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CONCURRENT SESSION THREE

Institutional Liability for Student Teaching, Internships, Practice and Other Off-Campus Placements

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INSTITUTIONAL LIABILITY FOR STUDENT TEACHING, INTERNSHIPS, PRACTICE AND OTHER OFF-CAMPUS PLACEMENTS

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Institutional Liability for Student Teaching, Internships, Practice and Other Off-Campus Placements

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I. INTRODUCTION

There was a time in the history of American education when the actions of attorneys and judges seemed remote from the classrooms and laboratories of schools and colleges. Times have changed as today's educators have felt the impact of court rulings decided during the last thirty years. Much was learned during the tumultuous years surrounding the landmark court decisions of the 1960s and 1970s, and, as a result, educators can now confidently approach decision-making processes and avoid many of the legal pitfalls which were so prevalent during that era.

Understanding and adhering to the expectations of the judicial system is an important factor in reducing the potential for legal entanglements encountered in the "traditional" classroom. However, all educational experiences are not limited to the physical confines of the traditional classroom or laboratory. This is the case when students engage in "experiential learning." Students in business, communication, the health-related professions, medicine, and teacher education engage in experiential learning en route to completing their respective professional education programs. The health-related professions are composed of numerous distinct disciplines such as nursing, physical therapy, and radiologic technology. For these professions, experiential learning is termed clinical education or clinical practicum. In teacher education, other terms are used to describe experiential learning and include student teaching, practice teaching, internship, or field experiences.

Providing "real life experiences" outside the traditional classroom raises additional legal questions for educators due to inherent differences between experiential learning and traditional classroom experiences. The numerous differences which exist include the following: (1) University supervisors must function in environments where they have little authority over the ongoing activities within the placement settings; (2) Students often participate in activities vastly different from the activities associated with the traditional classroom; and (3) University faculty and students must depend on the cooperation of other individuals such as on-site professionals, health-care practitioners, classroom pupils, and patients, in order to achieve their educational objectives.

Given the litigious nature of the society in which we live, educators must appreciate the legal questions associated with experiential learning in order to avoid potential legal entanglements. Who should be concerned with these legal possibilities? There are at least six parties involved:
1. student
2. educational institution supervisor
3. educational institution
4. pupils, patients, or clients at placement site
5. cooperating teacher, clinical instructor, or supervisor
6. institution or business (the placement site).
II. FEDERAL CONSTITUTIONAL RIGHTS

The United States Constitution is the supreme law of the land. All statutes passed by Congress, all state constitutions, all state statutes and regulations, and the policies of public colleges and universities are subject to its provisions. Very few of the protections of the Constitution apply to non-public institutions, especially as related to students and employees. The two Constitutional provisions most relevant for public school educators are the First and Fourteenth Amendments.

The rights protected against congressional (federal) intrusion by the First Amendment are protected against state intrusion by the Fourteenth Amendment. Public colleges and universities are "state" for purposes of the Constitution.

A. Freedom of Religion

There are two parts to freedom of religion: establishment and free exercise. For the free exercise analysis, use Wisconsin and/or Employment Division. For the establishment analysis, use Lemon v. Kurtzman.

Instances to avoid: public money or support for placements in private institutions, programmatic rules burdening religious beliefs.

Cases for presentation: Stark and St. Agnes Hospital.

B. Freedoms of Speech and Association and Right to Assemble

For employee rights, use Pickering and Connick. For student rights, use Tinker, Bethel School District, and Hazelwood School District (but the postsecondary legal rule is not the same legal rule as with K-12 students).

Instances to avoid: limitations on away-from-campus speech activities.

C. Reputation

Reputation is one's good name and standing with colleagues, superiors, and future employers. For understanding, use *Wisconsin v. Constantineau, Board of Regents*.

Instances to avoid: public dissemination of confidential information, negative comments regarding competence or character.

Cases for presentation: *Aubuchon, Harris, Greenhill*.

D. Privacy

Privacy concerns arise in three circumstances: (1) confidential information; (2) search and seizure; and (3) bodily integrity (physical/sexual abuse).

Instances to avoid: public dissemination of confidential information, searches without legal cause, physical contact or sexual relationships.

E. Property

A property right is something to which one has a legitimate claim of entitlement. For understanding, use *Board of Regents, Perry v. Sinderman*.

