Understanding education law remains one of the biggest challenges facing SROs and police officers that assist educators in maintaining safe schools. SROs quickly develop an appreciation for how the law, in general, may apply differently on campus than on the streets, parks and other property in their community. Some of the differences (for example searches, seizures, interrogations and sharing records) are specifically designed to maximize the efficiency of the SRO for the sake of school safety. Other differences are the direct result of duties placed on the SRO that match those already imposed on educators. One area that is currently receiving much attention is SRO liability.

All police officers are mindful of tort liability and receive training on how to avoid it when discharging their duties in the community. Currently, the laws of all states have immunity safeguards built into their liability laws to shield law enforcement from liability for negligent acts. These shields are designed to protect all but the plainly incompetent or officers who knowingly violate the law.

The most prominent liability shield is the so-called Public Duty Doctrine. Under the public duty doctrine, police exist for the benefit of the general public, and have no duty to protect particular individuals from harm by third parties, thus no claim may be brought against them for negligence. This rule recognizes the limited resources of law enforcement and refuses to judicially impose an overwhelming burden of liability for failure to prevent every criminal act. The doctrine bars official capacity claims against law enforcement officers arising from the negligent performance of duties that by definition call for degrees of discretion and judgment. See Landis v. Rockdale County, 212 Ga. App. 700; 445 S.E.2d 264 (1994) (applying public duty doctrine in suit against deputy sheriff who observed, but failed to stop, intoxicated driver). See Ashby v. Louisville, 841 S.W.2d 184 (Ky. Ct. App. 1992) (applying public duty doctrine in a suit against the city for failing to respond appropriately to acts of domestic violence). See also, Hartzler v. City of San Jose, 46 Cal. App. 3d 6, 120 Cal. Rptr. 5 (Cal.App. 1st Dist. 1975) (applying public duty doctrine in a suit against police who failed to dispatch police officers to home of a citizen calling for assistance.).

**What's Your Liability IQ?**

How does collaboration between SROs and educators affect liability? Do the liability rules change when law enforcement officers assist educators on campus? Does the Public Duty Doctrine apply to the SRO? Test your "Liability I.Q." on the following fact patterns:
A lawsuit brought by parents of a student against educators for negligent supervision of a teacher who inappropriately touched students. Although several complaints had been filed against the teacher, none were ever placed in the teacher’s file and the superintendent was never informed of the allegations. The teacher did not deny the incidents, but merely explained them as misunderstandings. Later, parents filed charges with the police accusing the teacher of sexual molestation. The teacher’s contract was terminated. Assume that negligence by the educators occurred. Is liability defeated by the public duty doctrine?

A lawsuit brought by a female high school student who was being verbally harassed by a male student. The student complained repeatedly to a school administrator, who assured her that he would take care of the situation. The male student’s taunts did not stop and he threatened to beat up the plaintiff. Subsequently, in the school hallway, the male student punched the plaintiff in the face causing serious injuries. Assume negligence by the administrator did occur. Is his conduct shielded by the public duty doctrine?

A lawsuit brought by parents against educators, and the Chief of Police for the school district. The Chief had assigned a police officer to investigate child abuse complaints about a teacher. The lawsuit alleges negligence regarding the failure to properly investigate or report the suspected child abuse to the department of social services. Assume that negligence by the police did occur. Is liability defeated by the public duty doctrine?

A lawsuit brought by parents of a child who was hit by a car while crossing the street in the school crosswalk. After school, the student walked to the corner of campus, stopped and waited for directions from the school safety crossing guard. After the guard directed the student to walk, an automobile struck him. Assume that negligence by the guard did occur. Is this conduct shielded by the public duty doctrine?

A lawsuit brought by parents who claim that a teacher at their daughter’s school manipulated her into having a sexual relationship with another student and then attempted to videotape it. According to the lawsuit, the school resource officer knew of teacher’s conduct, but failed to report it. Assume that negligence by the SRO occurred. Is liability defeated by the public duty doctrine?
Exceptions to the Public Duty Doctrine

There are two well-established exceptions to the public duty doctrine that strip away immunity from liability. (1) When there is a special relationship between the injured party and the police; and (2) when police create a special duty by promising protection to an individual. For a thorough summary of these exceptions, see "Modern Status of Rule Excusing Governmental Unit from Tort Liability on Theory that only General, not Particular, Duty was Owed under Circumstances," 38 A.L.R. 4th 1194.

