

**THE CT CONSORTIUM FOR LAW AND
CITIZENSHIP EDUCATION, INC.
PRESENTS:
THE 10TH ANNUAL
MIDDLE SCHOOL MOCK TRIAL COMPETITION
2006-2007**

CASE MATERIALS

LESLEY PARKER

V.

NEW JUSTICE COUNTY SCHOOL BOARD

CASE NO. 01006071787 CV

Co-Sponsored by the CT Bar Association

Statement of Facts

1. In March of 2004, the plaintiff's then 13-year-old child, Lesley Parker, was
2. seriously injured when his/her homework project, a simulated volcano, exploded.
3. The child's right hand received severe lacerations, and one finger was almost
4. destroyed. Corrective plastic surgery was required to restore the hand to its
5. present functioning level of 80%.

6. The science teacher, Pat Mentor, asked the students in Lesley's class to prepare
7. projects for demonstration on Science Day, March 10, 2004. Lesley chose to
8. build a simulated volcano. The volcano was constructed at Lesley's home, with
9. the help of his/her father/mother and older brother. The powder used to create
10. the "eruption" effect was taken from firecrackers purchased by Lesley's
11. father/mother. As it happens, several other students also brought volcano projects
12. for demonstration on Science Day, and all three volcanoes were stored in a closet
13. in the teacher's classroom. One of these volcanoes was brought out and
14. demonstrated.

15. The next day, Lesley picked up his/her volcano, as instructed, to take it home.
16. While waiting for the school bus, Lesley decided to demonstrate the volcano for
17. the other students. He/she gave one or two demonstrations and was pouring
18. powder for a second or third demonstration. A spark apparently entered the
19. plastic bottle containing the remainder of the powder and some fuses, causing the
20. explosion.

21. On behalf of their minor child, Lesley's parents have brought this action against
22. the school board for negligence due to the science teacher's lack of proper
23. supervision in allowing Lesley to build and demonstrate a volcano with
24. firecracker powder.

Witnesses for the plaintiff:

1. Lesley Parker, a 13-year-old in 6th grade at the time the injury occurred
2. Jonathan/Jane Parker, Lesley's father/mother
3. Marty Watkins, a classmate of Lesley's

Witnesses for the defense:

1. Pat Mentor, science teacher at Orange Canyon Elementary School
2. Sandy Todd, another teacher at Orange Canyon Elementary School
3. Sy Intist, safety expert

Causes of Action:

1. Plaintiff claims that the science teacher, Pat Mentor, was negligent in allowing a 13-year-old to build and demonstrate a simulated volcano.
2. Defendant claims that the child, Lesley Parker, was contributorily negligent in intentionally exposing him/herself to the obvious danger and that he/she assumed the risk of this activity.
3. Defendant also claims that the actions of the parent of Lesley Parker were contributorily negligent.

Stipulations:

1. If Pat Mentor was negligent then the school board is liable under the doctrine of respondeat superior.
2. Bus and after-school supervision are not at issue in this case.
3. All witness statements are sworn affidavits and should be treated as such under proper rules of evidence.
4. Exhibit 1 – School Safety Rules – is admissible evidence. (Remember that admissible evidence is not yet admitted as evidence.)

Affidavit of Lesley Parker

1. My name is Lesley Lee Parker. I turned 14 years old on September 27, 2004. In
2. March, 2004, I was in sixth grade at Orange Canyon Elementary School. This
3. school year, 2006-2007, I am in ninth grade at Green River High School.

4. In sixth grade, when my science teacher, Pat Mentor, asked the class to think up
5. projects to show off for our parents on Science Day, I decided to make a real
6. working model of a volcano. I really liked the classes where we learned about
7. Mount Vesuvius and Pompeii, and all the strange things they found when they
8. dug out the old city; you know the way the people were found frozen in positions
9. like they didn't realize what was happening to them, and all the destruction
10. caused by the hot lava.

11. Anyway, my brother had done a volcano for his science project a couple of years
12. ago, and it was neat the way the thing exploded. They wouldn't let me get near it
13. back then, but I knew I could get my mom/dad and my older brother, Michael, to
14. help me build it, now that I was a little older.

