A STUDY OF SHOP-TEACHER LIABILITY

by

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INTRODUCTION

The possibility of being sued for negligence faces the shop teacher every second of every school day, but few of them realize the significance of this threat to their careers and financial well-being. There is a need for a greater awareness on the part of school teachers and particularly shop teachers of the possibility of their being sued for negligence in the performance of their duties.

Statement of the problem. It is the purpose of this study to (1) explain some of the factors concerning shop teacher liability, (2) explain the relationship between tort liability and the public school, and (3) indicate methods of alleviating the possibility of litigation for shop teachers.

Importance of the problem. Teacher liability is a serious problem today because of several factors. The average court award in cases involving personal injury is up 38 per cent from 1952.[1] For example a sixth grade girl in Illinois was paralyzed when a bat slipped out of the hands of a teacher and struck her. The courts awarded her $44,750.[2] A boy playing football in California was injured so severely he became a paraplegic. The courts awarded him $325,000, which was later reduced by the courts to $118,196.[3] Although both these cases were suits against school

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[1] Denis J. Kigin, "Who Pays for shop accidents?", Safety Education, December, 1962, p. 1.

[2] Ibid.

[3] Ibid.

districts, the increased salaries of teachers and the liability insurance some of them carry make them more apt to be sued than in past years.

Increased enrollment in our public schools, which in 1962 was approximately 40 million elementary and secondary pupils, will lead to an increase in accidents of which some will result in law suits. In addition, the increased activities of pupils resulting from the expanded curriculum demanded of modern education exposes the pupil to more opportunity for accidents. "The possibilities of negligent action by teachers are very great due to the number of activities in which pupils engage as part of their school work and extra-curricular programs," according to Hamilton and Mort.[1] Warren Gauerke states, "school litigation is increasing in both state and federal courts as one result of the expanding services of the schools to pupils and employees."[2]

Several states have abrogated the state immunity doctrine in regard to the liability of school districts. Furthermore, other states' courts are seriously questioning the validity of this doctrine.[3] Of course the teacher has always been liable for his negligent acts, but if this trend continues it will probably result in more litigation involving both school districts and teachers.

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[1]Robert R. Hamilton and Paul R. Mort, The Law and Public Education with Cases. (Brooklyn: The Foundation Press, 1959), p. 292.

[2]Warren E. Gauerke, Legal and Ethical Responsibilities of School Personnel. (Englewood Cliffs, N. J.: Prentice-Hall Inc., 1959), p. 1.

[3]Kigin, on. cit., p. 2.

Among the states which have abrogated school district immunity are California and New York. Both of these states have had an increased amount of litigation involving schools since the legislation was passed abrogating the immunity doctrine.

The teacher, of necessity, must assume a certain amount of responsibility for the welfare of his pupils, just as must the school district and its officers. "By virtue of his position," Kigin says, "and by reason of his assigned duties, the public school teacher assumes some degree of responsibility for the welfare and safety of the students in his charge."[1] It sometimes happens that the courts must determine this degree of responsibility and this is most frequently done by a jury of laymen. Therefore, the teacher must view his responsibilities as they appear to the layman as well as the professional educator. Warren Gauerke believes, "pupil control in and outside of the classroom is related to the matter of the possibility of teacher liability in the event of injury to the child."[2]

It would appear the teacher should be aware of the seriousness of accidents not only for their pupils well-being and safety, which is their primary concern, but also for the possible legal consequences of accidents to pupils.[3] The teacher who has never had an accident occur in the classroom should not assume that he is immune

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[1] Ibid.

[2] Gauerke, op. cit., p. 258.

[3] Kigin, loc. cit.

to accidents.

Limiting the study. One of the areas in which accidents most frequently happen is the school shop. The National Safety Council reports twelve per cent of all school accidents occur in school shops.[1] Although this figure would not seem to be extremely high it should be noted that the accidents that do occur in the school shop are quite frequently very serious, sometimes resulting in the loss of an eye or hand or even death. The equipment and machinery used in the school shop is more dangerous than that found in most other areas of the school curriculum. Kigin sums this up well by saying:

> The tremendous growth of the industrial arts curriculum in the modern high school has made it now far more comprehensive than was ever thought possible. Along with this growth and expansion came tools and machines which, in the main, are more hazardous to operate. Many of these machines have built-in guards and devices, but in spite of these precautions, accidents do occur in school shops, and inevitably, some of them are going to result in lawsuits involving the teacher.[2]

The shop teacher, in addition to the normal responsibility for the pupil's welfare must also assume the responsibility for the maintenance and safety of a wide variety of potentially dangerous equipment. He must maintain and provide discipline, order and safety for 100 to 150 active and vigorous youths every day. The possibility of accidents is always present in the school shop. As Seitz

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[1]William A. Williams (ed.), Accident Prevention Manual for Shop Teachers. (Chicago: American Technical Society, 1963), p. 367.

[2]Kigin, op. cit., p. 1.

points out, "because of the possibility of injury inherent in the school shop, adequate supervision is especially important."[1]

Shop teachers have been found guilty of negligence if they have failed to properly instruct their students in safe practices and safety rules. They could also be found negligent if they do not instruct their students in the proper method of operating potentially dangerous machinery.

The shop teacher may also be held liable for the action of a pupil which results in injury to another pupil. This was the case in Lilienthal v. San Leandro Unified School District. The teacher was found negligent by the court because he had failed to properly supervise a class in which one student was flipping a knife which struck an object and was deflected into another pupil's eye resulting in permanent eye damage.[2]

All teachers and particularly shop teachers need to be aware of the doctrine of legal liability and how it may affect them. Gauerke believes:

> The doctrine of negligence is involved and requires a trained legal expert. However, a teacher and principal should familiarize themselves with the body of law, including court decisions, that affect their relationship with pupils.[3]

By understanding the law of liability the teacher will relieve

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[1]Reynold C. Seitz (ed.), Law and the School Principal. (Cincinnati: The W. H. Anderson Company, 1961), p. 79.