Instances to avoid: failure to assess the existence of a property right.

Cases for presentation: *Reed, Easaw, Ikpeazu, Ezekwe, Harris*.

F. Procedural Due Process

Procedural due process relates to how property or liberty rights are removed. The basic elements are notice of the charges and a hearing. For background, use *Board of Regents, Perry, Dixon*.

Instances to avoid: failure to develop and to follow institutional policies.

Cases for presentation: *Horwitz, Aubuchon*. 

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G. Substantive Due Process

Substantive due process relates to why property or liberty rights are removed. Laws, policies, rules, and decisions must not be arbitrary and capricious, i.e., a substantial departure from accepted academic norms.

Instances to avoid: failure to "look good" and to "be good", i.e., fair and reasonable, when dealing with employees and students.

Cases for presentation: Ewing, Aubuchon.

H. Equal Protection

This is one of the most complex concepts in the Constitution to understand! Essentially, it protects individuals and groups against intentional governmental discrimination because of their membership in a protected group or because of the exercise of their fundamental constitutional rights.

Instances to avoid: treating someone in a "different" way because of a group characteristic, e.g., race, national origin, alienage, sex.

III. FEDERAL STATUTORY RIGHTS

A. Introduction

There will be little, if any, discussion during the presentation. There are very few cases relating to experiential learning. These cases are cited in the Bibliography. Depending on the language of the individual statute, there may be application to non-public schools.


C. Title VI: 42 U.S.C. §2000(d)

D. Title IX: 20 U.S.C. §1681


F. Family Educational Rights and Privacy Act: 20 U.S.C. 1232(g)
IV. Torts

A. Introduction

A tort is a civil wrong involving injury to another's person or property, for which a court may provide a remedy (usually monetary damages). Principles of tort law apply to public and non-public institutions, employees, and students. There are four varieties of tort: (1) intentional (e.g., assault, battery, trespass); (2) unintentional, (negligence); (3) liability without fault; and (4) miscellaneous and unrelated (e.g. libel and slander). The major legal concern is for negligence.

B. Negligence

Negligence may be defined as:

...the doing of that thing which a reasonably prudent person would not have done, or the failure to do that thing which a reasonably prudent person would have done in like or similar circumstances: it is the failure to exercise that degree of care and prudence that reasonably prudent persons would have exercised in like or similar circumstances.

There are four parts for a plaintiff (person suing) to prove:

1. Duty (=legal duty)

2. Breach of duty

3. Proximate cause--that which, in a natural and continuous sequence, unbroken by an efficient intervening cause, produces the injury, and without which the result would not have occurred.

4. Actual injuries

The defendant (person being sued) has two common defenses to argue:

1. Contributory/comparative negligence (differs by state)--had the plaintiff acted as a reasonably prudent person, he would not have placed himself in a situation which resulted in the injuries actually suffered.

2. Assumption of the risk--the plaintiff knowingly and voluntarily accepted the risks inherent in an activity.

Instances to avoid: situations where you do not behave as a reasonable person.

Cases for presentation: Swidryk, Brahatek, Central Anesthesia Associates, DeMauro, and Straub Clinic and Hospital Inc. and CNA Insurance Co.
BIBLIOGRAPHY

I. PERIODICALS


II. DISSERTATIONS

SRUGGS, Sabrina K. "Allied Health Clinical Education
Affiliations: A Study of Medical Technology, Occupa-
tional Therapy and Physical Therapy Programs." Ed.D.

III. CASES: FEDERAL CONSTITUTIONAL AND STATUTORY

Alevy v. Downstate Medical Center of New York, 359 N.Y.S.2d
(Title VI)

Aubuchon v. Olsen, 467 F. Supp. 568 (E.D. Mo. 1979). (Reputation,
Procedural, and Substantive Due Process)

Bachman v. American Soc. of Clinical Pathologists, 577
F.Supp. 1257 (D. N.J. 1983). (Section 504)

Bakke v. Regents of University of California, 553 P.2d 1152
(Cal. 1976), aff'd in part and rev'd in part, 438
U.S. 265 (1978). (Title VI)

Procedural Due Process, and Equal Protection)

Bauza v. Morales Carrion, 578 F.2d 447 (1st Cir. 1978). (Equal
Protection)

