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# Liability for Field Trips: An Update

t is not uncommon for school leaders to worry about parents' suits for negligence arising from student injuries incurred during field trips and other off-campus, schoolsponsored activities. For example, a recent national survey revealed that elementary school principals, even more than secondary school principals, considered the issue of possible liability when making decisions regarding student activities away from school.<sup>1</sup> Yet, when addressing the topic of liability for field trips in November 2000, I found that, based on published case law as of that date, "the risk of liability for field trips is not as high as some school leaders may fear." The majority of such suits foundered on the barrier of governmental immunity, which varies from state to state.<sup>2</sup>

The following illustrative case and its accompanying questions and answers provide an update on this potentially fertile field of negligence liability.

#### The Case

An elementary school in northern California organized a field trip for 90 students that included an overnight stay at a hotel with a swimming pool. Included in the group was Samuel C., a fourth-grade special education student who did not know how to swim. His older sister had told this to his teacher prior to the trip. Neverthe-

less, the staff members and parent volunteers who provided supervision allegedly allowed Samuel to enter the pool and to be pushed by other students into the deep end, where he sank to the bottom and nearly drowned. In addition, the employee assigned to chaperone Samuel allegedly left her post at the pool area.

Samuel's parents filed suit against the employee rather than the school district, apparently because California's Education Code includes a provision specifically granting school districts absolute immunity for personal injury claims arising from field trips and another provision obligating the district to pay any judgment against an employee. Thus, if the parents succeeded in their negligence claim against the individual employee, the school district would be responsible for payment.

The defendant employee filed a motion for dismissal, arguing that the legislature's intent was to include, albeit implicitly, district employees within the governmental immunity provision.

# Questions and Answers What do you think was the outcome in this case?

The trial court granted the employee's dismissal motion,

"...Governmental immunity varies from state to state, offering strong protection in some jurisdictions and no defense in others." and the appellate court affirmed. The reasoning was that:

The field trip immunity statute had a latent ambiguity with regard to employees;

• The legislative history of the statute revealed a concern that school districts be able to conduct field trips without undue fiscal burden; and

"Including district employee is nec-

essary to avoid the absurd consequence of the de facto elimination of the field trip immunity for school districts, which the Legislature intended to provide."

At the same time, the court noted that this special California immunity only applies to field trips (*i.e.*, school-sponsored activities designed as firsthand observations of objects of study) and not to "excursions" (*i.e.*, trips that are merely for recreational purposes).<sup>3</sup>

#### In jurisdictions, like California, that provide liability immunity for field trips, would the parents of an injured student be able to collect damages by resorting to a Section 1983 federal civil rights action?

Not likely in most field trip cases. Although the state's immunity provision would not apply to a Section 1983 due process claim, the plaintiffs face a formidable hurdle in terms of the qualified

immunity that applies to school district employees engaged in discretionary acts.

For example, in a recent Texas case the appellate court first concluded that field trip supervision is a discretionary act, explaining that even though there is a "mandatory duty to supervise" on field trips, this duty "involves the exercise of judgment or discretion." Next, the court concluded that qualified immunity covered the case because precedent has not established the special relationship or danger-creation prerequisites of Section 1983 violations in field trip cases.<sup>4</sup> Similarly, a federal civil rights suit against the district itself would require proof of a policy or custom of providing inadequate supervision on field trips, which in most cases would pose a daunting obstacle.

# If the state does not provide immunity, what are the essential elements of negligence liability?

Because school districts have the legal duty of keeping students reasonably safe, the key questions are whether district personnel breached this duty and, if so, whether said breach resulted in actual injury to the student. Breach of duty depends on what is professionally reasonable under the circumstances. For instance, a Louisiana appellate court affirmed a liability judgment against the defendant district for the severe injury a kindergartner sustained from a heavy metal swing on an end-ofyear class field trip to a park with a large playground. The court overruled the trial court's conclusion that the use of parents along with teachers constituted inadequate supervision, but found that allowing little children to swing alone on heavy metal swings, where their feet could not reach the ground, was an unreasonable risk and, thus, a breach of the district's duty.<sup>5</sup>

In a New York City case, a sixthgrade girl was raped by two teenagers after the teachers and other students returned without her from a field trip to a drug awareness fair at a nearby park. One of the supervising teachers had given her permission to leave the park with friends for lunch at a nearby pizzeria, but when he discovered her missing after returning to the school, he did not inform any of the other teachers or the police, who co-sponsored the fair. The appeals court upheld the jury verdict against the school district, concluding that the criminal act was a foreseeable result of the teacher's breach of duty to provide reasonable supervision.6

Occasionally, the injury or harm is the disputed element. For example, in a case where the school bus transporting

students on a field trip to Washington, D.C., crashed into another vehicle, the trial court granted the defendantdistrict's motion for summary judgment, concluding that a plaintiffstudent's subsequent severe headaches were a continuation of a pre-existing condition and not a result of the accident. However, the appeals court reversed the decision, remanding the case for a trial to determine whether, as the plaintiff's expert asserted, her migraine headaches were separate from or an extension of her previous tension headaches, and that they were caused by the school bus driver's negligence.<sup>7</sup>

### If a parent wins a substantial verdict against a district in a negligence case, can the appellate court reduce it as excessive?