[2]Denis J. Kigin, Teacher Liability in School-Shop Accidents. (Ann Arbor, Michigan: Prakken Publications, Inc., 1963), p. 42.

[3]Gauerke, op. cit., p. 262.

his mind concerning his own conduct which might be considered negligent. In this way he can also take any necessary steps to protect himself against charges of negligence. Kigin states this premise quite well in saying:

> Teachers must be informed of how the doctrine of legal liability affects them in their everyday school activities. They should be cognizant of the basic legal principles governing their profession. They should have a working knowledge of the statutory enactments and significant court decisions which directly affect the operation of the state system of education and they should be familiar with where this information can be obtained. These constitute some of the working tools of a well informed professional educator, be he teacher or administrator.[1]

Organization of materials. The following parts of this study will attempt to explain some of the theories and concepts of liability which all teachers and particularly shop teachers should be aware of and understand for their own protection and well-being. Following this a section will be devoted to methods of protecting the shop teacher against litigation.

Definition of terms. The term shop teacher refers to all teachers in the subject area of industrial education. All legal terms will be explained in the study proper as they are part of the study.

Sources of information. In collecting material for this report the author wrote to the National Safety Council, the National Education Association and the Department of Health, Education and Welfare. Each of these agencies indicated that Dr. Denis J. Kigin

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[1] Kigin, op. cit., p. 7.

of Arizona State University was a recognized expert on the subject of shop teacher liability. The author corresponded with Dr. Kigin and he was kind enough to furnish material which has been used in this report. It appears to the author in his review of the literature of shop teacher liability that Dr. Kigin has contributed a large share.

Basic texts on public school law were used as background material for this study. The National Safety Council furnished the author with tear sheets from its publications in its library which explains the lack of volume numbers on some of the material.

FACTORS OF LIABILITY

Under American law all individuals are held liable for their acts which cause harm or damage to others. Teachers are no exception although some states have mitigated the extent to which they may be held liable. Therefore it behooves teachers to understand for what they may be held liable and the possible defenses available to them.

As far as teachers are concerned liability is a state of being responsible for damages which might arise from pupil injury.[1] The parents of any injured pupil may institute a civil suit to recover damages and medical expenses. The teacher may find himself the defendant in such a suit. In addition to being held liable for actual physical harm which he has caused, the teacher may also be held responsible:

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[1] Ibid., p. 9.

1. for physical harm resulting from fright or shock or other similar or immediate emotional disturbances caused by the injury or the negligent conduct causing it.

2. for additional bodily harm resulting from acts done by third persons in rendering aid irrespective of whether such acts are done in a proper or negligent manner.

3. for any disease which is contracted because of lowered vitality resulting from the injury caused by his negligent conduct.

4. for harm sustained in a subsequent accident which would not have occurred had the pupil's bodily efficiency not been impaired by the original negligence.[1]

The teacher may also be held liable for injuries to a pupil who has some disability even though the teacher is unaware of such disabilities. It would seem reasonable in such a case as this that some of the liability would be placed upon the person who neglected to inform the teacher of the disability.

It is sometimes difficult to ascertain who shall be held liable. Most frequently the suit is brought against the teacher and school district. Since many states claim immunity from suit for school districts most suits are brought ultimately against the teacher.

The decision of who is liable and under what conditions is difficult to predetermine since it is usually determined according to the facts by a jury of laymen. In any case the determination of liability rests upon an act of negligence and unless this can

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[1] NEA Research Division, Who is Liable for Pupil Injuries. (Washington, D. C.: National Commission on Safety Education, National Education Association, Feb., 1963), p. 15.

be proved the one charged cannot be held responsible. If negligence cannot be proved then it is assumed the injury was caused by pure accident. Of course many school shop injuries are of this nature and never result in litigation.

The shop teacher needs to know what is meant by negligence since most liability cases are based upon this claim. According to Gauerke:

> In a legal sense acts of a teacher become negligent by this standard: the ability of a prudent teacher, in the exercise of ordinary care, to foresee that harmful results will follow the commission of an act.[1]

Negligence is always an unintentional act.

The law of negligence as is most American law is based upon precedent, previous judicial decisions or established legal procedures. The fact that an accident occurs and the teacher is negligent does not always mean that the plaintiff can collect damages. It must be proved that the negligence was reasonably connected with the resulting accident.

According to Kigin there are certain basic elements which are necessary for any action based upon negligence. One is the "failure of the individual to act so as to protect others from unnecessary risks."[2] An example of a case of record typifying a claim of negligence based upon this element can be found in Boman v. Union High School District No. 1, Kitsap County.[3] In this case the court

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[1]Gauerke, op. cit., p. 260.

[2]Kigin, op. cit., p. 12.

[3]Ibid., p. 14.

found for the plaintiff. The teacher had removed a guard from a jointer and the jointer was dull. A student operating it suffered an injury in which he lost three fingers. The court held the defendant negligent in failing to properly guard and maintain the equipment used by the plaintiff.

Kigin indicates that negligence consists of the failure to act as a reasonably prudent and careful person would in similar circumstances.[1] This element would encompass either action or inaction. In a popular sense negligence has been defined as a lack of due care or diligence. This would apply to the shop teacher who failed to properly maintain shop equipment or set a proper example of safe practices. Negligence has also been held when a teacher allows a third party (a person other than the teacher or injured pupil) to use an object or engage in an activity which the teacher knows may result in harm.[2]

In determining the fault following an accident the courts use the principle of res ipsa loquitor. This means that the act speaks for itself. For example, if the evidence shows that the injury could have resulted only through the negligence of the teacher even though the injured student cannot prove how it happened the teacher would be liable for damages.

In a recent study, Kigin found that negligence is the most common cause of a teacher being found liable, and the most common conditions for which shop teachers have been held negligent are:

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[1] Ibid., p. 12.

[2] Ibid., p. 13.

