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The "Educational Malpractice" Doctrine

Posted on: 3/22/2012
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Introduction

When a lawyer commits malpractice, the injured party sues the lawyer. When a doctor commits malpractice, the injured party sues the doctor. But what if a law school or a medical school commits malpractice in training one of its students? Can it be sued for malpractice? In the vast majority of jurisdictions, the answer is "no," but there are narrow exceptions and notable distinctions to this rule.

In this article we will discuss both the general rule of and the narrow exceptions to what we hereinafter refer to as "the educational malpractice doctrine."

What Is an "Educational Malpractice" Claim?

Educational malpractice claims tend to fall into one of three general categories: (1) a student or a claimant injured by the student alleges that the school negligently failed to provide the student with adequate skills; (2) the student or the claimant alleges that the school negligently diagnosed or failed to diagnose the student's learning or mental disabilities; or (3) the student or claimant alleges that the school negligently supervised the student's training. *Dallas Airmotive, Inc. v. FlightSafety International, Inc.*, 277 S.W.3d 696, 699 (Mo. App. W.D. 2008), *citing*, *Moore v. Vanderloo*, 386 N.W.2d 108, 113 (Iowa 1986). While a student is usually the person asserting the claim, third parties have sometimes attempted to assert educational malpractice claims by contending that they were injured by the school's negligent teaching of the student. *Bunker v. Association of Missouri Electric Cooperatives*, 839 S.W.2d 608 (Mo. App. W.D. 1992); *Dallas Airmotive, supra,* at 699; *Moss Rehabilitation v. White*, 692 A.2d 902, 905 (Del.1997).

The essence of an educational malpractice claim calls into question the quality or the effectiveness of instruction or training given by an academic or trade institution. If the claim requires "an analysis of the quality of education received and in making that analysis the fact finder must consider principles of duty, standards of care, and the reasonableness of the defendant's conduct," then the claim is one of educational malpractice. *Christensen v. S. Normal Schools*, 790 So.2d 252, 255 (Ala. 2001). If the duty alleged to have been breached is the duty to educate effectively, the claim is one of educational malpractice. *Vogel v. Maimonides Academy of W. Conn., Inc.*, 754 A.2d 824, 828 (Conn. App. 2000). A claim that educational services provided were inadequate, substandard, or ineffective constitutes a claim of educational malpractice. *Lawrence v. Lorain County Community College*, 127 Ohio App.3d 546, 713 N.E.2d 478, 480 (1998); *Alsides v. Brown Institute, Ltd.*, 592 N.W.2d 468, 473 (Minn. 1999); *Dallas Airmotive*, *supra*, 277 S.W.3d at 700. Where the court is asked to evaluate the course of instruction or the soundness of the method of teaching that has been adopted by an educational institution, the claim is one of educational malpractice. *Andre v. Pace Univ.*, 170 Misc.2d 893, 655 N.Y.S.2d 777, 779 (N.Y.App.Div.1996).

The General Rule

The legal theory of educational malpractice has been consistently and repeatedly rejected as a cause of action by an overwhelming majority of jurisdictions across the country. Specifically, as a general rule a party may not allege claims against an educational facility for damages arising out its failure to properly educate or train a student. This extends to claims alleging that a school was negligent in its choice of curriculum or had a duty to provide its student with a higher quality education. None have been held to be viable causes of action. *See, Peter W. v. San Francisco Unified Sch. Dist.*, 131 Cal. Rptr. 854 (Cal. Ct. App. 1976); *Tubell v. Dade County Public Schools*, 419 So.2d 388 (Fla. Dist. Ct. App. 1982); *Brantley v. District of Columbia*, 640 A.2d 181 (D.C. 1994); *Finstad v. Washburn*