Amendment)

Procedural, and Substantive Due Process)

Bethel School Dist. v. Fraser, 478 U.S. 675 (1986). (Speech)

Board of Curators v. Horowitz, 447 F. Supp. 1102 (W.D. Mo.
1975), rev'd, 538 F.2d 1317 (8th Cir.), rehearing
denied, 542 F.2d 1335 (8th Cir. 1976), rev'd 435
U.S. 78 (1978). (Property, Procedural and Substantive Due
Process)

Board of Regents v. Roth, 408 U.S. 564 (1972). (Property, Reputation)

Bonwitt v. Albany Med. Ctr. Sch. of Nursing, 353 N.Y.S.2d
82 (Sup. Ct. 1973). (Property, Procedural and Substantive
Due Process)

Bower v. O'Reilly, 318 N.Y.S.2d 242, (Sup. Ct. 1971). (Property,
Substantive Due Process)

Procedural Due Process)


Chu v. Schweiker, 690 F.2d 330 (2d Cir. 1982). (Property)

Clements v. Nassau County, 835 F.2d 1000 (2d Cir. 1987). (Reputation, Substantive Due Process, and Equal Protection)

Connelly v. University of Vermont, 244 F.Supp. 156 (D.Vt. 1965). (Property, Substantive Due Process)


Cowan v. University of Louisville School of Med., 900 F.2d 936 (6th Cir. 1990). (Reputation, Procedural Due Process)

Cummings v. Hampton, 485 F.2d 1153, (9th Cir. 1973). (Association)


DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989). (Privacy)


Gaspar v. Burton, 513 F.2d 843 (10th Cir. 1975). (Property, Procedural Due Process)


Grimard v. Carlston, 567 F.2d 1171 (1st Cir. 1978). (Property, Procedural Due Process and Section 504)

Hankins v. Temple University, 829 F.2d 437 (3d Cir. 1987). (Procedural Due Process, Title VI)

Harris v. Blake, 798 F.2d 419 (10th Cir. 1986). (Reputation, Property, Procedural and Substantive Due Process)

Healy v. James, 408 U.S. 169 (1972). (Association)


Hines v. Rinker, 667 F.2d 699 (8th Cir. 1983). (Property, Substantive Due Process)


Ikpeazu v. University of Nebraska, 775 F.2d 250 (8th Cir. 1985). (Property, Procedural and Substantive Due Process, and Equal Protection)


Keesler v. Board of Regents, 738 F.2d 751 (6th Cir. 1984). (Property, Procedural Due Process)


McDonald v. Hogness, 598 P.2d 707 (Wash. 1979). (Title VI)

Medical Institute of Minnesota v. NATTS, 817 F.2d 1310 (8th Cir. 1987). (Substantive Due Process)
Menorah Medical Center v. Health and Ed. Facilities Act., 584 S.W.2d 73 (Mo. 1979). (Religion)


Mississippi University for Women v. Hogan, 646 F.2d 1116 (5th Cir. 1981), aff’d, 653 F.2d 222 (5th Cir.), aff’d, 458 U.S. 718 (1982). (Title IX)


Moire v. Temple U. School of Medicine, 613 F. Supp. 1360 (E.D. Pa. 1985), aff’d, 800 F.2d 1136 (3d Cir. 1986). (Property, Procedural and Substantive Due Process, and Title IX)


Mustell v. Rose, 211 So.2d 489 (Ala. 1968). (Property, Procedural and Substantive Due Process)


Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368 (3d Cir. 1991). (Section 504)


New Jersey v. T.L.O., 469 U.S. 325 (1985). (Fourth Amendment)


O’Connor v. Ortega, 480 U.S. 709 (1987). (Fourth Amendment)


Perry v. Sindermann, 408 U.S. 593 (1972). (Property)


Purdie v. University of Utah, 584 F.2d 831 (Utah 1978). (Age Discrimination Act)

Pushkin v. Regents of the University of Colorado, 504 F.Supp. 1292 (D. Colo.), aff'd, 658 F.2d 1372 (10th Cir. 1981). (Section 504)

Reed v. Washington County Bd. of Educ., 756 S.W. 2d 250 (Tenn. 1988). (Property, Procedural Due Process)