1. Absence of the teacher from the classroom.
2. Neglect of equipment.
3. Lack of proper safety instruction.
4. Lack of due care with regard to the age and maturity of the pupils.
5. Lack of insistance that proper safeguards be used.[1]

Two types of negligence need to be examined next for they are sometimes used as a defense for the teacher charged with negligence. If the student fails to act in regard to his own safety it may be charged that he has contributed to the harmful act. This is called contributory negligence and, if it can be proved, the defendant is relieved of all or part of his liability. However, the courts have not been inclined to extend to teachers the use of this defense to any great degree. This is mainly because students are minors and as such not expected to behave or understand danger to the extent an adult would. The courts have held that the teacher is expected to recognize he is dealing with children and anticipate variations in their behavior from that of adults. A defense of contributory negligence was denied by the court in ruling in a case in which a student had part of his finger cut off on a shearing machine in a metal shop. The accident occurred when another student stepped on the foot pedal of the machine while the plaintiff was trying to extricate a piece of metal. The teacher was within nine feet of the machine at the time of the accident. The court held the teacher negligent for failing to observe that the machine was not being

[1] Ibid., p. 14.

properly used and that it was being tampered with by another pupil.[1]

A fairly recent development in the area of contributory negligence has been comparative negligence. Comparative negligence has been used to mitigate the extent of the damages brought against the defendant. Under this doctrine the courts undertake to divide the degree of negligence between the plaintiff and the defendant. Comparative negligence is considered to be more equitable since it allows the plaintiff to collect damages to some extent whereas contributory negligence if proved relieves the defendant of any responsibility for damages. In a case in Wisconsin in which a student was injured when an alleged uncorked bottle of acid spilled on him in the finishing room, the court applied the doctrine of comparative negligence. They apportioned 55 per cent of the negligence to the teacher and 45 per cent to the pupil. In later appeal the higher court ruled the plaintiff had not proven the bottle of acid was left uncorked by the defendant and consequently dismissed the complaint.[2]

The term proximate cause is used frequently in cases involving shop teachers charged with negligence. This is a legal term meaning the direct or immediate cause of the resultant injury to the pupil. The shop teacher can only be found liable if evidence proves that his negligent act was the direct cause of the injury-causing accident. Therefore a teacher could be negligent and still not be

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[1] Ibid., pp. 42-43.

[2] Ibid., p. 40.

held responsible for an accident if his negligence was not the proximate cause of the accident. This principle is found in Ohman v. Board of Education of New York. The court ruled for the defendant even though the teacher was absent from the classroom at the time of the accident. It held the teacher's absence was not the proximate cause of the injury which occurred when a drafting pencil was thrown and caused eye injury.[1]

The courts have held that intervening independent acts on the part of third parties break the chain of causation and relieve the teacher of charges of negligence. However, this principle must be approached with care since the intervening act must be unforeseeable and extraordinary and beyond the scope of the teacher to anticipate. This brings up the test of foreseeability.

Foreseeability is usually a basic issue in any suit brought against a shop teacher charged with negligence. One of the first questions asked when a charge of negligence is brought against a shop teacher is: could a reasonably prudent shop teacher have foreseen the unsafe condition which resulted in the accident?

The ability of the shop teacher to foresee or anticipate danger is the key to the determination of reasonably prudent action.[2] It is difficult for the shop teacher to know at exactly what point a machine or tool becomes unsafe to use. Therefore he must maintain a constant safety program which includes maintenance of machinery and tools. Kigin points out that machines and tools are

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[1] Ibid., p. 17.

[2] Ibid., p. 19.

inanimate objects and as such not dangerous. They are as safe or unsafe as the operator who used them and it is the shop teacher's duty to properly instruct the student in the operation of the equipment.[1] Because of the potentially hazardous equipment used in the shop, the shop teacher must exercise a very strict supervision over its use by the pupils. The lack of such supervision could result in charges of negligence if an accident occurred. As part of his supervision, the shop teacher needs to be able to anticipate any dangerous situation and give it strict supervision. Recognition must be given to the fact that some operations in the shop are more potentially dangerous than others and these require stricter supervision. The shop teacher who fails to recognize this fact would not pass the test of foreseeability in a case of negligence brought against him.

A case in which the test of foreseeability was the determining factor in finding for the plaintiff was Banks v. Seattle School District No. 5. In this case a pupil was injured when his foot slipped while operating a printing press. Negligence was charged against the school district for failing to properly guard the equipment. Evidence that the press was subsequently provided with a guard was used to prove they should have foreseen the press could have been properly guarded.[2]

The test of foreseeability may be used to limit the defendant's liability. If the harm that occurs varies greatly from

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[1] Loc. cit.

[2] Ibid., p. 20.

that which could have been expected the degree of liability would be limited.

A legal defense which might be used by a shop teacher is the principle of assumption of risk.

> Assumption of risk is a legal doctrine which presupposes that despite a relation or situation known to be dangerous, a person appreciating the danger involved voluntarily chooses to enter upon and remain within the area of risk.[1]

As a defense for shop teachers against charges of negligence the principle of assumption of risk may only apply in certain circumstances.

In general the courts have held that students are too immature to completely comprehend the risk involved in the school shop. The very nature of the shop program involves some exposure to risks however courts have usually ruled that students lack the experience to understand how great the risk is. Therefore, the shop teacher must exercise diligent care and assume a greater degree of responsibility for his students than would a teacher of academic subjects. Even though there is an element of risk involved in the shop which the student must assume it does not include defective equipment, unsafe practices or incompetent instruction.[2] The doctrine of assumption of risk is generally conceded not to be a valid defense in cases involving minors.

In summarizing those terms that have been discussed there are a few points that should be emphasized. Contributory negligence

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[1] NEA Research Division, op. cit., p. 14.

[2] Kigin, op. cit., p. 22.

and assumption of risk are questions of fact that must be determined by a lay jury and the burden of proof lies with the defendant. Negligence is also a question of fact to be determined by a jury of laymen, but the burden of proof rests with the plaintiff. Shop teachers should always keep in mind that their actions may be subjected to the scrutiny of laymen so they should always meet the test of common sense.

