Pinellas County School Board Attorneys Office

Legally Speaking

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Tort Liability and Sovereign Immunity

By David Koperski, School Board Attorney

One of the areas that we, as the district's lawyers, practice relates to lawsuits against the School Board, district and possibly individual employees for injuries or other damages we allegedly caused by our actions or inactions. These cases, known as tort cases, usually involve some form of personal injury, either physical or mental, and/or property damage sustained by the person suing the district. In law, a "tort" is a wrong that one actor commits upon another that can be remedied in a civil court (in a criminal setting, the same concept is known as a crime). Examples of civil lawsuits other than torts include breach of contract and violations of Constitutional rights. Examples of tort cases that may be filed against us include a bus driver causing a traffic accident that injured others, or a school-based employee not properly supervising a group of students where some of those students were hurt. This article will review the basic principles involving tort cases and discuss the concept of sovereign immunity that provides certain benefits to governmental defendants, such as us, in tort cases.

Most tort cases will be brought as a negligence case. In Florida, in order for plain-

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Legal Department Mission Statement

The mission of the School Board Attorney and Staff Attorney Offices is to provide the highest quality legal services to the Pinellas County School Board, the Superintendent and the District by ensuring timely and accurate legal advice and effective representation on all legal matters.

ESE Refresher - Part 2

By Heather Wallace, Assistant School Board Attorney

In the last edition of Legally Speaking, I presented a review of some important issues regarding students with disabilities. This article addresses some additional issues for consideration. In the last article, I began a discussion of the IEP meeting, including required participants and the need for parental participation. In general, it is important that all members of the team remember that they should come to an IEP meeting with an open mind and a willingness to listen to the input of all team members. Decisions should be based on the information that the participant has in their own knowledge along with information and data shared at the meeting. Decisions must be made at the meeting rather than in advance. It is acceptable for members to enter the meeting with an opinion, but they cannot have their mind

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tiffs to prevail in a negligence lawsuit, they must prove four things. First, the defendant must owe the plaintiff a duty of care. A duty of care can arise from statutes, School Board policy, court opinions or other sources. One example of a duty of care is that a driver owes every other driver on the road and nearby pedestrians the duty to drive in a safe manner. As a public school district, we have certain duties to our students and other visitors to our property. In short, that duty is to take reasonable precautions to protect them from harm. So, each of us in our daily lives owe many other people, most of whom we will never meet, a duty of care. But, a plaintiff must prove the remaining three elements to hold a defendant liable.

Second, a plaintiff must prove that the defendant violated its duty of care. This is usually the issue that is contested in negligence cases. Take the example of a driver on the road – if a driver is texting while driving on U.S.19 and rear-ends another car, the driver would have violated the duty to drive in a safe manner because texting while driving is illegal in Florida and, even if it wasn't illegal, a good argument could be made that it is not safe to do. In the school context, if a bus is involved in an accident, the exact facts will dictate whether our bus driver breached a duty of care. For example, did the bus driver run a red light and cause an accident (duty violated) or did someone pull out in front of a bus without allowing enough room for the bus to brake (duty not violated). Similarly, in the supervision context, if an AP or teacher was tasked to supervise a group of 50 3rd graders and left the area to take a personal phone call, and a student was injured, the duty of reasonable supervision and safekeeping was likely violated. However, again, even if we had a duty and breached it, a plaintiff cannot hold us liable unless they prove the remaining two elements of negligence.

Third, a plaintiff must have sustained some damages or injury. So, if a bus driver rear-ended another car because the driver was texting while driving, but only hit that car going 2 mph, there may be no damages. The person who was hit likely would have no personal injuries and the car likely would have no property damage, such as a dented bumper. In this case, the driver owed a duty, breached it, but the person cannot recover any damages because there were none.

Lastly, a plaintiff must prove that the defendant's breach of duty caused the plaintiff's injuries. Without this causation, the plaintiff cannot recover their damages from the defendant. For example, if the bus going 2 mph hit a car and the driver of that car sued us for causing a neck injury, we would quickly look into whether the person had a neck injury before the accident. If they did, then we would prevail in our defense because, even though we owed the plaintiff driver a duty and breached it, we did not cause the injury that the person is complaining about. The discovery of pre-existing medical conditions often allows us to successfully dispose of lawsuits brought against us. That said, we must take plaintiffs "as they come" and some people may actually sustain personal injuries with a 2 mph collision, and we would need to pay for those injuries, even though most people would not be injured by such an accident.