The collaboration between schools and SROs easily falls within both exceptions to the public duty doctrine. Under the "special relationship" exception to public duty immunity, the assumption of a role in campus safety requires that the police do more than adhere to its statutory duty to the public in general. Law enforcement officials voluntarily assume a specific, additional duty. By agreeing to conduct regular campus safety inspections of a school, or by assigning an SRO to a campus, or by implementing an interagency agreement, which involves the dedication of personnel and resources to a school, the police are going beyond the general statutory duty. This creates a special duty by promising protection to students on a public school campus.

Police Liability and School Safety

The school safety movement may be canceling out the public duty doctrine. The courts in some states have held that the public duty doctrine does not apply outside of the police protection context. See Hamilton v. Cannon, 267 Ga. 655; 482 S.E.2d 370 (1997). In such an instance, educators do not have benefit of this protection from liability and SROs surrender this shield when routinely collaborating with educators. Other states hold that the public duty doctrine is not applicable in campus liability cases because school children form a special class to which educators owe a special duty. In those states, the public duty doctrine fails because it conflicts with the general rule that educators have a duty to exercise reasonable care in the supervision and protection of their students.

To match the duty already imposed on educators, the SRO is stripped of immunity for discretionary decisions as to school children subject to a foreseeable risk of harm. North Carolina courts have found that a "special relationship" exists between students and school crossing guards and between students and school resource officers. See Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999) and Smith v. Jackson County Bd. of Educ., 168 N.C. App. 452, 608 S.E.2d 399 (2005).

It is not yet fully clear how much the law will change because of the increased presence of SROs on public school campuses. SROs are not expected to predict the future course of liability law. However, the emerging law suggests that the school safety movement should be treated with a clearer awareness of the trade-offs involved. An emphasis on proper training and supervision of SROs will further the interest of law enforcement to reduce the probability of liability for negligent conduct on campus. The interagency agreement (MOU) is an indispensable liability insurance policy. Law enforcement officials should spell out duties and obligations in a manner that properly address the unique safety needs of local campuses and set the tone for effective, responsible collaboration.

In the I.Q. test, the answer is "no" to question one. The Public Duty Doctrine does not apply to this negligence. The special relationship exception to the Public Duty Doctrine applies here. An elementary school student is a member of an identifiable group subject to a foreseeable risk of harm. The special relationship between an educator and the school children under his day-to-day supervision places this negligence outside of the immunity provided by public duty doctrine. See DOE v. MCKENNA, 1998 R.I. Super. LEXIS 34 (1998).

In question two, the public duty doctrine is not applicable because the administrator did not simply have a duty to the public at large; rather, he had a day-to-day duty to the students placed in his charge to exercise reasonable care to supervise and protect them. The overall course of events was foreseeable and the educator had a duty to take preventative actions. Dean v. Weakley County Bd. of Educ., 2008 Tenn. App. LEXIS 218 (Tenn. Ct. App. Apr. 9, 2008).

In question three, the Public Duty Doctrine prevents a finding of liability. The investigating officer was not present in the school on a day-to-day basis and thus had no direct relationship with the students at the school. The officer was fulfilling the duty of a general law enforcement officer by investigating crimes occurring at schools throughout the school system. The special relationship exception does not apply to the police under these facts. See Ostwalt v. Charlotte-Mecklenburg Bd. of Educ., 2008 U.S. Dist. LEXIS 104102 (W.D.N.C. Oct. 8, 2008).

In question four, the public duty doctrine is not applicable because the guard did not simply have a duty to the public at large. School crossing guards are tasked with student safety on a day-to-day basis. The relationship between the crossing guard and the children is direct and personal, and the dangers are immediate and foreseeable. See Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

In question five, the public duty doctrine is not applicable because the SRO did not simply have a duty to the public at large. The negligence falls within the special relationship exception. SROs are tasked with student safety on a day-to-day basis. SROs have a special duty to perform their duties and obligations in a professional manner. Any negligence by an SRO will provide a basis for liability. The public duty doctrine will not bar the claim. See Smith v. Jackson County Bd. of Educ., 168 N.C. App. 452, 608 S.E.2d 399 (2005).

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