The principles of negligence and liability are particularly important to teachers in areas of potential danger which includes the shop. Consequently they should be thoroughly acquainted with these principles for their own peace of mind and protection.

LIABILITY AND THE PUBLIC SCHOOL

To complete an understanding of liability as it affects the shop teacher it is necessary to understand the relationship between schools and the law. Since the beginning of our nation's history, schools have been under the control of the states with very few exceptions. Traditionally, the administrative control of schools has been left in the hands of the people immediately concerned, the school districts and school boards, but legally the control of the schools has resided with the state. It is an established legal principle found in state constitutions, that state legislatures have the power to regulate the schools of their states.

Basically school law has developed from two main sources, statutory law and common law. Common law is a heritage from our country's early ties with England where it originated. Common law principles are based primarily upon precedent. Common law is

frequently referred to as judge-made law although this is not entirely true since many enactments, rules and customs influence common law. Under a common law system previous decisions are used as a basis of determining justice. This system of law is open to reinterpretation on the part of the courts which frequently occurs. Common law is used in reaching decisions concerning cases for which no statutory enactments exist. If there is statutory law which applies it is used in determining justice. However the courts have held that the statutory enactment must be very implicit in order to over-rule a common law principle. Frequently state legislation passed to cover a certain contingency has been held by the courts to not be explicit enough.

Legally local school districts are controlled by state statute or if none exists in a particular area by common law. In the area of liability many states have not enacted statutory legislation so their school districts are governed by the common law principle of immunity.

Common law immunity is based on the principle of "The King Can Do No Wrong". This common law principle stems from the old medieval concept of divine right of kings. It has come down through the ages to mean the state is sovereign and can do no wrong. Therefore it cannot be sued for wrongs without its consent. This doctrine is applied to school districts because they are creatures of the state carrying out the purpose (education) of the state so consequently are subject to immunity as is the state.[1]

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[1]Hamilton and Mort, op. cit., p. 279.

The local school district is considered an agency of the state government. The officers of the school district are also covered by this immunity. In general the courts have held that this immunity covers all elected officers but not those appointed such as teachers or school employees. Under this interpretation school boards are synonymous with school districts and may not be sued.

Furthermore, the courts have held under the common law immunity doctrine that school districts do not have the power to waive their immunity, but this right rests solely with the state legislatures.

The principle of school district immunity has been upheld in the courts even in cases in which it has been proved the district was negligent. Such a case was Conrad v. Board of Education of Ridgeville Township. This case occurred in Ohio in 1928 and involved injury to a pupil using an unguarded power saw in the school shop. Even though the board conceded negligence the court said:

> In the absence of a statute specifically creating a civil liability, a board of education is not liable in damages to a pupil who is taking a manual training course in its mechanical department, and who suffers injury as a result of the board's failure to protect, as required by law, the machinery used by said pupil.[1]

In some cases, the courts have relied upon other reasons beside immunity to sustain the non-liability of school districts. Some of these reasons have been: (a) school districts have only limited powers granted by state statute and therefore do not have permission to commit a tort or raise money to pay damage claims;

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[1]Kigin, op. cit., p. 33.

(b) school funds are a "trust" to be used only for educational purposes and any diversion for payment of damage claims would be improper; (c) abolition of the immunity rule would lead to numerous law suits which would distract from the educational purpose of schools; and (d) the abrogation of immunity is the prerogative of the state legislature and not the courts.[1]

Some states have reinforced the common law doctrine of immunity by passing specific legislation granting immunity to school districts and boards of education. An example of this is found in the state laws of Virginia which say:

> A school board is not liable for injuries to pupils received while working in an industrial arts shop or science laboratory, or while playing on the grounds during recess.[2]

Some states in recognition of changing conditions and responsibilities have passed legislation relieving the teacher of liability in tort. This type of legislation is called "save harmless" because it is constructed to "save" the teacher from financial "harm". Connecticut, New York, New Jersey, Wyoming and Maine have passed this type of legislation. Legislation of this nature either authorizes or requires the school district to defend at district expense suits which may be brought against teachers for damages for their allegedly negligent acts in the performance of their duties. These statutes also require or authorize the school districts to pay any damages recoverable from such suits against

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[1] Kigin, op. cit., p. 29.

[2] Hamilton and Mort, on. cit., p. 288.

teachers.[1] Hawaii in 1957, passed a Tort Liability Act under which teachers are not liable to suit. Oregon has passed legislation which allows school districts to provide defense for any employee sued in a civil action. The district may also pay court costs, attorney's fees and any judgment rendered.[2] This would appear to be a permissive type of "save harmless" law. Massachusett has also passed a permissive type law which allows indemnification of a teacher who has been charged with negligence in the performance of his duties.[3]

Washington by statute has made its school districts liable in tort to a limited extent. It still exempts the district from liability for acts or omissions by officers, agents or employees in regard to parks, playgrounds, field houses, athletic equipment or apparatus or manual training.[4] This limiting statute was passed in 1917.

Another type of legislation which has been used in Wisconsin to hold school districts liable is called "safe place". This type of statue is found in several states but Wisconsin is the only state to apply it to schools and school districts.[5]

A few states have passed legislation abrogating their common law immunity. California has specifically repudiated its immunity

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[1]Hamilton and Mort, op. cit., p. 288.

[2]NEA Research Division, op. cit., p. 23.

[3]Ibid., p. 24.

[4]Hamilton and Mort, op. cit., p. 287.

[5]Ibid., p. 286.

in a series of three legislative acts. The most important one holds that the district is liable for any injury arising out of the negligence of its employees, officers or district.[1] New York has abrogated tort liability for school districts and as pointed out earlier Washington state has to a limited extent. Hawaii did in 1957.