15. I did what my mom/dad told me to do. I found a large jar and a heavy piece of
16. board. I covered the board with aluminum foil and put the jar in the middle.
17. Then Michael and I used some clay and mud and Michael had mixed up and
18. shaped it into a cone around the bottle, with a big crater-like dip at the top for the
19. opening. We put a small metal can, with a wire attached to the top of the volcano
20. so I could pull it out when I wanted to, in the bottom of the bottle. We tried it out
21. on the floor of the garage.

22. Oh yeah, we also used firecracker powder from firecrackers my mom/dad bought.
23. Mom/Dad told me to put enough powder into the can to cover the bottom of it,
24. then to lower it into the bottle. The first time we tried it out, Michael threw in the
25. match to start the explosion. Then she/he let me try it while she/he and Michael
26. watched. Once I got the match lit (I broke one), I threw it in the center just like
27. Michael did. Boy, did it work great!

28. Mom/Dad put the powder in an aspirin bottle, and he/she told me to keep it away
29. from anything hot because it might catch fire accidentally. He/she also said I
30. should be real careful when demonstrating the volcano because I could get hurt.
31. On the day before Science Day, I asked Mom/Dad to give me some matches to
32. take to school as a part of my volcano project, but he/she said no, that I could get
33. matches from my teacher. I told him/her that I would be careful but he/she just
34. said no.

35. I put the volcano in Mr./Ms. Mentor's closet when I took it to school that day, and
36. I was really disappointed to see that there were two other kids who had brought
37. volcanoes. They looked a little different from mine though. One was made of
38. white stuff, and the other one wasn't shaped as well as mine.

39. When it came time to demonstrate the volcano projects, they chose to use mine, I
40. guess because it looked more realistic than the others. Mr./Ms. Mentor wouldn't
41. let me demonstrate it though, and when he/she demonstrated it, he/she lit the
42. match to a string running into the center of the volcano instead of throwing the
43. match in the way Mom/Dad had taught me. It took a little longer to work that
44. way, but the end result was the same: KABLOOM!!

45. The next day, I picked up my volcano project to take it home. The bottle with the
46. powder in it looked different, somehow bigger, than the one I brought to school.
47. There were a couple of stiff string-like things inside, but the powder still looked
48. the same. All of the other projects had been picked up, and there were no other
49. aspirin bottles laying around.

50. As I waited for the bus, several kids told me they wanted to see it work. I refused
51. at first, and I ran across the street to the drugstore to buy a pack of chewing gum.
52. I know it's against school rules to go across the street, but all the kids do it. After
53. I came back, they told me they didn't think I could make it work, so I said okay.
54. At the time, I thought it was real lucky that Mr./Ms. Mentor left the book of
55. matches with my project, because otherwise I wouldn't have been able to do it.

56. I thought there was a school rule against having matches on school grounds, but
57. since we had used them to demonstrate the project yesterday, I thought the rule
58. was meant to stop kids from starting fires on purpose. I remembered what
59. Mom/Dad had told me about being real careful with matches near the powder, and
60. I thought I was doing it right.

61. I put some powder from the aspirin bottle in the can and put the bottle aside,
62. while I lit a match and threw it in. It worked, and I felt real proud. Some more
63. kids heard the explosion and came running, and they asked me to do it again, so I
64. did. The third time I had just started putting powder into the can, when the aspirin
65. bottle just exploded in my right hand. I never felt so much pain before in my life,
66. even when I had a tooth pulled at the dentist. One of the kids found a teacher who
67. took me to a hospital and called my mom/dad.

68. The doctor says my hand will never be the same again.

LESLEY LEE PARKER

Affidavit of Jonathan/Jane Parker

1. My name is Jonathan/Jane Parker. Lesley Lee Parker is my child. I have one
2. other child, a son named Michael that is two years older than Lesley. I am
3. divorced. When Lesley came home from school one day in February, 2004,
4. he/she said that the science teacher had told the class to come up with projects to
5. show all the parents on Science Day, March 10, 2004. Lesley said that the teacher
6. had okayed a volcano project, and that he/she wanted to build one for his/her
7. project just like Michael had done two years before.

8. Lesley is an average student. He/She has never been very good in reading or
9. writing; as a matter of fact, he/she flunked third grade. I think a lot of his/her
10. problem was that my ex-spouse never got Lesley up in time for school the way
11. he/she should have. But for the first time in a long time, Lesley was excited about
12. a school project, and even though I was concerned about the danger involved, I
13. thought it was okay if the teacher had approved it. Besides, I had learned with
14. Michael how to do this kind of thing safely.