Robinson v. University of Miami, 100 So.2d 442 (Fla. Dist. Ct. 1958). (Speech)


Stark v. St. Cloud State University, 604 F. Supp. 1555 (D. Minn. 1985), aff’d, 802 F.2d 1046 (8th Cir 1986). (Religion)

State ex rel. Warren v. Nusbaum, 198 N.W.2d 650 (Wis. 1972). (Religion)

State ex rel. Warren v. Nusbaum, 219 N.W. 2d 577 (Wis. 1974). (Religion)

State ex rel. Warren v. Reuter, 170 N.W. 2d 790 (Wis. 1969). (Religion)


Wisconsin v. Constantineau, 400 U.S. 433 (1971). (Reputation)
Wynne v. Tufts University School of Medicine, 932 F.2d 19
(1st Cir. 1991). (Section 504)

IV. CASES: TORTS

AETNA Casualty and Surety Co. v. Arlington Hospital Assoc., Civ.
No. 88-1290-LFD (D. Columbia filed Sept. 26, 1989)(LEXIS,
Genfed library, Courts file). (Negligence)

Assaad-Faltas v. Univ. of Ark. for Medical Sciences, 708 F.Supp.
1026 (E.D. Ark. 1989). (Defamation)

Aubert v. Charity Hospital of Louisiana, 363 So.2d 1223 (La. App.
1978). (Negligence)


(Negligence)

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989). (Negli-
gence, Battery)

Blair v. New York University College of Dentistry, 222 N.Y.S. 2d

(Negligence)

Breese v. State, 449 N.E.2d 1098 (Ind. Ct. App. 1983). (Negli-
gence)

Brittan v. State, 103 N.Y.S.2d 485 (N.Y. Ct. Cl. 1951). (Negli-
gence)


1985). (Negligence)

Carter v. Louisiana State University, 513 So.2d 560, (La. Ct.

App. 1984). (Negligence)

gence)
Christensen v. Des Moines Still College of O. & S., 82 N.W.2d 741 (Iowa 1957). (Negligence)

Clements v. Nassau County, 835 F.2d 1000 (2nd Cir. 1987). (Defamation)

Condemarin v. University Hosp., 775 P.2d 348 (Utah 1989). (Negligence)


DeMauro v. Tusculum College, Inc., 603 S.W.2d 115 (Tenn. 1980).


Flagiello v. Pennsylvania Hospital, 208 A.2d 193 (Pa. 1965). (Negligence)


Gordon v. St. Mary’s Hospital, Inc. 293 So.2d 153 (Fla. Cir. Ct. 1974), rev’d, 297 So.2d 4, (Fla.) 305 So.2d 234 (Fla. Dist. Ct. App. 1975). (Negligence)


Habuda v. Trustees of Rex Hospital, Inc. 164 S.E.2d 17 (N.C. Ct. App. 1968). (Negligence)


Inderbitzen v. Lane Hospital, 12 P.2d 744 (Cal. Dist. Ct. App. 1932). (Battery)


Jensen v. Linner, 108 N.W.2d 705 (Minn. 1961). (Negligence)

Judd v. Sanatorium Commission of Hennepin County, 35 N.W.2d 430 (Minn. 1948). (Negligence)

Kilbane v. County of Ramsey, 193 N.W.2d 301 (Minn. 1971). (Negligence)

Kirchner v. Yale U., 192 A.2d 641 (Conn. 1963). (Negligence)


Krause v. Trustees of Hamline University of Minn., 68 N.W.2d 124 (Minn. 1955). (Negligence)

Kresko v. Rulli, 432 N.W.2d 764 (Minn. Ct. App. 1988). (Battery)


McBride v. U. S., 462 F.2d 72 (9th Cir. 1972). (Negligence)

McCafferty v. Medical College of Georgia, 287 S.E.2d 171 (Ga. 1982). (Negligence)


Moore v. Vanderloo, 386 N.W.2d 108 (Iowa 1986). (Negligence)


Ross v. Univ. of Minnesota, 439 N.W.2d 28 (Minn. App. Ct. 1989). (Defamation)


Spivey v. St. Thomas Hospital, 211 S.W.2d 450 (Tenn. App. Ct. 1948). (Negligence)


Stineman v. Fontbonne College, 664 F.2d 1082 (8th Cir. 1981). (Negligence)


