PERRY A. ZIRKEL

Liability for Off-Campus Nonschool Activity

Negligence is a common-law claim that includes four essential elements—legal duty, breach of that duty, causation, and injury—and various defenses, including governmental and official immunity.[1] Liability for negligence during school hours, whether in the classroom[2] or on the playground,[3] is a continuing concern for elementary school principals. However, the concern is less clear-cut for off-campus injuries, especially if the activity is not school-sponsored.[4]

In March 1984, when we last visited this subject, we found that the school's liability did not stop at its doorstep, or beyond its doorstep, with school sponsorship.[5] The early court decisions viewed the threshold issue—in terms of the essential elements of duty and breach of duty—as the time and place of the duty, not the time and place of the injury.

The following case and the accompanying question-and-answer discussion provide an overdue update of this special area of negligence liability.

"…school leaders… should avoid the misconception that their legal duty of care does not extend to students off-campus or in nonschool activities."

The Case

In June 2001, Joseph J. was a third grader at an elementary school in Pleasantville, New Jersey. Since his parents were divorced, Joseph lived with his father and two older brothers. Typically, either his father or brother Charles would accompany him to school and meet him at the end of the school day to walk him home.

The 2001–2002 calendar in the school handbook listed June 14, 15, and 18 as early dismissal days. As in past years, school personnel distributed the annual handbook to students during the first week of school, with instructions to give it to their parents. The first page of the handbook is a form for the parent or guardian to sign to verify receipt.

Joseph did not start school until October, but the school's practice is to give the parent or guardian a copy of the handbook upon registration. Additionally, the calendar is included in the district's monthly newsletter, which is given to each student and mailed to every residence in Pleasantville. Although the June newsletter contained a reminder of the early dismissal days, Joseph's father and brother relied

instead on Joseph to inform them.

He failed to tell them of the early dismissal on June 14, and when he arrived home early on his own he simply explained, "I had a half a day today," without mentioning the two additional days.

On June 15, Charles walked Joseph to school in the morning. But when he returned at the regular dismissal time of 2:50 p.m., Joseph was not there. He was playing with another child a few blocks from the school when, at approximately 4 p.m., he suddenly ran into the road and was struck by a car, causing catastrophic injuries that rendered him quadriplegic.

In December 2002, his family sued the driver, the district, and the principal for negligence. In depositions, Joseph's father and older brother testified that when they received Joseph's registration packet, there was nothing to sign and send back; they did not recall receiving or seeing the school handbook or newsletter at any time. In her deposition, the principal testified that the school does not have buses or a policy for releasing students to parents or guardians at the end of the school day. She said that the school expected students to walk home, with or without adult accompaniment, unless the parent had registered the child in the after-school program or provided instructions about picking up the child.

In April 2004, the school defendants moved for summary judgment, *i.e.*, a decision in their favor without a trial. In June 2004, the judge granted their motion, ruling that the district and the principal did not have a duty of reasonable care for Joseph's safety several hours after dismissal. The family separately settled its claim against the driver and appealed the court's ruling to the state's intermediate appellate court.

Questions and Answers

What do you think was the appellate court's decision?

On June 30, 2006, the appellate court reversed the lower court's ruling and remanded the case for a trial.[6] The court determined that the district had a legal duty to Joseph based on multiple factors. First, the court concluded that the risk of harm was foreseeable, reasoning as follows:

It is foreseeable that a nine-year-old child, who is dismissed early from school and not met by a parent or older sibling, would remain unsupervised for several hours.... Consequently, the child would remain without supervision and could be injured by an accident of the sort that occurred here.

Second, the court concluded that Joseph's relationship to the defendants also supported imposition of the duty of care, because the alleged negligence was dismissing Joseph without taking reasonable steps to ensure that a responsible person would be on hand to take over his supervision.

Third, the court assessed the "nature of the attendant risk" as substantial, relying on the age of the child as key to understanding and appreciating the risk of running into a busy street.

Fourth, the court concluded that it would not be unduly burdensome for the school to determine whether an adult or responsible elder sibling was there to accompany the child at dismissal and, if not, to call home.

Finally, the court considered the public interest, concluding that this interest "would be served if younger students in our school are assured of proper supervision on dismissal from school."

Does the appellate court's ruling mean that the district and the principal were liable in this case?

No, not necessarily. All the appeals court did was to establish the duty. The trial court will have to determine whether the district and the principal breached this duty; if so, whether the breach proximately caused the injury; and, if so, whether a defense, such as governmental immunity, applies.