15. I told Lesley what to do, and I bought some firecrackers for the powder. I was
16. afraid of combustion, so I didn't want Lesley to use the fuses from the
17. firecrackers, and I was with them when we took the firecrackers apart. We laid
18. them out on the garage floor and removed the powder very carefully. I was
19. watching the whole time. Then we put the powder in an empty aspirin bottle and
20. put a plastic cap on it. I got rid of the fuses and the other remains of the
21. firecrackers.

22. I showed Lesley how to light the volcano safely, by throwing the match into the
23. center and pulling his/her hand away fast. I told him/her not to let the match get
24. close to the powder while he/she was still holding onto the match. I warned
25. him/her about combustion and how he/she could get hurt if he/she weren't
26. careful. We even did a couple of trial runs with the volcano at home, and it
27. worked beautiful. I didn't expect Lesley to be demonstrating the project without
28. adult supervision. I didn't even give him/her any matches. I assumed he/she
29. would be supervised at school just as I supervised him/her at home. When the
30. teacher called and told me something had happened to Lesley, and that they had
31. taken him/her to the hospital, it never occurred to me that it had anything to do
32. with the volcano. I had given him/her strict instructions about it, and even though
33. he/she may be a little mischievous now and then, he/she obeys me.

34. The doctor said Lesley received several severe lacerations, and one finger was
35. almost destroyed. When I think about the pain he/she must have suffered, it
36. breaks my heart. He/she is just a kid, and he/she will never have the full use of
37. his/her hand again. The doctor says it will never get better than it is right now,
38. about an 80% functioning level. The corrective and plastic surgery helped, but it
39. sure cost us a pretty penny. It doesn't matter thought; I'd pay anything to make
40. this whole nightmare go away. I just can't believe the school would let this sort of

41. thing happen. . .

JONATHAN/JANE PARKER

Affidavit of Marty Watkins

1. My name is Marty Watkins. I was also in sixth grade at Orange Canyon
2. Elementary School last year. I graduated to junior high, just like Lesley. I will
3. turn 13 years old on January 3, 2005.

4. Lesley's a lot of fun – always doing something funny, getting him/herself into
5. trouble, like the time he/she drew a picture of Mr./Ms. Mentor on the drawing
6. board when the teacher stepped out for a minute; the teacher didn't see it until we
7. started laughing so hard he/she couldn't help but wonder what was so funny.
8. Lesley didn't mean any harm; he/she never does. I guess he/she just likes to get
9. everyone's attention. We all know he/she is older than the rest of us.

10. When Mr./Ms. Mentor told us about Science Day, Lesley and I talked about
11. making volcanoes, and I got really excited. When I went home that night, I
12. signed on to the internet to find out how to make a really cool volcano. I knew
13. how to make a regular volcano, but I wanted mine to be really cool. After looking
14. for a while, I found a website that told me how to make a supercharged volcano. I
15. printed it out because it didn't look too hard to make. The instructions said that if
16. I added powder from bottle rocket, the volcano would be really cool. I was
17. making my volcano when my mom got home from work. She asked what I was
18. doing, and I showed her the instructions. Mom freaked out! She said that it was
19. way too dangerous for me and that I couldn't make it. I got mad and yelled, but
20. she still wouldn't let me. She said I had to make a plaster of paris volcano. I was
21. really mad because plaster volcanoes are for babies, and I was in sixth grade!
22. Anyway, the next day at school I told Lesley what my mom said. Lesley said a
23. supercharged volcano sounded really cool and then asked me for the instructions.
24. I gave them to Lesley and also got some bottle rockets. After school that day, I
25. took the bottle rockets apart and put the powder in a bag before my mom got
26. home. On science day, after Mr./Ms. Mentor demonstrated Lesley's volcano, I
27. asked Lesley if I could look at the aspirin bottle. I put some bottle rocket powder
28. in Lesley's aspirin bottle so that the volcano would be even cooler the next time
29. we tried it.

30. While we were waiting for the school bus to take us home, some of the kids asked
31. Lesley to show them his/her volcano. At first, he/she said no. He/She ran across
32. the street and went into the drugstore for a few minutes. When he/she came out,
33. he/she had a small package. The other kids started in again, asking him/her to
34. demonstrate the volcano. This time Lesley said yes.