A recent development in the area of school district immunity which is expected to have repercussions is the Illinois Supreme Court decision in Molitor v. Kaneland Unit School District, in March, 1959.[2] In this unprecedented decision the courts overthrew the doctrine of immunity and said:

> When, in the operation of a school system it is necessary for the board of education to enter into relationships which are within the scope of private law, it should be subject to the obligations inherent in such relations, and funds spent in the discharge thereof should be considered as expended for educational purposes. If there is danger that a weak district may be crippled in the carrying out of its educational functions through being obliged to pay a large judgment against it, some legal provision, such as liability insurance, should be made for the protection of the district. The district should bear the loss since it is in a position to spread it over the community at large and thus to avoid serious hardship upon the individual.[3]

In this case the Illinois court in effect said since they had established the rule of immunity they also had the power to abrogate

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[1] Ibid.,

[2] Denis J. Kigin, "Tort Liability Affecting Shop Teachers with Provisions for Avoiding Accidents and Litigation", (1960 National Safety Congress, Vol. 23: 1960), p. 72.

[3] Hamilton and Mort, op. cit., p. 280-281.

it. This is what was meant by the statement that this case could have far-reaching effects. For example, the Wisconsin Supreme Court since 1959, has said the day of governmental immunity is passed and therefore that of school immunity. The Minnesota Supreme Court has also waived school district immunity.[1] If these courts have assumed the responsibility of abrogating school district immunity it is possible that other state courts may follow their example.

In addition to the reasons given earlier in this study for maintaining school district immunity, Kigin suggests: "budgets would pose extreme problems because of the uncertain element of damages." He also felt the quality of educational programs might suffer from a diversion of public funds from educational functions.[2]

There has been a growing belief among educators and others connected with the field of school liability that the doctrine of school district immunity is "old, obsolete and unjust".[3] Hamilton and Mort have this to say about school district immunity.

> Since the sphere of educational activity is being constantly extended, and school districts are obliged to engage in a wide variety of enterprises commercial in nature, it is submitted that damages in tort should be considered a legitimate cost of public education.[4]

In Law and the School Principal, Seitz says,

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[1]Harry N. Rosenfield, "Guilty", Safety Education, (April, 1963), p. 5.

[2]Denis J. Kigin, Teacher Liability in School-Shop Accidents, p. 5.

[3]Ibid., p. 34.

[4]Hamilton and Mort, loc. cit.

> The common-law rule of immunity of school districts has been severely criticized by some courts which could, if they wish, abrogate it.[1]

Harry N. Rosenfield, Washington counsel for the National Safety Council, in an address to a meeting of the National School Board Association, argued against state immunity for school districts on the grounds that they are shirking an important duty. He pointed out how industry has saved money by instituting safety programs and schools could also if they did not hide behind immunity. He felt it was unfair for the injured to have to pay all their expenses.[2]

In regard to the legal status of the teacher under common law, Seitz comments, "to the utter amazement of many teachers, courts are universally agreed that the cloak of immunity enjoyed by school districts and school board members does not cover teachers."[3] The teacher is not considered a public officer so is not held to be immune from liability, but is held by the courts to be governed by the common law rules of liability. He may be held personally liable for any acts of negligence in the performance of his duties.

The phrase, in loco parentis, refers to the legal aspect of the teacher's responsibility to the pupil. This is an ancient doctrine which evolved as the earliest teachers were granted certain duties and privileges for taking over some of the responsibilities

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[1]Seitz, op. cit., p. 70.

[2]Harry N. Rosenfield, "Legal Liability and the Cost of Accidents", Safety Education, April, 1957.

[3]Seitz, op. cit., p. 72.

of the parents. The teacher's control over the pupil is now limited to educating and training the pupil. The courts have held the teacher must act as a reasonable and prudent parent would in relation to his pupils.

As individuals, teachers do not come under common law immunity. They have no advantage in most states because they are state employees. In fact, the courts have at times held teachers to be more accountable than the average laymen because of their position in regard to their students. There have been cases brought against both school districts and teachers in which the district escaped responsibility by claiming immunity but the teacher was found guilty of negligence.

METHODS OF MITIGATING SHOP TEACHER LIABILITY

At the present time there are three basic methods whereby the shop teacher can be relieved of the threat of liability or at least protect himself against charges of negligence. These methods consist of various types of state legislation, insurance programs, and an adequate safety program.

There is sufficient evidence to indicate the shop teacher occupies a vulnerable position in regard to liability. According to Tischendorf only four states have so far passed what he considers really progressive legislation to protect their teachers from tort liability: California, Connecticut, New Jersey and New York.[1]

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[1] E. W. Tischendorf, "Legal Liability of Teachers with Reference to the Students Under Their Direct Supervision", (1960 National Safety Congress, Vol. 23: 1960), p. 44.

Since he wrote his article in 1952, several other states have also passed legislation protecting their teachers from liability. Hawaii passed their Tort Liability Act in 1957 which provides that a teacher is not liable if sued for actions performed in line with his duties as a teacher.[1] Instead suit may be brought against the governmental agency and it pays all expenses connected with the case.

The Hawaii act is an example of the type of legislation many educational associations in various states are working toward. An attempt to pass legislation completely relieving teachers of liability occurred in Nebraska in 1957. It failed. Judicial experts are of the opinion such legislation would be deemed "class" legislation and probably be held unconstitutional by the federal courts. Therefore most interested individuals and agencies are attempting to get states to pass legislation of the "save harmless" type in which the teacher may be charged with negligence but the district must or is authorized to assume the financial burdens involved in such suits. The people who advocate this type of legislation feel that it is sound, and therefore, teachers' associations in those states who do not have it should work actively for its passage. They feel the "save harmless" statutes should be mandatory as is the case in Connecticut, New York, New Jersey and Maine and not permissive as is the case in Wyoming.[2] In most cases the "save harmless" statutes do not make the school district liable for the

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[1]Kigin, Teacher Liability in School-Shop Accidents, p. 54.

