



New Book Addresses Liability Of Schools Due To Negligence

Contact: [Lori Wright](#)
603-862-0574
UNH Media Relations

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EDITORS AND REPORTERS: Todd DeMitchell can be reached at (603) 862-5043 and tad@unh.edu.

DURHAM, N.H. -- Unsupervised fifth-graders are caught having sex in a school classroom. A student is injured when chemicals splash in his eyes after a science teacher forgets to remind her students to wear safety goggles. Two students drown during a teacher-supervised field trip to the seashore.

School districts today face increasing threats of lawsuits due to the negligence of school officials, but there are a number of actions principals can take to reduce and avoid legal liability, according to a new book by Todd DeMitchell, professor of education at the University of New Hampshire.

"Negligence: What Principals Need to Know about Avoiding Liability" provides a primer on the tort of negligence and what steps can be taken to reduce injuries and avoid liability. DeMitchell spent 18 years in the public school system holding positions from substitute teacher to superintendent, including principal of a K-8 school. He researches school law, collective bargaining and educational policy.

"Safety and security should be a core value of a school. It is a beginning point for all other educational activities," DeMitchell says. "Often, however, there is not enough time available to research and learn all of the various responsibilities that shape the work of educating students. One such area that is often given short shrift is the legal responsibilities of educators."

DeMitchell's research shows that only 55 percent of principals thought their knowledge of tort liability was sufficient enough to meet their administrative responsibilities. This is startling when considering the number of lawsuits filed each year as a result of negligence. One California study found that during a three-year period, students filed more than 1,000 lawsuits, with nearly 80 percent of them based on allegations of negligence. The average size of damage awards in negligence cases was more than \$1 million.

"Even though principals typically take a school law class that covers negligence, the knowledge gained does not always stay with the principal and become part of the principal's habits of mind and habits of action," he says.

According to DeMitchell, many student injuries can be avoided by taking reasonable precautions. His book addresses a number of instances in which injuries can be prevented, including incidents of hazing, negligent hiring, educational malpractice, sexual abuse of students, harm caused by school employees and adherence to Do Not Resuscitate orders.

Recently a number of high-profile cases involving teachers having sex with students have been reported in the media. According to DeMitchell, courts often award damages in such

cases when there is a failure on the part of the school administration to supervise and train school officials, investigate incidents or hire carefully.

"It seems axiomatic that students should be able to attend school and not have to run a gauntlet of abuse. Unfortunately, the school as a safe harbor is not always safe for students. All too often students suffer harassment, abuse and sexual assault while at school or while participating in school-related activities," he says.

For special education teachers, Do Not Resuscitate orders for medically fragile children are a delicate and heart-rending issue. Essentially, how do school personnel let a student die at school?

DeMitchell suggests schools develop individualized care plans for each medically fragile student. The plan should include what comfort measures should be given to the child and how the family will be notified if the student dies at school.

"Teachers and principals owe a duty of reasonable care to their students. Teachers and principals can be sued for the breach of that duty that caused the injury. There is no magic formula for incantation that can be invoked that will protect an educator from such lawsuits. The best protection from lawsuits lies within the control of educators – how they consistently discharge their professional duties," he says.