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**Exploring Administrative
Decision-Making in Public
Education**
The Negligence Evolution

**Beth Godett
Liana M. Nobile**

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Exploring Administrative Decision-Making in Public Education

“This compelling book delves into the crucial intersection of public K-12 education and negligence, providing invaluable and novel insights for school personnel. With a keen examination of the unique challenges and responsibilities faced within the public education system, Godett and Nobile provide an indispensable guide for fostering a safe and accountable environment for both students, staff, and school administrators.”

—Chris Yarrell, Education Attorney, *Center for Law & Education*

“As a former high school principal I find that the authors’ approach to the ever-evolving issue of negligence in public education is not only very timely (thanks, for example, to the inclusion of negligence regarding technology) but extremely thought-provoking as well. Their work provoked me to think of applications not only in the context of my school experience, but also beyond that as they might apply to more comprehensive questions. I found myself reexamining long-held personal notions and ideas about negligence, my role and my exposure. Each chapter challenged me to pause, reflect, and apply. I particularly enjoyed the balance between examples in case law and hypothetical scenarios. With decades of experience as an educator, it’s not often that a work makes me sit up and take a fresh look at my established ideas. These authors have done that.”

—Tom Welch, *former high school principal and current education consultant*

Godett and Nobile use the concept of Next-Gen Negligence to precisely explain how, through the logic of *Students for Fair Admission v. Harvard*, conservatives are turning the very idea of equity upside down at this very moment. More importantly, they use the Next Gen Negligence concept to create a roadmap for taking the Equal Protection Clause back, hopefully to better the lives of our most vulnerable students.”

—Stephen Himes, Co-Founder and Head of Advising, *Storyboards College Admission Portfolios, a Nationwide College Admissions Counseling Firm*

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*To Fred, my true partner,
whose love and support make it possible for me to pursue my dreams.
To Mike and Joel, my favorite (and only) sons,
on whom I can always rely to call things as they see them.
And to Art, my friend and mentor,
who inspires me to look to the future with hope.
—Beth*

*For all of my teachers, both in and out of the classroom,
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—I wouldn't be the lawyer and person I am without each and every one of
you holding my hand along the way.
—Liana*

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ABOUT THE AUTHORS

Beth Godett brings 35 years of public school experience to her writing including that of a teacher, principal, curriculum director, assistant superintendent, and superintendent. Especially relevant to this publication is that she attained her J.D. as a start to a new professional chapter in her life and embarked on a career as an adjunct professor of education law and policy. Using her school practitioner experience as a filter through which to view the law has provided her with unique and practical insight which proves valuable to her readers.

Beth is known for her presentations at national and international conferences which challenge participants to think differently and critically about court rulings and the legal structure within which public education operates. She has authored articles that look to the future of learning and schooling from a practical perspective intended to foster hope amid a rapidly changing landscape. Her book, *Toward the Bigger Half: Equity in Public Education*, was published in 2024.

Liana Nobile vigorously defends her clients in premises liability disputes and provides advice on insurance coverage matters. Before becoming a defense attorney, Liana was an attorney at a plaintiff's personal injury firm. Her experience on both sides of the aisle has given her useful insight into resolving cases efficiently.

Following her graduation from Seton Hall Law, Liana clerked for the Honorable Dennis J. O'Brien, J.S.C. (Ret.) while he was still on the bench in the Monmouth County Superior Court in New Jersey. This invaluable experience set her up for a successful career as a litigator.

Liana has previously spoken as a guest lecturer on the implications of recent Supreme Court cases on the education industry and on negligence in the school and education setting. She frequently blogs about current legal trends and hot topics on JD Supra and has also spoken as a guest on a legal podcast through Learn Formula.

When not at work, Liana can be found taking in a Broadway show in New York City or spending time with her husband and their golden retriever, Hercules.

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PART I

Defining Negligence in Public Schools



Preface: A Note from the Authors

Abstract Chapter 1 introduces readers to the inspiration for and purpose of this book, setting out its importance as a guide for school administrators. It encourages readers to begin thinking about liability for negligence from different perspectives and to consider that an important legal aspect of their practice can evolve to take on new meaning.