[2]Kigin, op. cit., p. 57.

teacher's negligence but simply liable for the damages assessed against the teacher. In fact New Jersey specifies that direct actions against the school district are not allowed. On the other hand, New York completely abolished the concept of non-liability of school districts.

Not all states which have abrogated school district immunity provide help for the individual teacher charged with negligence. Therefore it is felt that some type of legislation to protect teachers is needed in these states.

Kigin feels there are several valid reasons for the passage of "save harmless" laws. First, they provide protection for the individual teacher in the event of a pupil injury in a class activity. They also go far to provide security for the individual teacher. In addition, they reduce the number of suits against school districts based on the alleged negligence of their employees. And lastly, even though the school district must or may pay for the expenses of any liability charge brought against a teacher the district does not give up its governmental immunity.[1]

Another type of legislation which has been used successfully in Wisconsin to recover damages against a school district is the "safe place" statute. This type of legislation is only effective if it is very specific in covering school buildings and playgrounds. Even so, a Wisconsin court ruled it did not apply to an unsafe machine located within a school shop.[2]

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[1]Kigin, op. cit., p. 57.

[2]Ibid.

A few states have statutes of limitation in effect which require that claims be filed within a reasonable length of time. Hawaii allows two years and California and New York allow ninety days for the filing of a claim. This type of legislation would appear to be reasonable for elapsed time would tend to distort the facts of a case. It also serves to protect teachers against obsolete or fraudulent claims.

Another method of mitigating teacher liability is insurance. There are several kinds of insurance that need to be discussed, but before discussing them it should be pointed out that for humanitarian reasons there should be some provision for the innocent victim of an accidental injury. Insurance spreads the risks and still provides means for compensating an injured party.

Basically there appear to be two types of insurance available for tort liability in relation to schools. One type provides protection for school districts and the other type provides protection for the individual teacher.

In states using the immunity doctrine there is no need for liability insurance on the part of the school district, however some states by statute allow school districts to purchase such insurance, usually for school transportation and athletic programs.[1] Some states by statute allow school districts to carry liability insurance to protect teachers in the event they are held liable for injury to a pupil.[2] Fourteen states authorize by statute the

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[1]Hamilton and Mort, op. cit., p. 290-291.

[2]Gauerke, op. cit., p. 264.

purchase of liability insurance to protect officers and employees of the school district and California requires the purchase of such insurance. The fourteen states are Connecticut, Illinois, Massachusett, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Washington and Wyoming.[1] An example of how a district may use this is Carlsbad, New Mexico. This school district carries liability insurance for the school board and driver training program. The individual teacher is not covered.

It should be pointed out that statutes authorizing the purchase of liability insurance on the part of the school district do not waive governmental immunity for tort liability. Usually authority to purchase such insurance comes from statutes, court decisions or an opinion by the attorney general of that state.

Kigin points out there are two opposing views in relation to liability insurance for school districts. One side "captivated by the premise of governmental immunity" feels the school district has no liability and therefore liability insurance is "a misnomer, a waste and possibly illegal". The opposing side argues that because of the expanding curriculum and types of programs expected of modern schools "the school district as a public body should accept some of the responsibility of liability."[2]

The other major kind of insurance against liability provides direct protection for the individual teacher. Basically this

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[1] NEA Research Division, op. cit., p. 68.

[2] Kigin, op. cit., p. 61.

protection is provided in two ways; group liability insurance programs and individual liability insurance.

Approximately twenty-five state teachers associations offer a group liability program for their members. For example the New Mexico Educational Association provides liability coverage of $10,000.00 to all their members and the premiums are included in the dues. In some other states the premiums are in addition to their state educational association dues. Four state associations provide coverage up to $25,000.00 They are Arizona, Colorado, South Dakota, and Wyoming.[1] In realization of increased costs today, the New Mexico Educational Association is attempting to increase its coverage to $50,000 or $100,000.

The American Industrial Arts Association approved a liability insurance program in 1962. It is open to all members of the Association at a special nominal group rate.

It should be mentioned that in addition to providing group liability insurance programs, some educational agencies undertake to help teachers charged with negligence. Sometimes such agencies provide legal aid and research assistance to individual teachers charged with negligence. This service is usually available to the teacher upon request.

Of course the teacher can always buy individual liability insurance to protect himself. There is no question about the legality of such insurance and it is available to all teachers. Studies show that on an individual basis such insurance premiums average

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[1]Kigin, op. cit., p. 63.

from $3.00 to $5.25 per year for protection up to $10,000.[1] Insurance companies have identified the areas of potential risk in determining the premiums on policies for liability for individual teachers. Premium "C" group includes physical education teachers, coaches, physical science teachers using laboratories, and industrial education teachers. Premium "D" group includes all teachers not other wise classified. Premium "C" coverage ranges from $9.45 for $10,000 to $12.75 for $50,000 for a three year period, whereas Premium "D" coverage ranges from $4.05 to $5.46.[2] It is obvious from these figures that insurance companies recognize the potential danger inherent in shop teaching.

Teachers who are homeowners may get a "business pursuits" rider on their home owner's policy. The above coverage mentioned was for premiums for such "business pursuits" riders.

Warren Gauerke in pointing out that teachers need protection from liability said, "a teacher should carry adequate insurance to offset his liability in the event of accident to a pupil. A personal liability policy is one means of safeguarding life earnings and protecting against the disaster of a large verdict."[3]

The third method a shop teacher may use to mitigate charges of liability being brought against him, according to several authorities, is a good, sound safety program. As Kigin says, "an

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[1] Ibid., p. 65.

[2] Ibid., p. 66.

[3] Gauerke, op. cit., p. 265.

important piece of the teacher's armor of protection from liability is an adequate prevention or safety program."[1] Emphasizing the importance of safety Seitz remarked:

> The principal should require that the use of safety devices and precautions be taught and practiced as part of the regular curriculum. He should also require that every member of the staff set a good example in following safety precautions.[2]

The court ruled in Meyer v. Board of Education, Middletown, that the Board of Education was not liable "because it was established that the shop teacher had conducted a thorough safety program and practiced it consistently."[3]

Accidents do occur and neither legislation nor insurance can prevent them. Only an adequate accident prevention program administered by a teacher trained in safety and backed by a safety conscious administration can hope to prevent accidents from occurring.