Before a person can file a lawsuit against us alleging negligence or any other tort, Florida law requires them to first send us a notice of the claim and then wait six months before filing in court. This time allows us to work with the claimant in an attempt to resolve the matter without a court filing. If we believe that we actually were negligent, we can reach a mutually agreed upon settlement with the person and avoid the time and expenses of a court case.

When a person is injured by our action or inaction, the proper party to name as a defendant is the School Board, which is the official head of our governmental agency. Plaintiffs sometimes name other parties as additional defendants, including the Superintendent and/or the individual employee whose actions are in question. However, as discussed in more detail below, individual employees cannot be sued unless their actions were egregious in some manner. If an individual employee is named as a defendant, we will seek to have them dismissed from the lawsuit unless the facts indicate they could be held individually liable in accordance with the rules below.

Once a tort case is filed against a governmental agency, it can obtain certain benefits from the concept of sovereign immunity. At its purist, sovereign immunity would mean that no one could sue the government for any reason, even if the government was negligent. Some people, most likely including those who have sustained personal injuries because of the government's negligence, have strong feelings about this concept. Regardless, in Florida, the Legislature has agreed to relax this standard by passing a law that allows people to sue the government in tort, but limiting who they can sue and how much they can recover even if they win.

Under our sovereign immunity statute, an individual plaintiff can recover no more than $200,000 against a governmental defendant, even if the jury awards much more. Further, if more than one person was injured by a single incident of the government's negligence, the total of all the plaintiffs' recoveries against the government cannot exceed a total of $300,000. One exception to this rule is if the plaintiff is successful in passing a special law in the Florida Legislature, known as a "claims bill," that essentially removes those limits just for their specific case. Claims bills are very rare and, just like any other law, must be passed by both houses

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Why Can School Grounds be used for Religious Purposes?

By David Koperski, School Board Attorney

We are often asked why schools can allow their grounds to be used for religious purposes. Specifically, the two commonly questioned uses are (1) student clubs that have a religious purpose, such as a bible club or the Fellowship of Christian Athletes, and (2) religious services held on school grounds on the weekends, such as church services on Sundays. Each of these two circumstances raise the same "church-state" legal issues, but are answered slightly differently.

Commonly referred to as the "separation of church and state," the First Amendment to the United States Constitution contains a provision that prohibits the government from "establishing" a religion. This has historically come to mean much more than just the federal government officially recognizing a religion, like the country of England does with the Christian Anglican Church or the country of Cambodia does with Buddhism. Rather, courts have interpreted this provision to generally mean that the government may not engage in activities that can be viewed to endorse or sponsor religion. For example, in 2000, the U.S. Supreme Court told a Texas high school that it cannot allow its football team members to lead a prayer on the field before the start of the game where the school allowed the team to use the school stadium's PA system to broadcast the prayer to the spectators. While no school employee was involved in the actual prayer, the Court said the school gave the impression that it was endorsing the prayer by allowing the use of its PA system and tolerating the prayer as part of the pre-game ceremonies. So, the question that arises is how the Constitution allows the other uses identified in the first paragraph above.

Regarding student clubs with a religious purpose, we must also consider one of the other rights contained in the First Amendment – freedom of speech. For decades, if not longer, public schools have allowed their grounds to be used after school hours by non-school-sponsored student clubs, such as the Boy Scouts, the 4-H Club and sometimes religious clubs. Some schools refused to allow the religious clubs based upon fears that they would violate the principles of separation of church and state. Some of these schools were sued by the student religious clubs claiming that the schools were discriminating against them based upon the religious content of their clubs' speech in violation of their free speech rights.

Eventually, Congress got involved and passed a federal law known as the Equal Access Act that clarifies that these non-school-sponsored student clubs have the same access to school facilities as other similar groups. Not surprisingly, this law was challenged on the same religious grounds, but the U.S. Supreme Court ruled that it was valid. Thus, it is not unlawful for a school to allow a non-school-sponsored student religious club to use its facilities on the same basis as other non-school-sponsored student clubs – in fact, it would be unlawful to not allow them. In the end, this is not the school sponsoring the religious content, but rather the school simply not discriminating against these types of clubs based upon their speech. And, even though a school employee may be sitting in on the club, that person should only be there for supervision purposes and should not be taking an active role in the meetings or the student organization hosting them.