35. Lesley told everyone to stand back, and he/she put some powder in the can in the
36. center of the volcano. Lesley used a set of matches; he/she said they were just
37. laying with the project when he/she picked it up from Mr./Ms. Mentor. I didn't
38. see where the matches came from; at least, I just don't remember clearly. But I
39. believe Lesley over that jerk Alex. Alex said that he/she saw Mr./Ms. Mentor

40. lock up the matches in a desk drawer. Alex was finally caught cheating last year
41. and was suspended for two weeks.

42. Lesley threw a lighted match into the center of the volcano, and almost
43. immediately there was a big bang with sparks coming out of the top of the
44. volcano. More kids came around, I guess because of the sound, so Lesley agreed
45. to do it again. Lesley told me that his/her mom/dad told him/her that if a spark
46. got into the powder, it could explode, so he/she had to be careful.

47. The third time Lesley tried to demonstrate the volcano, the bottle with the powder
48. just exploded in his/her hand, for no reason at all that I could see. One thing I
49. thought was strange, though; Lesley said that his/her mom/dad wouldn't let
50. him/her use a fuse the way the science teacher did on Science Day, but I could see
51. a couple of firecracker fuses in the aspirin bottle along with the powder. I don't
52. know whether Lesley realized that or not, but I am sure the fuses were there.

53. I really thought Lesley knew what he/she was doing, being older than the rest of
54. us. I just don't understand how it happened.

MARTY WATKINS

Affidavit of Pat Mentor

1. My name is Pat Mentor. I teach science to fifth and sixth graders at Orange
2. Canyon Elementary School. I teach only science, taking over from the regular
3. teachers for that subject at specific times during the day. This is a special
4. program initiated by the New Justice County School Board to focus on certain
5. subjects, such as science and math, taught by teachers with superior education and
6. experience in teaching those subjects.

7. I earned my bachelor of science and master's degree in education (summa cum
8. laude) from Salt Lake University. After two years' experience teaching science in
9. a high school setting, I decided to further my education. I received a full
10. scholarship at the Massachusetts Institute of Technology, where I earned a Ph.D.
11. in 2000. Although I was offered a lucrative research position at a major
12. pharmaceutical company, I accepted this job because teaching has always been
13. my first love. There's nothing quite as rewarding as seeing a child's eyes open
14. wide when I show him or her the magic of science . . . but I digress.

15. I suppose an accident of this nature was bound to happen someday because
16. children at this age tend to be a little careless. But I cannot believe I am being
17. blamed. Kids are so fascinated by the concept of combustion that I constantly
18. warn them of the dangers of being careless.

19. About the time we started teaching the subject of "Earth Surfaces", I told the
20. students to prepare projects for the upcoming Science Day, on March 10, 2004.
21. Lesley Parker, the class "cut-up", told me he/she was going to make the best
22. volcano we had ever seen. It was encouraging to see a goof-off such as Lesley
23. finally taking an interest in something.

24. Several kids chose to make volcanoes, although I never suggested volcanoes as a
25. project. As with anyone using even slightly dangerous products, I gave them oral
26. and written warnings (safety rules). I told them never to demonstrate their
27. projects without me or a parent watching, and I warned them that they should
28. never use matches or lighters near any of the chemicals and powders they would
29. be using.

30. Knowing Lesley's playful nature, I told him/her that I didn't want him/her to do
31. this project if he/she couldn't obey the safety rules. We talked in general terms
32. about matches and fire, but I don't recall exactly what was said.

33. The written warnings also give strict instructions that the kids should not light a
34. fire without using a paper-extender or a string-like fuse. I don't understand why
35. Mr./Ms. Parker thinks that fuses are more dangerous than throwing matches; that
36. just doesn't make sense.

37. Now, I did offer an alternative way of making a volcano—with a chemical

38. compound and plaster of paris. I made a special point of suggesting this type of
39. volcano to Lesley, but, of course, that sort of volcano doesn't create the loud
40. explosion and sparks that a firecracker powder volcano makes. One student did
41. choose to make the safer version.

42. When I demonstrated Lesley's volcano for Science Day, I used fuses from one of
43. the other kid's projects. I may have even put a few fuses in the bottle with the
44. powder, since I was asked to demonstrate it several times and was expecting to be
45. asked again. Of course, I would not allow the kids to demonstrate it; I kept a fire
46. extinguisher nearby (just in case) even when I was demonstrating.