Have other courts ruled similarly?

The results have varied, depending on the particular facts and courts,[7] but the prospect of liability in such circumstances is not unusual, particularly in jurisdictions that do not have applicable governmental or official immunity.[8] Thus, this case represents a continuation of the case law view in the earlier article.[9]

If Joseph had left school during the school day and incurred injury off-campus, would the school officials be liable?

It depends, again, on the facts and the jurisdiction. For example, in two Arizona cases where high school students were victims of vehicular accidents when they cut class and left school on their own, the appeals court concluded that the district had no legal duty but warned that "parents' supervisory expectations may reasonably differ at differing levels of the schools."[10] On the other hand, a Louisiana appellate court upheld a trial court award of $20,000 to a 12-year-old junior high school student for emotional injuries after she was sexually molested on her way home from school in the middle of the school day.[11] The assistant principal had informed her that her skirt was too short, in violation of the school's dress code, but failed to follow school policy, which required an administrator to obtain direct contact with a parent before signing a student out of school.

"The key is what school officials do or fail to do at school, rather than the location or timing of the student's injury."

Conclusion

The lesson here is simple, yet difficult. As a threshold matter, school leaders, especially in cases involving elementary-age students, should avoid the misconception that their legal duty of care does not extend to students off-campus in nonschool activities. The key is what school officials do or fail to do at school, rather than the location or timing of the student's injury.

The difficulty is in formulating and following school policy that considers various pertinent factors, including foreseeability, that affect breach of duty and proximate causation. These more recent court decisions continue the trend toward the conditional "it depends" answer to the question of liability and the value of the proverbial extra "ounce of prevention." P

Notes

1. The focus here is on public school liability for negligence. "Official" immunity in this specific context refers to immunity—whether based on case law or legislation—that applies to public school employees.
2. *See, e.g.*, Zirkel, P. and I. Gluckman. "Is the Principal Liable When One Student Injures Another?" *Principal*, May 1987, 44–7.
3. *See, e.g.*, Stegossi, L. and P. Zirkel. "Avoiding Liability for Playground Injuries." *Here's How,* March 2000, 1–4; Zirkel, P. and J. Thompson. "Avoiding Liability for Playground Accidents." *Principal*, March 1986, 43–6.
4. For a separable liability issue of off-campus, nonschool activity, see Zirkel, P., "Student Suicide: An Update." *Principal*, May/June 2006, 10–11. For a recent reversal of one of the decisions summarized there, see *Carrier v. Lake Pend Oreille Sch. Dist. #84*, 134 P.3d 655 (Idaho 2006). (Student's essay did not trigger state statute's duty to warn upon knowledge of "suicidal tendencies.")
5. Zirkel, P. and I. Gluckman. "Liability for Off-Site Injuries." *Principal*, March 1984, 47–8.
6. *Jerkins v. Anderson*, 2006 WL 1675405 (N.J. Super. Ct. App. Div. 2006).
7. For an example of significantly different circumstances, an Arizona appellate court concluded that school officials did not breach their duty to take reasonable precautions for school safety when they made a discretionary decision not to discipline a student for a verbal altercation with another student; the injury occurred later that day when, after school and off-campus, the first student shot the other. *Hill v. Safford Unified Sch. Dist.*, 952 P.2d 754 (Ariz. Ct. App. 1997).
8. *See, e.g., Sutton v. Duplessis*, 584 So.2d 362 (La. Ct. App. 1991). As an example of contrasting circumstances, a Kansas court ruled that a student struck by a car when he ran off school grounds 20 minutes before the school day started could not recover in negligence against the school district or its employees unless they assumed a supervisory duty for this early-arrival period. *Glaser v. Emporia Unified Sch. Dist.* No. 253, 21 P.3d 573 (Kan. 2001).
9. *See supra* note 5.
10. *Rodgers v. Retrum*, 825 P.2d 20, 25 (Ariz. Ct. App. 1991); *see also Tollenaar v. Chino Valley Sch. Dist.*, 945 P.2d 1310 (Ariz. Ct. App. 1997); *cf. Heigl v. Bd. of Educ.* (587 A.2d 423 (Conn. 1991) (governmental immunity).
11. *D.C. v. St. Landry Parish Sch. Bd.*, 802 So.2d 19 (La. Ct. App. 2001).

Perry A. Zirkel is University Professor of Education and Law at Lehigh University in Bethlehem, Pennsylvania.