Regarding leases of our school grounds, School Board Policy 7511 outlines the rules whereby outside organizations can lease our facilities.

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of the Legislature and signed by the Governor.

Another benefit of sovereign immunity is that individual employees cannot be named as a defendant in the lawsuit, with certain limited exceptions. So, in the vast majority of cases, if a plaintiff names an individual employee as a defendant, we will have that person dismissed from the case. The primary benefit of this is that the employee will not be personally responsible for the payment of any damages if the plaintiff wins the case. However, the law allows individual employees to be named and held individually liable if the employee was acting outside "the scope of her or his employment or function" or if the employee acted "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property." Thus, so long as employees are doing their jobs and not acting in one of these egregious manners, they cannot be named as a defendant or be held personally liable for any damages due to the plaintiff. An example of this exception would be if an employee intentionally hurt another or if a maintenance truck driver was driving under the influence of drugs or alcohol when he or she caused the accident.

Tort liability is an area of the law that we all need to be aware of and seek to protect against by being as careful as possible as we perform our work duties. But, in the event an accident does happen, we will defend as best we can and seek to dismiss individual employees from lawsuits brought against us. ■

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made up. Often we know that a meeting is scheduled for a particular purpose and they may have thoughts about what the outcome will be, but they must listen to input and be willing to change their opinion based on the information provided. The best way to guard against an appearance of predetermination is for the team to engage in healthy discussion. For example, if the purpose of the meeting is to consider whether a change in placement is appropriate for a particular student, the team should consider all placements available, rather than limiting themselves to one particular placement.

It is important to remember that in order to provide a student with a Free Appropriate Public Education (FAPE) an IEP must be written to meet the needs of that individual student. If the team feels a student needs 60 minutes of counseling a week, the student should receive that even if that is not the standard or norm for a particular program.

The law requires that a student with disabilities be placed in the Least Restrictive Environment (LRE). This does not mean that every child should be placed in a general education classroom, but that they should be placed in the LRE that is most appropriate for that student. For some students, that will mean a self-contained ESE program or even an ESE center. The district is required to have a continuum of placements available so that there is a placement available to meet each student's particular needs. A "one size fits all" approach where every student is served in a general education environment is not in compliance with the law. Again, the best approach to take in an IEP meeting is to have a discussion of the continuum of services available so that the team can come to a conclusion as to what environment is the most appropriate for the individual student.

If your school is served with a due process complaint with regard to a student with disabilities, please be sure to contact the ESE department at the district office as soon as possible so that they can begin to process the complaint. Documentation is very important in defense of a due process claim, so be sure to document discussions that the IEP team engaged in, options that were considered, parental input and whether or not items that the parent requested are included in the IEP. Please also keep in mind that emails are records that are often requested in a due process proceeding, so do not put anything in an email that you would prefer not to explain in front of a judge. ■

School Property Use for Religious Reasons
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The policy was passed to allow the public to have access to our facilities when we are not using them, usually for a fee. Certain school-based organizations, such as the SAC, will be able to use our facilities without charge and other school-related organizations, such as booster clubs, may be able to use the facilities without charge under certain circumstances. However, purely private organizations would be charged a lease fee and certain other incurred expenses. A multitude of outside organizations lease our facilities, including religious organizations. To allow a private company or motivational speaker to lease our facilities and disallow a religious organization would likely amount to unlawful discrimination against religion under Florida law and/or a violation of the right to free speech in the First Amendment. Regardless, allowing a religious group to lease our facility for a fee when it is not otherwise being used as a school is not tantamount to endorsing that group's message – much like the student groups discussed above, it is merely the district not discriminating against religion.

Religion in the public schools, even more so than in other governmental setting, can raise interesting questions, and the answers are not always simple. However, it is clear that for these two commonly questioned scenarios, the use of our facilities under the proper circumstances does not unlawfully violate the principles of separation of church and state. ■