47. Know this: I would never have left any matches with any of the kids' projects
48. when they picked them up to take home. I lock all matches and dangerous items
49. in a drawer in my desk when I am out of the room. I am a very careful, tidy
50. person.

51. I am sorry for what happened to Lesley Parker, but it was his/her own fault. I did
52. my job, and my responsibility ends at the classroom door.

PAT MENTOR

Affidavit of Sandy Todd

1. My name is Sandy Socrates Todd. I teach sixth grade at Orange Canyon
2. Elementary School, and Lesley Parker was my student when this terrible accident
3. happened. Pat Mentor comes into my class four times a week to teach science. I
4. have regular meetings with Pat and the visiting math teacher to evaluate students'
5. progress and to discuss problems.

6. It's a strange coincidence that we had been talking about Lesley Parker a few
7. weeks before the accident. Lesley is a bit of a pain in the neck, if you know what
8. I mean. Maybe it's partly because his/her parents are divorced; I don't really
9. know. I told Pat to pay extra careful attention to that kid, not to expect him/her to
10. obey orders. We discussed the fact that Lesley failed a grade and that insecurity
11. might be at the root of his/her problems. I remember that we both thought he/she
12. had a good mind, if only he/she could direct his/her energies toward something
13. positive.

14. I am a little surprised, to be honest, that Pat allowed Lesley to create such an
15. inherently dangerous project as a volcano. I am not sure I would have approved
16. of it had I known about it. But, you must remember, Pat is the teacher when it
17. comes to science, and if this, or anything for that matter, would spark Lesley's
18. interest in school, then it would be the right thing to do. After all, our primary
19. concern is that these young people take an interest in learning, for their own
20. sakes.

21. Pat Mentor is extremely well-qualified, and he/she really seems to care about
22. these young minds. I don't believe he/she has worked with kids this age very
23. much; most of his/her experience is at a higher education level, but Pat is learning
24. fast what you can or cannot expect out of sixth-grade kids. I am working very
25. closely with Pat at the request of the Principal. The school has published safety
26. rules. I gave copies to Pat to hand out to the class, and I am sure that he/she
27. discussed the rules with the class. I also discussed these rules with every class at
28. the beginning of the school year, so I know Lesley Parker was aware of the rule
29. against demonstrating projects without an adult present.

30. There is one thing that's for sure: Lesley Parker violated the school rule
31. prohibiting students from crossing the street. Every student has that rule drilled
32. into his/her head from first grade onward, since it is such a busy street and
33. children have been hit by passing cars before. If I had seen Lesley begin to cross
34. the street, I would have stopped it. However, I was watching other children, so I
35. only saw Lesley run back towards the school after going to the store. I told
36. Lesley to stop and reprimanded him/her for breaking the rule. I remember I was
37. curious what was in the bag because I heard a shaking sound. It could quite
38. possibly have been a box of matches, but I cannot say for sure. I wanted to check
39. the contents of the bag, but a student started yelling for me because two fifth-
40. graders were pushing each other. I had to leave Lesley in order to deal with the

41. other students.

42. By the way, I was on bus guard duty that day. I heard some commotion where
43. some kids were gathering and I was on my way to investigate what sounded like
44. an explosion, when Marty Watkins came running to tell me about the accident.
45. Marty Watkins is the ideal student: good grades, good manner, and good
46. grooming. The school board has investigated the incident and has already cleared
47. me of any responsibility. I guess that's why I am not a party to this lawsuit, and
48. why bus guard duty is not even an issue in this case. With so many kids, there's
49. no way to watch them all. In my twenty years of teaching, this is the first time
50. anything so serious as this has happened to one of my students.

SANDY TODD

Affidavit of Sy Intist

1. My name is Sy Intist. I am a Physics Professor at Salt Lake University. For
2. about ten years now, the New Justice School Board has asked me to come to
3. science classes to teach elementary school children about safety. The School
4. Board referred my services to Pat Mentor, so that the children could have a safety
5. lesson before preparing their projects for Science Day. I have conducted
6. hundreds of experiments both alone and with college students and can proudly say
7. I have never witnessed an injury. The foundation of science experiments is
8. safety, and I take great care to educate children about being extremely careful.

