



**AVOIDING INJURIES,
INVESTIGATIONS, LIABILITY,
AND LAWYERS**

INTERACTION WITH STUDENTS

Tips For Avoiding
Legal Risk

Interaction with students and potential liability

- Intimate relationships with students are always prohibited no matter the age of the student or circumstances!

Interaction with students and potential liability

- **SHOWING AFFECTION**
 - **Avoid touching students unless it is absolutely necessary to protect the safety of the student or others!**
- **SCHOOL SOCIAL EVENTS**
 - **Staff is there to chaperone not participate!**
- **TUTORING OR OFFICE VISITS**
 - **Not in isolated location**

Interaction with students and potential liability

- OFF CAMPUS INTERACTION
 - Proceed with caution!
- SPONSORING EXTRACURRICULAR ACTIVITIES AND FIELD TRIPS
 - Good judgment! Never alone in car or hotel room!
- CLASSROOM ACTIVITIES
 - Corporal punishment
 - Exercise as discipline
 - Isolating for discipline
 - Showing videos, DVDs, etc. (board policy)
 - Outside speakers
 - Greater possibility of danger (Snake hunt, blood typing)
 - What would your insurance carrier or lawyer think?
 - Always obtain administrator approval for activities!

Which of the following text messages is appropriate for a teacher to send to a student?



**a. “Good morning my
goofy sunshine girl.”**



**b. “Where is your
homework?”**

c. “Bingo.”

**d. “Basketball game at 3
p.m.”**



e. none of the above



Do you want to be the
future lead story?

Social Networking Sites

- MySpace
- Facebook
- Twitter

Social Networking Sites

- **Have you ever “googled” yourself? You better believe someone else has!**
- **Once something is published, it cannot be controlled!**
- **Does your profile tell more about you than you want employers, students and parents of students to know?**
 - **Pics**
 - **Status updates & tweets**
- **Control your online image!**

What have employers found?

- **information about drinking or drug use**
- **provocative or inappropriate photographs or information**
- **poor communication skills**
- **bad-mouthed their previous company or fellow employee**
- **lies about qualifications**
- **discriminatory remarks related to race, gender, religion, etc.**
- **Unprofessional screen name**
- **link to criminal behavior**
- **shared confidential information from previous employers**

How can I control my online image?

- **Clean up digital dirt.** Make sure there are no pictures, content and links that can send the wrong message to employers, students and parents.
- **Monitor comments.** You can't control what other people say on your site, so you may want to use the "block comments" feature.
- **Be discriminating about what groups you join.** The group with a fun or silly name may seem harmless, "Party Monsters R Us" but may not give the best impression to employers, students and parents. Also be selective about who you accept as "friends."
- **Set your profile to "private,"** so only designated friends can view it.

Ways to Reduce Liability

- **REMEMBER BOUNDARIES!**
- **AVOID TOUCHING STUDENTS UNLESS IT IS ABSOLUTELY NECESSARY TO PROTECT THE SAFETY OF THE STUDENT OR OTHERS**

School Liability




Torts & Civil Rights

TORTS

- **Actionable wrong**
- **Majority of tort claims are due to negligence**
- **Negligence occurs when a person's behavior falls below an acceptable standard of care**

Court tests of negligence

- Duty (standard of care)
- Breach of duty
- Injury
- Causation
 - Cause in fact
 - Proximate cause



**What do courts
consider when
determining if a
breach of duty
occurred?**

Reasonable person doctrine

How would a reasonably prudent administrator, teacher or other school employee act under similar circumstances?

Reasonable person doctrine

- Intelligence
- Physical attributes
- Perception or memory
- Special skills

Foreseeability

- proof that a person of ordinary intelligence and prudence should have anticipated danger to others created by his or her negligent act
- that which is reasonable to expect not what might conceivably occur

Negligence Per Se

A duty is created by statute and that duty has been breached by violating the law.

Respondeat superior

- “Let the master answer”
- Master is responsible for the acts of his servant
- Employer responsible for injury proximately caused by employees within scope of employment

TCA 29-20-310 (1987 amendment)

No claim or judgment against employee for injury caused within scope of employment except in cases of willful, malicious, or criminal actions.



**Are there defenses
available to the
board?**

Modified Comparative Fault

- Adopted by the Tennessee Supreme Court in 1992
- Plaintiff cannot recover when his or her fault is 50% or greater.

Tennessee Governmental Tort Liability Act

- General rule of immunity
- Excludes willful, wanton, or gross negligence
- Statutory limits on recovery

Negligence Case Studies

Roberts v. Robertson Co.

- Court held that accident was foreseeable and that failure to supervise breached duty owed which proximately caused the injury
- Board liable--respondeat superior
- Student awarded \$25,000

Walton v. Dickson Co. Board

- Plaintiff was knowledgeable about the proper procedures and violated them.
- Plaintiff found to be 50% or more at fault.
- Student's claim dismissed

Cadorette v. Sumner Co. Bd.

- Teachers are not “insurers of the safety of students”.
- Negligence established only where teacher’s actions in supervising students deviate from what a reasonable or prudent person would do under similar circumstances.
- Trial Court upheld--teacher not negligent

Reports of student offenses

T.C.A. 49-6-4301

- teacher to principal
- principal to police
- exceptions
 - fight not involving use of weapon
(*T.C.A. 39-17-1309*)
 - no serious personal injury

WHAT TO REMEMBER:

- PROPER INSTRUCTION!
- PROPER SUPERVISION!
- DOCUMENT, DOCUMENT, DOCUMENT!
- THINK & QUESTION BEFORE YOU ACT!

Civil Rights Violations

42 U.S.C. § 1983

- Person acting under color of state law, regulation, custom
- Deprives any citizen of rights, privileges, or immunities
- Secured by the Constitution and laws
- Shall be liable to injured party

Protected Rights

- Is it a constitutional right?
- Is it a federal right grounded in statute?
- Did Congress create a comprehensive enforcement scheme?


Types of claims

- personnel decisions
- student discipline
- sexual harassment
- free expression
- employment discrimination
- any area where a constitutional right may be invoked

What triggers liability?

- affirmative act of deprivation
- enacting unconstitutional rule or policy
- deliberate indifference

...not just unintentional or negligent conduct



**Are there defenses
available to the
board and its
employees?**

Individual liability

- Did the official implicitly authorize, approve or knowingly acquiesce in the unconstitutional actions of the offending subordinate?
- Did the official have notice?

Individual liability

- Respondeat superior generally does not apply in Section 1983 cases.

PERSONAL LIABILITY!

Sexual Harassment By school officials Case Studies

Franklin v. Gwinnett Co.

- Where a supervisor sexually harasses a subordinate based on the subordinate's sex, this is gender-based discrimination, and this rule applies when a teacher harasses a student.
- Where legal rights have been invaded, and a federal statute provides for a general right to sue, federal courts may award compensatory and punitive damages.

Gebser v. Lago Vista

- No vicarious liability under Title IX
- Damages available if....
 1. Supervisor has actual knowledge of discrimination and...
 2. Fails to adequately respond and...
 3. Failure amounts to “deliberate indifference”

Monroe v. Davis

- May be liable under Title IX for student to student sexual harassment
- What factors will be considered?
 - Actual knowledge
 - Deliberate indifference
 - Severe, pervasive and objectively offensive and denies access to education
- Case remanded



Ways to Reduce Liability

BEFORE YOU ACT, ASK QUESTIONS.

NOW....

- Relax
- Don't Worry
- Enjoy The Year!