Univ. of Topeka, 845 P.2d 685 (Kan. 1993); *Doe v. Town of Framingham*, 965 F. Supp 226 (D. Mass. 1997); *Moss Rehab v. White*, 692 A.2d 902 (Del. 1997); *Moore v. Vanderloo*, 386 N.W.2d 108 (Iowa 1986); *Swidryk v. Saint Michael's Med. Ctr.*, 493 A.2d 641 (N.J. Super. App. Ct. 1985); *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992); *Rich v. Kentucky Country Day, Inc.*, 793 S.W.2d 832 (Ken. App. 1990); *Wickstrom v. North Idaho College*, 725 P.2d 155 (Idaho 1986); *Blane v. Alabama Commercial Coll., Inc.*, 585 So.2d 866 (Ala. 1991); *Donohue v. Copiague Union Free Sch. Dist.*, 391 N.E.2d 1352 (N.Y. App. 1979); *D.S.W. v. Fairbanks North Star Borogough Sch. Dist.*, 628 P.2d 554 (Alaska 1981); *Doe v. Board of Education of Montgomery County*, 453 A.2d 814 (Md. 1982); *Alsides v. Brown Institute, Ltd.*, 592 N.W.2d 468 (Minn. 1999); *Miller v. Loyola Univ. of New Orleans*, 829 So.2d 1057 (La. Ct. App. 2002); *Page v. Klein Tools, Inc.*, 610 N.W.2d 900 (Mich. 2000); *Gupta v. New Britain Gen. Hosp.*, 687 A.2d 111 (Conn. 1996); *Lawrence v. Lorain County Cmty. Coll.*, 713 N.E.2d 478 (Ohio Ct. App. 1998); *Bittle v. Oklahoma City Univ.*, 6 P.3d 509 (Okla. Ct. App. 2000); *Cavaliere v. Duff's Business Institute*, 605 A.2d 397 (Pa. Super. Ct. 1992); *Denver Parents Ass'n. v. Denver Bd. of Educ.*, 10 P.3d 662 (Colo. Ct. App. 2000) (*citing, CenCor, Inc. v. Tolman*, 868 P.2d 396 (Colo. 1994)); *Dallas Airmotive, Inc. v. FlightSafety International, Inc.*, 277 S.W.3d 696 (Mo. App. W.D. 2008).

Strictly speaking, an educational malpractice claim sounds in tort. The basic legal relationship between a student and his or her school is, however, contractual in nature. *Zumbrun v. University of Southern California*, 25 Cal.App.3d 1, 10, 101 Cal.Rptr. 499, 504 (1972); *See also, Carr v. St. John's University*, 17 A.D.2d 632, 633, 231 N.Y.S.2d 410, 413 (1962); *University of Miami v. Militana*, 184 So.2d 701, 703-704 (Fla.App.1966); *Greene v. Howard University*, 271 F. Supp. 609, 613 (D.D.C.1967). Recognizing this, student-claimants have attempted to repackage educational malpractice claims as breach of contract claims which attack the quality of their education. Despite the repackaging, these claims have been treated much like the educational malpractice claims.

[T]he policy concerns that preclude a cause of action for educational malpractice apply with equal force to bar a breach of contract claim attacking the general quality of an education. . . . Where the essence of the complaint is that the school breached its agreement by failing to provide an effective education, the court is again asked to evaluate the course of instruction . . . [and] is similarly called upon to review the soundness of the method of teaching that has been adopted by an educational institution.

Ross v. Creighton, supra, at 416, *citing*, *Paladino v. Adelphi University*, 89 A.D.2d 85, 89-90, 454 N.Y.S.2d 868, 872 (1982). *See also*, *Alsides, supra,* 592 N.W.2d at 473; *Wickstrom*, *supra,* 725 P.2d at 157 n. 1; *Hunter v. Board of Education*, 439 A.2d 582, 586 n. 5 (Md. App. 1982); *Torres v. Little Flower Children's Services*, 474 N.E.2d 223, 227 (N.Y. Ct. App. 1984), *cert. denied*, 474 U.S. 864, 88 L.Ed.2d 150, 106 S. Ct. 181 (1985).

Four principal grounds counsel against recognizing educational malpractice claims:

1. the lack of a satisfactory standard of care by which to evaluate an educator;

2. the inherent uncertainties about causation and the nature of damages in light of such intervening factors as a student's attitude, motivation, temperament, past experience, and home environment;

3. the potential for a flood of litigation against schools; and

4. the possibility that such claims will "embroil the courts into overseeing the day-to-day operations of schools."

Page v. Klein Tools, Inc., 610 N.W.2d 900, 903 (Mich. 2000) (*citing*, *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 472 (Minn. 1999)).

An educational malpractice claim generally requires a review of the instructional materials and teaching method employed. *Alsides*, 592 N.W.2d at 472. As such, a typical educational malpractice claim involves "a comprehensive review of a myriad of educational . . . factors, as well as administrative policies that enter into the consideration of whether the method of instruction and choice of [teaching aids] was appropriate, or preferable." *Id.* at 472. The courts "have refused to become the 'overseers of both the day-to-day operation of [the] educational process as well as the formulation of its governing policies.'" *Id.* Thus, they have found a lack of duty and held the claim of educational malpractice to be non-cognizable. *Id.*The most recent ruling on this subject was in *Dallas Airmotive v. FlightSafety*, 277 S.W.3d 696 (Mo. App. W.D. 2008). *Dallas Airmotive* arose out of an airplane crash that occurred after a component part of the left engine failed during flight. The pilot deactivated the left engine and, thereafter, lost control of the airplane. The aircraft crashed, killing the pilot and all four passengers.