Yes, but only indirectly. For example, in a New York case in which a student drowned during a field trip to a water park, the trial judge concluded that the jury's verdict of \$10 million, of which the school district's share was \$5.7 million and the rest apportioned to the water park, was excessive. It determined that a total of \$2.75 million, with the district's share being \$1.5 million, was a fairer figure, and that there would be a new trial if the plaintiff refused to accept the reduced award.<sup>8</sup> On appeal, the state's intermediate appellate court further reduced the amount.<sup>9</sup>



#### Do these elements of negligence liability apply to private schools and to injuries to third parties?

Private schools face even greater odds of possible liability in such field trip cases to the extent that the defense of governmental immunity, in states that provide it, is not available to nonpublic schools. Whether a school is public or private, potential plaintiffs may include third parties who suffer foreseeable injuries as a result of inadequate supervision on field trips.

For example, five unsupervised students from a private school for at-risk youths attacked and beat an adult during a field trip to the National Zoo in Washington, D.C. The court denied a motion for dismissal, ruling that a jury would have to determine whether the harm was a foreseeable result of inadequate supervision. The outcome of this case is not known, but a win for the plaintiff is not automatic. Indeed, the court commented on the need to balance the plaintiff's interest with the following institutional consideration: "The effect of imposing unduly heavy burdens on schools could be to discourage them from affording valuable extracurricular opportunities to its students."10

## Would a permission slip or release form protect a school and its employees from liability?

Not necessarily. As explained in a previous column addressing the use of permission forms,<sup>11</sup> the form would have to be carefully drafted to waive liability and some states regard such waivers as void, based on public policy. For example, in a case where a student was injured on an overseas field trip, the court concluded that the release form was unenforceable because it did not clearly and unequivocally express the intention of the plaintiffs to relieve the school defendants from negligence liability.<sup>12</sup>

#### Conclusion

The trend in published case law has basically continued rather than changed since my November 2000 review. Contrary to the fearful perceptions of some principals, which have reportedly caused them to reduce or eliminate field trips, the risk of liability does not seem particularly high and the number of published court decisions concerning liability for field trips continues to be relatively low.

The overall lesson remains the same: principals should be careful when authorizing and implementing field trips. They should be aware that governmental immunity varies from state to state, offering strong protection in some jurisdictions and no defense in others; that the published cases are only the tip of an iceberg, which includes private settlements and unreported court decisions; that field trip incidents often have other consequences, including discipline for employees and bad publicity; and, most important of all, that schools have a moral imperative to keep students safe and secure.

Where field trips make sense in terms of the school's educational mission and

budget, the focus should be on proper preparation, adequate supervision, and carefully followed procedures.

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#### Notes

- 1. DeMitchell, T. and T. Carroll, "A Duty Owed: Tort Liability and the Perceptions of Public School Principals." *West's Education Law Reporter* 201, no. 1 (2005): 1–194.
- Zirkel, P. "Liability for Field Trips." *Principal*, November 2000, 60–61. For an additional case during the earlier period, where the court rejected a field trip negligence claim based on more general statutory immunity, see *Castenada v. Cmty. Sch. Dist. Unit No*, 200, 589 N.E.2d 1038 (Ill. App. Ct. 1992).
- Casterson v. Superior Ct., 123 Cal. Rptr. 2d 637 (Ct. App. 2002).
- 4. Leo v. Trevino, \_\_S.W.3d\_\_ 2006 WL 1550839 (Tex. Ct. App. 2006).
- Glankler v. Rapides Parish Sch. Bd., 610 So.2d 1020 (La. Ct. App. 1992). The

judgment was limited to \$500,000, which was the statutory cap for damages under the Louisiana statute for governmental entities.

- Bell v. Bd. of Educ., 665 N.Y.S.2d 42 (App. Div. 1997).
- McLeish v. Beachy, 756 A.2d 892 (D.C. Ct. App. 2000).
- 8. *Maracallo v. Bd. of Educ.*, 769 N.Y.S.2d 717 (Sup. Ct. 2003). The district's negligence was in failing to provide timely information to the parent and in failing to take reasonable steps to locate the child.
- Maracallo v. Bd. of Educ., 800 N.Y.S.2d 23 (App. Div. 2005).
- 10. Thomas v. City Lights Sch., Inc., 124
  F. Supp. 2d 707, 713 (D.D.C. 2000).
  For a similar outcome, see Alake v. City of Boston, 666 N.E.2d 1022 (Mass. Ct. App. 1996). For an example of a field trip case where a court rejected a third party's claim against a district defendant, see Louis v. Skipper, 851
  So.2d 895 (Fla. Dist. Ct. App. 2003).
- 11. Zirkel, P. "Permission Forms." *Principal*, January/February 2005, 8–9.
- 12. Doe v. Archbishop Stepinac High Sch., 729 N.Y.S.2d 538 (App. Div. 2001).