Keywords Inflection point • Negligence • Talking points

Dear Reader,

This book is written to address a topic of great importance and ever-growing concern at a time President Biden refers to as an “inflection point in history...where the decisions we make today are going to affect the course of our world for the next several decades, for certain” (Biden 2023). President Biden sees the inflection point as many things including climate change and emerging technologies. We, too, see many things happening which may be considered inflection points, turning points, or points from which there may be no turning back. As regards public schooling there is no question that seismic shifts are occurring in the tectonic plates we have always taken for granted as solidly in place.

Public schools have long been viewed as the foundation of a child’s education with certain guarantees coming from case law and legislative

entitlements. Whether changes appearing to impact public education today are true inflection points remains to be seen, and they are among the themes we will explore relative to an administrator's liability for negligence.

We do not intend for this monograph to provide legal advice. We are neither your attorneys nor your school administrators. Yet we believe our experience in both areas can offer helpful insights into the ever-widening range of responsibilities administrators hold relative to the operation of schools and school stakeholders.

Probably one of the most important legal issues to discuss regarding public education is negligence, underplayed yet omnipresent as a potential liability for school administrators. This is because negligence easily joins hands with other laws and becomes the basis for causes of action extending beyond its defined elements of duty, breach, and "but-for" or proximate causation of an injury. Negligence is growing as an area of interest and concern as our world and our relationships with institutions and the people around us evolve. This begs consideration of whether negligence as a looming threat is leading to an exodus of talented administrators and teachers from their positions as dedicated public servants.

Just to scratch the surface, we ask you to consider a wide variety of ways negligence can occur that are listed on the chart that follows (see Table 1.1). The potential exists for categories to overlap with nuanced illustrations.

The chart raises questions:

- Must the administrator's action or inaction be deliberate to be deemed negligent?
- Is there a consistent standard against which negligence can be measured?
- Are there actions that might be considered as negligent by some and not by others based upon an administrator's wide-ranging duties to various student populations and district stakeholders?

We invite you to refer back to this chart as our chapters unfold to appreciate the complexity of this seemingly simple concept. We also encourage you to read the chapters as they follow rather than in isolation. This will help you consider the talking points relative to negligence in your districts and aid in how to have important conversations with those to whom you owe a duty in your position as an administrator.

In the chapters that follow we will provide statements defining elements of the law; some history and case law explaining how public

Table 1.1 Identifying negligence

<i>Category</i>	<i>Description</i>
Intentional negligence/willful negligence	<ul style="list-style-type: none"> • Demonstrated by deliberate indifference to a situation • Attached to priorities or balance—however misguided
Unintentional negligence—something that might also be called “blind” negligence (or “blinder” negligence) Unanticipated negligence	<ul style="list-style-type: none"> • Attached to priorities or balance resulting from unintended consequences or an action’s effect • A failure of sensitivity to individual needs • Failure to see past the details of a situation • Caused by the actions of others beyond an administrator’s control
Hidden negligence	<ul style="list-style-type: none"> • Negligence masked by other unlawful acts, whether deliberately or unintentionally—nevertheless, a peripheral cause of something unfavorable that has occurred
Shared negligence	<ul style="list-style-type: none"> • Negligence on the part of one snowballs to include others • Can include both deliberate and unintentional negligent acts and implicate those involved to varying degrees • Ultimately, the administrator may be responsible
Historical negligence	<ul style="list-style-type: none"> • Negligence over time whose impact continues to affect a student or group of students in any number of ways
Traumatic negligence	<ul style="list-style-type: none"> • Self-associative negligence resulting in a disassociative response • Something in the administrator’s own past causes them to become less objective or effective in addressing responsibilities
Institutional/cultural negligence	<ul style="list-style-type: none"> • Where the district or school culture facilitates, imposes, or enforces negligence
Ethical disconnect negligence	<ul style="list-style-type: none"> • When the administrator is forced to serve in a position where the laws do not correspond with their administrative ethics and/or violates their integrity

education came to be where it is currently in terms of negligence; examples, where appropriate, of both hypothetical and real situations involving negligence that require you to reflect on your own practice; and questions to inspire you, dear reader, to think about the possibilities where administrators can incur liability under what we are calling “next-gen negligence.”