The underlying plaintiffs, all of whom were surviving family members of the occupants, filed wrongful death actions against various defendants including Dallas Airmotive, Inc., the provider of aircraft maintenance, and FlightSafety, the flight school that trained the pilot to fly the airplane. In their claims against FlightSafety, the plaintiffs alleged that FlightSafety was negligent in its training of the pilot in several respects, including: (i) failing to instruct the pilot to operate the airplane with the highest degree of care; (ii) failing to instruct the pilot to perform an appropriate pre-flight inspection; (iii) failing to instruct the pilot in the operation of the aircraft; and (iv) failing to instruct the pilot how to operate, control and land the aircraft as a result of the situation which arose during flight. The plaintiffs also challenged FlightSafety's instruction of the pilot in the form of a claim for breach of express and implied warranty, including that FlightSafety's instruction course did not comply with applicable standards and that FlightSafety did not adequately train the pilot.

Dallas Airmotive settled with the plaintiffs in exchange for an assignment of the plaintiffs' causes of action against FlightSafety. Thereafter, Dallas Airmotive filed a cross-claim for contribution against FlightSafety, incorporating by reference the plaintiffs' negligence and breach of warranty claims. FlightSafety moved for summary judgment on the cross-claims arguing, *inter alia*, that the negligence and breach of warranty claims were premised on the theory of educational malpractice, which is not recognized as a cause of action. The trial court sustained FlightSafety's motion and Dallas Airmotive appealed.

In upholding the summary judgment, the Missouri Court of Appeals for the Western District rejected Dallas Airmotive's argument that it did not allege educational malpractice claims but simply "very precise negligence claims" based on a failure "of FlightSafety to alert and warn . . . of the known dangers of shutting down an engine in flight without the ability to properly feather the propeller." *Dallas Airmotive*, 277 S.W.3d at 700.

Dallas Airmotive claims FlightSafety's method of instruction, the simulator, is unrealistic and inadequate. It alleges that FlightSafety failed to teach the pilot that which he needed to know in the situation leading to the crash. Dallas Airmotive's emphasis on the fact that

FlightSafety was aware of the deficiencies in its training program does not change the nature of its complaint. Dallas Airmotive's claims "encompass the traditional aspects of education," and thus attack the quality of the instruction.

* * *

Dallas Airmotive's claims are not cognizable as there is no legal duty upon which to premise the claim of negligence.

Id. at 701 (*citing*, *Moss Rehabilitation v. White*, 692 A.2d 902, 905 (Del.1997)).

Scope of the Educational Malpractice Doctrine

The application of the educational malpractice doctrine has been uniquely broad, regardless of the educational facility involved. Courts have held such actions – whether alleged by a student or a third party – to be invalid where alleged against public schools (*Peter W. v. San Francisco Unified Sch. Dist.*, 131 Cal. Rptr. 854 (Cal. Ct. App. 1976); *Tubell v. Dade County Public Schools*, 419 So.2d 388 (Fla. Dist. Ct. App. 1982); *Doe v. Board of Education of Montgomery County*, 453 A.2d 814 (Md. 1982)), colleges and universities (*Finstad v. Washburn Univ. of Topeka*, 845 P.2d 685 (Kan. 1993); *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992); *Doe v. Yale University*, 748 A.2d 834 (Conn. 2000)), community colleges (*Lawrence v. Lorain County Cmty. Coll.*, 713 N.E.2d 478 (Ohio Ct. App. 1998)), seminars (*Bunker v. Association of Missouri Electric Cooperatives*, 839 S.W.2d 608 (Mo. App. W.D. 1992)), daycare facilities (*Rich v. Kentucky Country Day, Inc.*, 793 S.W.2d 832 (Ken. App. 1990)), and private proprietary and trade schools (*Page v. Klein Tools, Inc.*, 461 Mich. 703, 610 N.W.2d 900, 905 (2000)).