9. For Science Day, I gave my usual instructions to the students: wear goggles and
10. gloves, stay away from flames, don't wear loose clothing, etc. I pointed out the
11. fire extinguisher and told the children how to use it. I identified the nearest
12. emergency exits and the nearest sink and explained how to use the eye-wash
13. fountain. I told them to stay away from all chemicals and powders unless their
14. teacher expressly told them they needed to grab them. I was told ahead of time
15. that multiple children were considering volcanoes for their science project. Due
16. to the explosive nature of these volcanoes, I was especially careful to talk to the
17. children about safety concerning these projects.

18. The one point that I most carefully covered was flammable objects. I told the
19. children to absolutely keep all lighters and matches away from their projects at all
20. times. The only people who should be using matches or lighters, I told them, are
21. your teacher and parents. I also told the children to follow the instructions for
22. their volcanoes exactly. I've heard about "extra special" volcanoes that emit
23. flames or shoot stuff into the air. I expressly told the children that if they wanted
24. to make their volcano any differently from the instructions, they needed to talk to
25. a teacher about their plans first. Mr./Ms. Mentor knew that if he/she received a
26. question he/she could not answer, my expertise was only a phone call away. I
27. specifically told the children that they should not demonstrate their project. I
28. know students want to try out their handiwork, but with something as serious as
29. this, only a responsible adult should conduct the actual experiment.

30. Because these were sixth-graders, there were a few students who were talking and
31. goofing off during this safety lecture. I tried to get their attention, but I know I
32. did not have it at all times. I don't go into these classes very much, so I don't
33. know who Lesley Parker is or if he/she were one of the students goofing off. In
34. order for all of the children to be clear on the safety rules, I wrote up a list of rules
35. for them to follow which I have submitted to this court. I am very sorry that a
36. child got injured in this case, but I know I did my job in teaching them about
37. safety.

SY INTIST

SAFETY RULES

1. If you're not sure if something is safe or not, **ASK YOUR TEACHER!**
2. Follow instructions and rules **EXACTLY** as stated.
3. Absolutely **DO NOT TOUCH ANYTHING FLAMMABLE**, such as matches, lighters, chemical, gasses, etc., unless your teacher specifically tells you to and watches you use it!
4. If you want to add something to your project that is not in the instructions given to you, **YOU MUST TALK TO YOUR TEACHER FIRST.**
5. Do not wear loose or baggy clothing. **GIRLS:** If your hair is very long, put it in a pony tail.
6. If your teacher tells you to wear goggles or gloves, you **MUST** put them on before beginning any experiment.
7. **LISTEN** to your teacher, not your neighbor or friend.
8. **DO NOT DEMONSTRATE YOUR EXPERIMENTS UNLESS A TEACHER OR PARENT TELLS YOU IT'S OKAY AND SUPERVISES THE EXPERIMENT.**
9. Even if you think something is edible, **DON'T EAT IT!** Do not chew gum, eat food, or drink anything while preparing or conducting science experiments.
10. Wash your hands before and after every science experiment. If something gets in your eyes, **TELL YOUR TEACHER IMMEDIATELY** and go to the eye-washing station I showed you. If something gets on your clothes or desk, **TELL YOUR TEACHER!** If a substance will not come off of your hands, **TELL YOUR TEACHER!**

Applicable Law

This is a tort action for negligence. Negligence is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; in other words, any conduct that falls below the legal standard established to protect others against unreasonable risk of harm.

In order to establish negligence, the plaintiff must prove:

1. That the person accused of negligence owed a duty of care towards the person injured;
2. That the accused person failed to exercise a reasonable standard of care commensurate with that duty (through action or inaction);
3. That there was, in fact, an injury;
4. That there is a causal relationship between the alleged negligent conduct and the injury; and
5. That the injury was a foreseeable result of the conduct.

The question is whether a reasonable person would have anticipated the harmful results of the conduct under similar circumstances. A teacher's conduct is compared with how a reasonable teacher, with special training in teaching, would have acted in a similar situation.

Courts have noted that teachers and school systems owe students a duty to provide adequate supervision and instruction, to maintain equipment and buildings in good repair, and to provide warnings regarding any known dangers. Factors in establishing the extent of those duties are the age of the students, the environment, and the type of instructional activities taking place.