Wrapped into all of this is the very serious consideration of whether the core legal elements of negligence have expanded in scope in recent years and whether they will evolve or change in years to come. To whom have duties been owed in the past? Has that changed? What constitutes an injury? These are areas ripe for discussion! We only ask that you recognize what we provide in the chapters that follow is not an exhaustive list of every area where an administrator could encounter liability for negligence. Anyone can sue anybody for anything anywhere or at any time (even if it’s considered a frivolous lawsuit)!

Ultimately, our discussion may be unable to conclude with certainty whether the elements of negligence are definitively evolving with regard to public education. Is what we introduce as next-gen negligence merely a symptom of a society in flux impacting an organization traditionally accepted as resistant to change? Or is it the harbinger of another inflection point, adding public education to President Biden’s list along with climate change and emerging technologies?

Join us as we initiate the conversation!

REFERENCE

- Biden, J. (2023, March 29). *Remarks by President Biden at the Summit for Democracy Virtual Plenary on Democracy Delivering on Global Challenges* [Speech transcript]. The White House. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/03/29/remarks-by-president-biden-at-the-summit-for-democracy-virtual-plenary-on-democracy-delivering-on-global-challenges/>



CHAPTER 2

Traditional Understandings of Negligence

Abstract Chapter 2 sets forth a basic explanation of negligence, both through its elements as a common law tort and, also, as it applies to education through the responsibilities of a public school administrator. This chapter presents a legal primer to help administrators develop an understanding of common law negligence and where it fits with their practice. It provides scenarios for the reader to contemplate, complete with questions prompting consideration of actual cases detailed within the chapter.

Keywords Traditional negligence • Tort • Common law negligence • Elements • Reasonably prudent person

In order to understand the concept of “next-gen negligence,” it is critical to first have a good foundational understanding of what traditional negligence is and why it is so important in a school law forum. Negligence, at its heart, is a tort (a civil wrong) that is actionable in a civil court of law.

Before delving into a discussion about negligence, it is first necessary to distinguish a civil wrong from other types of law with which we may be more familiar. In the most general terms, there are three broad categories we can think of when we think about the law: criminal law, family law, and civil law.

Criminal law can be thought of simply as “the government versus you.” This is what comes to most people’s minds when they think of the law, lawyers, courtrooms, courtroom dramas, etc. For those lacking intimate familiarity with law such as non-lawyers and non-legal professionals, criminal law is the easiest to conceptualize when thinking about the legal process. It is what we see most frequently in the media and pop culture.

Again, speaking in the most general of terms, criminal law involves the government (the prosecution) bringing a case against someone who has committed a crime and broken a law (the defendant). In criminal law the government bears the burden of proof, which is where we get the concept of “innocent until *proven* guilty.” In criminal cases, the prosecution must prove their case beyond a reasonable doubt, which is an incredibly high burden. If they fail to do so, they lose the case.

Family law is probably the second most common way the general public can relate to the law, lawyers, and courtrooms. Family law encompasses divorces, custody, adoption, and other matters that fall under the broad umbrella category of “family.” Family law can be thought of as “you versus you.” For purposes of this book, specifically, we will not examine family law in depth other than to acknowledge here that it exists and is another way our legal system operates.

Finally, civil law is the third general category under which American jurisprudence falls. Civil law can be thought of as “you versus me.” It is easy to confuse civil and criminal law. For example, under civil law, a person can have violated a statute or law and been found liable; however, the government may not necessarily be the entity bringing the lawsuit. The suit could have been brought by a private person—one private person versus another private person: you versus me. While most people do not have a ready understanding or familiarity with civil law, should you ever find yourself involved in a lawsuit, there is a very good possibility it will be a civil lawsuit because civil law is the venue for all personal injury lawsuits (car accidents, trips/slips and falls, premises liability, toxic tort personal injury cases, etc.), breach of contract cases, and other situations where a private person has wronged another giving rise to a cause of action. Civil cases involve a plaintiff making allegations that the defendant’s action caused the plaintiff to suffer harm.

In civil law, the plaintiff sits in the same shoes as the government/prosecution in a criminal case in that the plaintiff bears the burden of proof. However, in civil law, the burden of proof is significantly lower than that in a criminal matter. In proving a civil case, the plaintiff must establish that the defendant caused the harm by “a preponderance of the evidence,”