Board of Education 90 N.E.2d 474, 475 (N.Y.1949)
lxxxvi Id at 475.
Lopez v. Freeport Union Free School District 734 N.Y.S.2d 97 (N.Y.App.Div. 2001)
Tomlinson v. Board of Education of the City of Elmira 583 N.Y.S.2d 664 (N.Y.App.Div. 1992)
lxxxix Id at 665.
xc Id.
xci Butler v. Oklahoma City Public School System 871 P.2d. 444 (Okla.Ct.App. 1994)
Id at 445.
xciii Ann. Cal. Educ. Code §49079
xciv Ann. Cal. Educ. Code §48900
xcv Skinner v. Vacaville Unified School District 43 Cal.Rptr.2d 384 (Cal.Ct.App. 1995)
id at 387.
xcvii Id.
Id. at 391.
xcix Id. at 390.
c Id.
ci Skinner v. Vacaville Unified School District 43 Cal.Rptr.2d 384 (Cal.Ct.App. 1995)
cii Warren v. Metropolitan Government of Nashville and Davidson County 955 S.W. 2d 618
(Tenn.Ct.App.1997) ciii Id at 625.
civ Id.
cv Id at 620.
Terms in the agreement between the district and the teacher's union clearly spelled out a duty to maintain
order and prevent disruptive behavior, including, if necessary intervening to stop students from fighting.
Warren v. Metropolitan Government of Nashville and Davidson County 955 S.W. 2d 618 at 625
(Tenn.Ct.App. 1997) cviii Id at 620.
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cix Id at 625.
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CXIII Skinner v. Vacaville Unified School District 43 Cal.Rptr.2d 384 (Cal.Ct.App. 1995)

cxiv Ann. Cal Educ. Code §49079 states that an "officer or employee of a school district who knowingly fails to provide information about a pupil who has engaged in, or who is reasonably suspected to have engaged in, the acts referred to in subdivision (a) is guilty of a misdemeanor, which is punishable by confinement in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars, or both."

<sup>cxv</sup> Warren v. Metropolitan Government of Nashville and Davidson County 955 S.W. 2d 618 (Tenn.Ct.App. 1997)

cxvi Id at 625.

Ann. Cal. Educ. Code §49079

cxviii M.C.L.A. §380.1312

cxix M.G.L. Ch. 71 §38G and 32 MAPRAC §684

cxx Brahm v. Hatch 203 A.D.2d 640 (1994)

cxxi Armour v. England 619 N.Y.S.2d 807 (N.Y.App.Div. 1994)

Id at 807.

cxxiii Id.

cxxiv Id.

Diamond v. Board of Education City of New York 171 N.Y.S.2d 703 (N.Y.C.Ct.Term 1958) is an example of a poorly decided case in which a teacher was injured breaking up a fight in a lunchroom. The lunchroom had an established capacity of 300 students and the teacher, together with colleagues had requested that the capacity be observed and that more personnel be assigned to supervise the sometimes rowdy area. The court refused to find that the school had been placed on notice of a potential harm and ruled in favor of the district.

R.C. 2903.13, an Ohio regulation, makes it a crime to "knowingly cause or attempt to cause physical harm to another or another's unborn". The penalty for such offense is augmented in cases where the "victim of the offense is a school teacher or administrator or a school bus operator." The regulation was a factor in the outcome of In re A.C.T. 816 N.E.2d 1098 (Ohio Ct.App. 2004), where a teacher received a punch in the face intended for another student while trying to break up a fight. In that case, the court refused to apply the doctrine of transferred intent, finding that the student had lacked the requisite mental state of "knowingly" with respect to the assault on the teacher.

cxxvii The court in In re A.C.T. interpreted the augmented penalty for the student who strikes a school teacher as implying the student to be "a more serious offender than one who would strike a student" thus declaring that where the victims are not treated equally under the statute, the doctrine of transferred intent could not be applied.

cx Id.

<sup>&</sup>lt;sup>cxi</sup> *Id*.

cxii Id..