Of course the main object in a good safety program is providing for the well-being of the students under the care of the shop teacher. A secondary purpose of a safety program is to prevent, if possible, legal action being taken against a teacher.

The first element in an accident prevention program is adequate supervision. According to Seitz: "because of the possibility of injury inherent in the school shop, adequate supervision is

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[1]Kigin, op. cit., p. 71.

[2]Seitz, op. cit., p. 77.

[3]Denis J. Kigin, "The Prevention of Liability -- A Corollary of Safety", Industrial Arts and Vocational Education, (Vol. 51: Feb. 1962), p. 43.

especially important."[1] This supervision should cover both the environmental factors and the human factors. Environmental factors would include: shop building, machines, tools, storage room, all protective equipment and materials. The human factor would include all unsafe human behavior such as improper attitudes, lack of knowledge or skills and any physical or mental defects.[2]

In carrying out supervision, the shop teacher should always undertake to act as would a reasonable and prudent parent. In the case of Meade v. Oakland High School District of Alameda County, the teacher was found negligent for not acting as a reasonable and prudent person would because he had given a student a 400 pound pressure gauge to connect to an oxygen tank under 2000 pounds pressure.[3]

The shop teacher should establish a comprehensive safety program and see that it is rigidly enforced. Such a safety program proved to be the determining factor in the case of Klenzendorf v. Shasta Union High School District. The plaintiff had brought suit over the loss of several fingers while operating a jointer. The court ruled for the teacher and district when it was established that the pupil had been given thorough instruction in the safe operation of the machine and safety posters were prominently placed.[4]

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[1]Seitz, on. cit., p. 79.

[2]The New Mexico State Planning Guide for Industrial Arts, State Department of Education, Santa Fe, N. M., 1963, p. 15.

[3]John Walgren, "Are Shop Teachers Liable for Accidents?" School Shop, (XVI: Dec. 1956), p. 11.

[4]Kigin, Teacher Liability in School-Shop Accidents, p. 80.

A good procedure in establishing that safety is taught is the use of safety tests which are kept on file by the teacher. No student should be allowed to use a machine until he has passed a safety test on that machine. In addition, posters of the basic rules in the operation of each machine should be placed in a prominent location near the machine.

The safety program should be part of the day-by-day activities of the shop in order to make it meaningful to the pupils. The shop teacher should always set a good example of safe practices and procedures. In Ridge v. Boulder Creek, the court found the teacher had been negligent when evidence established the fact that the teacher had continually used a power saw without a guard or fence on it and also allowed the pupils to do so.[1]

Since courts have found shop teachers negligent for allowing dull or defective equipment to be used, it behooves the shop teacher to buy and maintain good machinery and equipment. Any defective machinery should be so marked and the class instructed not to attempt to use it. A recent development which could aid shop teachers in the maintenance of machinery is the summer workshop offered by Nebraska State Teachers College.[2] The shop teacher rarely receives instruction on maintenance of equipment in his training so this type of workshop is to be recommended. The shop teacher can protect himself by reporting in writing any defective machinery to

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[1]Kigin, "The Prevention of Liability -- A Corollary of Safety", p. 56.

[2]"Selection and Maintenance of Power Tools", Rockwell Power Tool Instructor, (Vol. 13: Winter Issue, 1963-64), p. 9.

his supervisor or principal. This should be done in regard to any defects in the building or other physical equipment used as well as machinery.

All machinery should be adequately guarded and a good suggestion, if possible, is periodic inspections of the shop facilities by the state safety inspector or commission.

Of particular importance in any safety program is an emphasis upon eye safety. In the cutting operations of machines used in the shop, waste particles are thrown off into the air which are potentially dangerous. A mandatory use of safety goggles in operating such equipment should be part of every shop safety program. Two cases of eye injuries in New York City resulted in judgments of $25,000 and $43,000. These occurred in vocational shops.[1]

The shop teacher should see that the students dress properly for shop work. Depending on the type of work to be performed, overalls or aprons may be needed. In addition, no loose clothing should be worn that might possibly be caught in machinery.

As part of the shop teacher's duties and responsibilities he should exercise care and judgment in the type of project the student is allowed to make. He should take into consideration the age and ability of each student in assigning tasks. Since the shop teacher frequently has under his supervision students who create problems for the school adminstration it is necessary for him to recognize these students and act accordingly.

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[1] Visual Damage in Schools and College, (New York, N. Y.: National Society for the Prevention of Blindness, Inc., Oct. 1963).

Every shop teacher should have training in the rudiments of first aid.[1] Courts have held teachers negligent for the medical treatment given students and also for not giving first aid. Shop teachers need to know what should be done and what should not be done in the event of an injury.

There is considerable misunderstanding by teachers in the use of waiver statements, but they can be of benefit to the shop teacher if properly used. Legally the parent cannot waive the responsibility of the teacher by the signing of such a statement. However this is a recommended method of assuring that the parents are aware of the type of activity their child is undertaking in school.

As part of a good safety program the shop teacher can benefit from the maintenance of an accident file. All accidents, whether they result in injury or not should be recorded. The Carlsbad, New Mexico, schools use a standard accident form to report all accidents resulting in injury. These are filled out by the teacher or school nurse and kept in the school files.[2] It is not enough to simply record accidents. The shop teacher should use these files in analyzing accidents and taking the necessary precautions to prevent similar accidents in the future. In line with this, shop teachers need more information on how to analyze accidents.[3]

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[1]William J. Micheels, "Coordinating a Safety Program", School Shop, (XVII: Dec. 1957), p. 8.

[2]School Health Manual for Elementary and Secondary Schools, (Santa Fe, N. M.: New Mexico State Coordinating Committee on School Health, 1963).