Exceptions and Distinctions to General Rule

Montana is the only jurisdiction known to recognize an action for educational malpractice. In *B.M. by Burger v. State of Montana*, 649 P.2d 425 (Mont. 1982), the Montana Supreme Court considered a state statute which created a special class of students for which special education programs were provided. *Burger*, at 427. The complaint of the student-plaintiff in *Burger* was that the school district failed to follow the statutory and regulatory policies governing her placement in the special education program. *Id.* After holding that the plaintiff "clearly fell within" the class of students created by the statute, the *Burger* court held that, under the statute, school authorities owed the child a duty of reasonable care in testing her and placing her in an appropriate special education program. *Id.* In so holding, however, the Montana Supreme Court expressly left to the trier of fact the question of whether a duty was in fact breached by the school district and, assuming a breach, whether the child was injured by the breach of duty. *Burger*, at 427.

The plaintiff's claim in *Burger* was limited to the application of a specific statute placing a duty of care on educators in limited circumstances, a circumstance not present in the vast majority of jurisdictions. Further, the essence of the plaintiff's claim was less about the quality of education that she received and more about the failure of the school district to place her in the proper class. As such, even the *Burger* court was not required to wade into the "day-to-day operation of the educational process."

A distinction (rather than an exception) from the general rule was made in *Glorvigen v. Cirrus Design Corp.*, 2008 WL 398814 (D. Minn. 2008). In *Glorvigen*, defendant Cirrus, an aircraft manufacturer, sold an SR-22 aircraft to one Gary Prokop. Approximately one month after the sale, Prokop was piloting the SR-22 when it crashed, killing both Prokop and his passenger. The survivor-plaintiffs filed wrongful death actions alleging that Cirrus agreed but failed to provide Prokop with flight training that would have taught him procedures for engaging the SR-22's autopilot which, in turn, would have guided the aircraft through the weather conditions that existed at the time of the crash.

It was undisputed between the parties that Cirrus had agreed to provide "standard two-day transition training" as part of the purchase price of the SR-22. The training was described in the SR-22 specifications as follows: "Pilot Training will consist of . . . Aircraft systems training with emphasis on the innovative aspects of the SR22. Examples include combined throttle/propeller control, side yoke and autopilot/trim system." *Glorvigen*, 2008 WL 398814, at * 1. What remained in dispute was whether the training actually took place. The plaintiffs alleged that it had not; Cirrus alleged that it had.

In analyzing the issues, the U.S. District Court for the District of Minnesota court made one rather large assumption: that the training in fact had not taken place. *Id. at* * 3. In so doing, the court removed any need to consider or analyze whether such training was adequate. In other words, the court chose not to "inquire into the nuances of educational processes and theories" as prohibited by the landmark Minnesota case, *Alsides v. Brown Institute Ltd.*, 592 N.W.2d 468, 473 (Minn. App. 1999).

Thus freed, the court was left only to consider whether a duty existed under Minnesota law for Cirrus to have provided the training to Prokop – regardless of its quality or adequacy. "One who voluntarily assumes a duty must exercise reasonable care or he will be responsible for damages resulting from his failure to do so." *Glorvigen*, 2008 WL 398814, at * 3 (*citing Isler v. Burman*, 232 N.W.2d 818, 822 (Minn.1975)). While the *Glorvigen* court acknowledged that claims which challenged the "general quality of the instructors" are not actionable in Minnesota, it duly noted that *Alsides* nevertheless held that claims alleging a failure to "perform on specific promises" are actionable if the claims do not involve an inquiry into the nuances of the educational processes. *Glorvigen*, 2008 WL 398814, at * 3 (*citing*, *Alsides*, *supra*, 592 N.W.2d at 472-473).

Further distinguishing its facts from *Alsides* and other cases rejecting educational malpractice claims, including those involving flight schools, the *Glorvigen* court noted that Cirrus's primary business was building and selling airplanes, not training pilots. *Glorvigen*, 2008 WL 398814, at * 4. Thus, the *Glorvigen* court concluded "under the unique facts of this case" that: general negligence principles applied; the occurrence which formed the basis of the action was reasonably foreseeable by Cirrus; Cirrus had voluntarily assumed a duty; and Minnesota law should "give recognition and effect" to the duty as alleged by the plaintiffs in their negligence causes of action.