The duty to protect students from harm is increased in laboratory classes and gymnasiums, where the risk of harm is greater than in an English class, for example. In one case, school officials were held negligent for breaching their duty to provide safety precautions on a playground where there was a fence in disrepair.

A teacher, however, does not have a duty to keep each student under constant surveillance or to anticipate every possible accident. Even if supervision is inadequate, a teacher will not be held negligent if the injury could have occurred as easily had there been proper supervision.

For example, a court has determined that a kindergarten teacher did not breach her duty of supervision during recess simply because she was attending to other students when a child fell while trying to swing down from a jungle gym. The court concluded that a teacher is not required to have each student in sight at all times.

The courts are in disagreement about the responsibility of school personnel to supervise the activities of students on school grounds after regular school hours.

Defenses Against Negligence:

There are several defenses to the accusation of negligence. The ones with which we are concerned in this case are: 1) contributory negligence, 2) intervening act, and 3) assumption of risk.

Contributory negligence is when a plaintiff's own negligence played a part in causing the plaintiff's injury and is significant enough to bar the plaintiff from recovering damages. This defense relies on evidence that the action of the injured party was a substantial factor in causing the injury. School officials may be successful in using this defense if they are able to prove that the child was aware or, or should have been aware of, the consequences of the actions, yet still engaged in the dangerous activity.

One court has stated: "A child is not held to the same degree of care as an adult; the test is whether the particular child, considering his age, background, and inherent intelligence, indulged in gross regard of his own safety in the face of known, understood and perceived danger." *Simmons v. Beauregard Parish School Board*, 315 So.2d 883 (La.App.3dcir.1975) That same court has also indicated that a 13-year-old child could be contributorily negligent.

Intervening Act: Even where a teacher has breached a duty of care, the teacher will not be held liable if the teacher's actions were not the "proximate cause" of the injury. "Proximate cause" in this situation means immediately in time. An intervening act, such as the negligence of a third party, has relieved school personnel of liability. However, even when an intervening event actually causes a given injury, school personnel may still be held liable if they place students in a dangerous situation or if they should have expected a special risk of harm.

Assumption of Risk: This is another defense which is closely related to contributory negligence. Simply, this means the injured party assumed the risk of a known danger. This defense can only be used successfully when the injured party had full knowledge of an appreciated the danger, yet voluntarily exposed him/herself to the risk.

Respondeat Superior: This phrase is Latin for "let the superior make answer." This doctrine holds that an employer or principal is liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency. At least one case has held that evidence in an action for injuries sustained by a student on school grounds, resulting from a teacher's negligent actions, could support a finding of actionable negligence on the part of a school board via the doctrine of respondeat superior.

Applicable Case Law

1. “A person has a duty to use reasonable care to avoid injuring other people or property. ‘Negligence’ simply means the failure to use reasonable care. Reasonable care does not require extraordinary caution or exceptional skill. Reasonable care is what an ordinary, prudent person uses in similar situations. The amount of care that is considered ‘reasonable’ depends on the situation. You must decide what a prudent person with similar knowledge would do in a similar situation.” *Summerill v. Shipley*, 890 P.2d 1042 (1995)
2. “A minor engaging in adult activity, that is, an activity which is normally performed by adults and which requires a higher degree of maturity and judgment than activities minors would normally engage in, is held to the same standard of care as an adult engaging in that activity.” *Summerill v. Shipley*, 890 P.2d 1042 (1995)
3. “(A) child must exercise that degree of care which ordinarily would be observed by children of the same age, intelligence, and experience under similar circumstances.” *Donohue v. Rolando*, 400 P.2d 12, 14 (1965)
4. “The question as to whether a child’s capacity is such that it may be chargeable with contributory negligence is a question of fact for the jury, unless so young and immature as to require the court to judicially know that it could not contribute to its own injury or be responsible for its acts, or so old and mature that the court must know that, though an infant, yet it is responsible.” *Mann v. Fairbourn*, 366 P.2d 603 (1961)
5. “The degree of care required of a child must be graduated to its age, capacity and experience, and must be measured by what might ordinarily be expected from a child of like age, capacity, and experience under similar conditions.” *Mann v. Fairbourn*, 366 P.2d 603 (1961)
6. (The general duty of care required of a minor is) “limited by consideration of the [child’s] age, intelligence and experience.” *Morby v. Rogers*, 252 P.2d 231, 234 (1953)