



- School legal specialists who receive more work and attention; and

- Various other special interest groups.

In 1988 and again in 1999, an American Tort Reform Association survey purportedly documented a “tort-liability explosion” in the schools. Similarly, an organization with the name Common Good is conducting a campaign that includes similar research and a push for legislative changes akin to the Teacher Protection Act. The act is part of NCLB and provides individual immunity from liability for negligence in specific circumstances.

To obtain an objective longitudinal look, Lehigh University researchers examined a representative sample of 200 published court decisions for student-initiated negligence claims. The decisions, issued from 1990 to 2005, involved claims against school districts and/or their personnel.

Given the rhetoric you hear, our findings may surprise you. Here’s what we found:

- The frequency of published negligence decisions remained relatively stable, and the outcomes overwhelmingly favored district defendants during the 16-year period. Students conclusively won or otherwise received at least partial damages in only 12 percent of the cases. Classroom teachers were not defendants in any of the losing cases; in contrast, athletic coaches were defendants in one-fifth of the decisions against school districts.

- The most common reason for the 88 percent success rate for the defendants was governmental immunity, which is still alive and well in many states. State laws vary widely, however, with regard to immunity’s particular scope in relation to negligence.

- Transit-related activities, such as busing and walking between home and school, accounted for approximately half of the relatively few decisions in which students were successful in recovering at least partial damages.

- New York was, by far, No 1. in terms of the frequency of decisions, whether calculated on a total or on an enrollment-proportioned basis. Among the distant runners-up—depending on whether enrollment was taken into consideration—were Georgia, Illinois, and Louisiana.

- Louisiana accounted for the highest proportion of outcomes that were favorable to the students, with New York being a distant second. No other state accounted for at least 5 percent of the student victories.

### What the study results show

Certainly, our study only examined the visible part of the iceberg, that being the published court decisions. But the results show that reports of an explosion of school negligence litigation and fears of negligence liability warrant more tempered and selective actions and reactions by school districts.

Below the surface are lawsuits that were settled by district defendants or their insurers, but the published decisions estab-

lish the precedents that affect the odds of settlement. These subsurface cases also include lawsuits that parents and students abandoned after further legal research was conducted.

So, as school board members and administrators, what should you do?

The selective actions that we tentatively recommend include more emphatic and systematic attention to governmental immunity, school transit and athletic coach activities, and state-specific policies and practices. For example, in light of its unique origins in French legal tradition, Louisiana merits special and somewhat separate attention in terms of negligence cases.

As for Vic, she is not likely to win in court. In Pennsylvania, for example, her case would not get past the dismissal stage prior to a trial because immunity applies to both the district and the employee defendants for negligence lawsuits. There are limited exceptions, such as public school motor vehicles and real estate, which do not come close to playing a role in her case.

For states that do not have such immunity, Vic’s family has the burden to prove that the defendants breached their legal duty of reasonable care for her safety. We need more facts, but certainly it is conceivable that including the disabled student in the class met the district’s legal duty, as long as the student’s IEP included reasonable supplementary aids and services such as a paraprofessional for the mainstreamed student and special behavior management training for the teacher.

Finally, even if expert witnesses show that the defendants breached their duty in terms of formulating or implementing the IEP, Vic’s parents would face another hurdle, which is proving causation. For example, the teacher may have breached her duty by not maintaining close proximity and attention to the mainstreamed student during test-taking, but the facts may reveal that he would have carried out his sudden act of frustration even if the teacher had done so.

The bottom line is we should not ignore student safety any more than we should ignore student achievement. But misinformed fear of negligence liability for student injuries can lead to stifled innovation and wasted resources, which in the end can hurt achievement because we are paying too much attention to providing total safety.

Obtaining more objective information specific to your state and making sure it is applied properly will lead to a better balance between student safety and student achievement, without legal guarantees of either one. With efficient use of limited resources, you can attend not just to Vic’s interests, but also to those of her special education peer, her other classmates, her teacher, and your school district. ■

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