Educational malpractice claims also are distinguished from cognizable negligence claims arising in the educational context. The duty not to cause physical injury by negligent conduct "does not disappear when the negligent conduct occurs in an educational setting." *Vogel, supra,* 754 A.2d at 828. The duty pertains to an educator using reasonable care so as not to cause physical injury to a trainee during the course of instruction or supervision. *Id.*

An example is the duty of a medical school residency program to train a resident in needle safety and supervise her, in the course of his instruction, while performing a procedure involving needles. *Doe v. Yale University*, 748 A.2d 834 (Conn. 2000). In *Doe*, the plaintiff filed an action for personal injuries against her medical school after she had contracted the HIV virus when – while working as a resident at the defendant university's hospital – she performed an unsupervised procedure on a patient. *Doe* held that, in these circumstances, the plaintiff's case was not a claim for educational malpractice but rather "a cognizable negligence claim arising in the educational context" resulting from the "breach of a duty not to cause physical harm by negligent conduct." *Id.* at 847.

In so holding, *Doe* distinguished the resident's claims from typical claims for educational malpractice, and reiterated that Connecticut continued to reject the latter claims. *Id.* at 846. The *Doe* court recognized the critical difference was between claims challenging the educational training, on the one hand, and claims for negligence that injury occurred in an educational setting on the other:

If the duty alleged to have been breached is the *duty to educate effectively*, the claim is not cognizable. If the duty alleged to have been breached is the *common-law duty not to cause physical injury by negligent conduct*, such a claim is, of course, cognizable. That common-law duty does not disappear when negligent conduct occurs in an educational setting.

. . .

The duty of an educator or supervisor to use reasonable care so as not to cause physical injury to a trainee *during the course of instruction* or supervision is not novel.

Id. at 847 (emphasis supplied) (*citing Gupta v. New Britain Gen. Hosp.*, 687 A.2d 111 (Conn. 1996)).

Thus, a cognizable negligence case within the educational context is distinguished from a case alleging educational malpractice where: (1) the claimant is a student; (2) alleging personal injuries; (3) against his or her school or educator; (4) arising during the course of instruction. *See also, Kirchner v. Yale Univ.*, 192 A.2d 641, 642 (Conn. 1963) (action by architectural student against university for injuries suffered while in woodworking shop); *Stehn v. Bernarr MacFadden Founds., Inc.*, 434 F.2d 811, 812 (6th Cir. 1970) (injuries suffered when plaintiff was a student at a school operated by defendant); *Brigham Young Univ. v. Lillywhite*, 118 F.2d 836, 838 (10th Cir. 1941) (plaintiff was a student at the university when she suffered injuries during a chemistry experiment); *Delbridge v. Maricopa County Comm. Coll. Dist.*, 182 Ariz. 55, 59, 893 P.2d 55, (1994) (plaintiff was student at defendant community college when he was injured during a training class); *Morehouse Col. v. Russell*, 136 S.E.2d 179, 181(Ga. App. 1964) (student drowned during swimming class at defendant college); *Yarborough v. City Univ. of New York*, 137 Misc.2d 282, 283, 520 N.Y.S.2d 518, 519 (N.Y. Ct. Cl. 1987) (student sustained injuries during CUNY class for "Physical Education for Elementary School Teachers"); *DeMauro v. Tusculum Coll., Inc.*, 603 S.W.2d 115, 116 (Tenn. 1980) (student was injured after being struck by a golf ball while participating in defendant's physical education class); *Sewell v. London*, 371 S.W.2d 426 (Tex. Civ. App. 1963) (high school student injured during building trades class).

Conclusion

Perhaps the Connecticut Supreme Court has best stated the public policy reasons behind the educational malpractice doctrine:

Among other problems for adjudication [of educational malpractice claims], these claims involve the judiciary in the awkward tasks of defining what constitutes a reasonable educational program and of deciding whether that standard has been breached. In entertaining such claims, moreover, courts are required "not merely to make judgments as to the validity of broad educational policies . . . but, more importantly, to sit in review of the day to day implementation of these policies."

Gupta v. New Britain Gen. Hosp., 687 A.2d 111, 119 (Conn. 1996) (citations omitted).

The philosophy generally followed by courts seems to be that the courts are ill-equipped to involve themselves in day-to-day educational decisions to determine what should or should not be taught in a particular curriculum and how well is "good enough." *See, Miller v. Loyola Univ. of New Orleans*, 829 So.2d 1057, 1061 (La. Ct. App. 2002) (holding that it is not the place of the court system to judge the adequacy of the instruction provided by educators). The concern is that recognition of educational malpractice claims would inevitably turn the courts into "curriculum police," forcing them to sit in day-to-day review of specific academic choices, a responsibility the courts are ill-suited to carry out.

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