[3]Micheels, op. cit., p. 8.

The shop teacher through proper attention to safety can do much to relieve himself of worry about possible charges of negligence being brought against him.

SUMMARY AND CONCLUSIONS

Some of the factors of liability which the shop teacher needs to be aware of are; negligence, contributory negligence, comparative negligence, proximate cause, foreseeability and assumption of risk. Liability consists of being responsible for damages which might arise as a result of pupil injury. Negligence is most frequently charged in tort liability. Failure to act as a reasonable and prudent person can result in charges of negligence.

Contributory negligence and comparative negligence are two defenses available to shop teachers against charges of negligence. Contributory negligence means the injured pupil has been partly at fault in causing the resulting accident. Using the principle of comparative negligence the courts divide the responsibility between the defendant and the plaintiff. The courts have usually disallowed these defenses because students are minors, and therefore, not expected to behave as adults.

Proximate cause is a legal term referring to the immediate or direct cause of the injury-producing accident. Unless the plaintiff can prove the teacher's negligent act was the proximate cause of his injury, the teacher cannot be found liable.

The test of foreseeability is used by the courts in determining negligence. In other words, the court determines whether or

not a reasonable and prudent teacher could have foreseen that the situation was dangerous and might result in injury.

Assumption of risk is sometimes used as a defense for charges of negligence. This defense argues the student was aware of the risk involved and voluntarily undertook it. Again the courts will not ordinarily sustain such a defense since they hold a pupil is a minor and not capable of understanding the risks involved in the tasks he undertakes.

The elements of liability are important to the shop teacher since the shop is a potentially dangerous area.

In order for the shop teacher to understand his position in regard to liability, he needs to understand the law and its relationship to the public school. School law is based upon two main sources, common law and statutory law. Common law is founded upon precedent while statutory law is enacted.

In the area of liability, many states claim immunity from suit for their alleged wrongs. This immunity is based upon the common law principle that the state is sovereign and can do no wrong. School districts as agents of the state are covered by this doctrine unless the state legislature by statute or the state courts by re-interpretation have abrogated it. A few states have abrogated by statute the school district's immunity. The Illinois Supreme Court abrogated school district immunity in an unprecedented move in 1959. Some educators and attorneys believe other state courts may follow the lead of Illinois in regard to school district immunity.

In recognition of changing conditions a few states have passed legislation to save their teachers from financial harm. These statutes are called "save harmless". Under "save harmless" statutes the district assumes responsibility for damages assessed against a teacher found guilty of negligence in the performance of his duties. In passing this type of legislation some states have abrogated their school district immunity and others have retained it.

Many shop teachers are unaware that the immunity from tort liability claimed by their school districts does not extend to them. As individuals, they are liable for their negligent acts so should always act as a reasonable and prudent parent would in relationship to their pupils. When a school district and teacher are charged with negligence, the school district may escape its responsibility by claiming immunity whereas the teacher may not.

There are three basic methods whereby the shop teacher can be relieved of the threat of liability or at least protect himself against charges of negligence. These methods are state legislation, liability insurance and an adequate safety program.

Various types of state legislation have been passed to protect the teacher from financial harm or allow the school district to assume legal responsibility for the acts of its employees. The abrogation of school district immunity does not necessarily protect the individual teacher. Some educators recommend legislation similar to Hawaii's which allows suits to be brought against the educational agency for alleged acts of negligence on the part of its

employees.

Liability insurance is a method of protecting both the school district and the teacher from financial harm as a result of litigation. Some states allow districts to carry liability insurance on their employees while California requires it. The carrying of liability insurance does not necessarily abrogate the district's immunity.

The teacher may purchase liability insurance either individually or under group plans. Twenty-five state teacher associations provide group liability insurance programs for their teachers. The coverage is usually for $10,000. Individual liability coverage costs around $5 per year for $10,000.

The third method of protection for the shop teacher against charges of liability consists of a sound safety program administered by a safety-conscious teacher. The first consideration should be adequate supervision at all times. The shop teacher should include in his safety program; thorough instruction in safe procedures, safety tests, eye safety, and proper dress. He should always set a good example for his students. The shop teacher should always maintain safe shop equipment. He needs to know the rudiments of first aid.

The shop teacher through proper attention to safety can do much to relieve himself of worry about possible charges of negligence being brought against him.

In conclusion, this study indicates: (1) shop teachers are not aware of their vulnerability in regard to liability; (2) they

need to understand the legal aspects of the teaching profession; (3) all shop teachers need to establish sound safety programs with adequate supervision.

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A STUDY OF SHOP-TEACHER LIABILITY

by

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AN ABSTRACT OF A MASTER'S REPORT

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It is the purpose of this study to (1) explain some of the factors concerning shop teacher liability, (2) explain the relationship between tort liability and the public school, and (3) indicate some methods of mitigating the possibility of litigation for shop teachers.

The factors concerning shop teacher liability include an understanding of negligence and its attendant aspects. The defenses used in cases involving alleged negligence are contributory negligence and assumption of risk. These are not very good defenses in cases involving minors.

Traditionally, school districts enjoy an immunity from liability not enjoyed by teachers. Some states have abrogated their school district immunity. Some states, in an attempt to protect teachers, have passed legislation to mitigate the effects of lawsuits against teachers, and some states have done both. This is considered progressive legislation.

The three methods suggested to mitigate the possibility of litigation are state legislation, liability insurance and sound safety programs. Legislation to give legal protection to the teacher is advocated by some educators and attorneys. There are two basic types of liability insurance, that which protects the school districts and that which protects the individual teacher. The best protection for a shop teacher lies in an adequate safety program properly administered.

There are three basic recommendations to be made from this study. (1) All shop teachers need to establish a sound safety

program. (2) They should thoroughly supervise the shop and shop activities at all times. (3) Shop teachers need knowledge and understanding of the principles of liability as it applies to teachers and schools.