



LAW WISE

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Greetings from the Kansas Bar Association (KBA).

Welcome to this edition of *Law Wise* and the fourth edition of the 2014-2015 school year.

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WELCOME

Have you ever been sued for acts related to your teaching? Hopefully you never have been and never will be. But if you ever find yourself in that unenviable position, you should know about the statute discussed in this edition of *Law Wise* – the Paul D. Coverdell Teacher Protection Act. (Paul Coverdell was a senator from Georgia who died of a cerebral hemorrhage in 2000 while serving in the U.S. Senate. He grew up in the Midwest and graduated from Lee’s Summit High School in Missouri.) The limits of this law are now being established by court cases throughout the United States. Read on to see how two recent Kansas courts have applied this law.

CALENDAR OF EVENTS

February 28, 2015	Regional High School Mock Trial Tournament
March 27-28, 2015	State High School Mock Trial Tournament
May 1, 2015	Law Day
May 14-16, 2015	National High School Mock Trial Tournament, Raleigh, North Carolina

THE COVERDELL TEACHER PROTECTION ACT

The United States Congress enacted the Coverdell Teacher Protection Act (Coverdell Act) in 2001 as part of the No Child Left Behind Act. The law generally immunizes teachers from liability when they take “reasonable actions to maintain order, discipline, and an appropriate educational environment.” “Teacher” is broadly defined to include a teacher, instructor, principal, administrator, educational employee who works in a school, or an individual school board member. The law applies to both public and private schools in states that receive funds under Chapter 70 of the education title.

A. Immunities and Exceptions

The protection from liability provisions of the Coverdell Act state:
[N]o teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if—

- (1) the teacher was acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity;
- (2) the actions of the teacher were carried out in conformity with Federal, State, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;



(3) if appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice involved in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher's responsibilities;

(4) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and

(5) the harm was not caused by the teacher operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to

(A) possess an operator's license; or

(B) maintain insurance.

(d) Exceptions to limitations on liability

(1) In general

The limitations on the liability of a teacher under this subpart shall not apply to any misconduct that-

(A) constitutes a crime of violence or act of international terrorism for which the defendant has been convicted in any court;

(B) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(C) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(D) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(c) Limitation on punitive damages based on the actions of teachers

(1) General rule

Punitive damages may not be awarded against a teacher in an action brought for harm based on the act or omission of a teacher acting within the scope of the teacher's employment or responsibilities to a school or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an act or omission of such teacher that constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

B. Kansas Court of Appeals Applies the Act to Public School Principal, not to School Board

Only 30 reported cases in state or federal court have mentioned the Act, and fewer have discussed its applicability. But two Kansas cases have recently applied it.

In *Sanchez, ex rel., Sanchez v. Unified School Dist.*, 2014 WL 5899975, 5-6 (2014), a parent sued USD 469, the Lansing Middle School principal, two students, and the students' parents. The suit alleged the school district breached its duty to provide the student with a safe learning environment. Specifically, it alleged the school district and principal had failed to

reasonably and promptly respond to notice that other middle school students were routinely bullying her son. The trial court found the principal and the school district immune from suit under the Coverdell Act.

The parent appealed that decision to the Kansas Court of Appeals, which examined the plaintiff's claim of negligent supervision against the school district and the principal. The Court of Appeals found that the principal was immune from suit based on the immunity provided in the Coverdell Act.

But the Court of Appeals reversed the finding that the school district was also immune. It held that the teacher immunity from liability did not extend to the school district as an entity because the Act uses unequivocal language in stating that the term "teacher" includes "an individual member of a school board [as distinct from the board]." (That decision was in November 2014 and the case against the school board is still pending.)

C. Federal District Court Applies the Act to Private Boarding School President

In an earlier federal case, parents sued St. John's Military School – a private boarding school for minors. See *Nkemakolam v. St. John's Military School*, 890 F. Supp. 2d 1260,1263-1264 (D. Kan. 2012). A number of former students claimed damages for personal injuries suffered as a result of alleged physical and mental abuse by other students. Plaintiffs claimed that in some instances the acts were performed at the direction or under the observation of school employees. Plaintiffs alleged negligent supervision, intentional failure to supervise, intentional infliction of emotional distress or outrage, negligent infliction of emotional distress, breach of fiduciary duty (alleging failure to discharge loco parentis responsibilities), and civil conspiracy of assault and battery. Defendant generally and specifically denied the allegations of abuse.

Plaintiffs then tried to add a claim against the president of defendant St. John's Military School for intentionally failing to supervise and "control the conduct" of students at the school, and for breaching its fiduciary duty. The potential defendant responded that trying to sue him would be futile because he had immunity under the Coverdell Act. But the Plaintiffs accurately countered that the Act did "not apply to harm caused by 'willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.'"

So the federal district court reviewed the proposed amended complaint to see if it sufficiently alleged the necessary degree of intentional or culpable conduct by the president. It alleged that the president "was aware of the dangerous propensities" of some of the students at St. John's, and that the president "affirmatively represented to the student's mother that he would protect him and he would not be harmed." That same night the student was allegedly taken by students, held down, and branded against his will. But the court found that those allegations did not contain sufficient factual allegations to plausibly support a claim for willful, criminal, grossly negligent, reckless, or flagrantly indifferent behavior by the president. The president was therefore entitled to immunity, so was never added as a party to the case. (The case between the parents and St. John's Military School settled on undisclosed terms in the spring of 2014.)

LESSON PLAN #1

EXPERIMENTING WITH SELF-DISCIPLINE

Source:

<http://learningtogive.org/lessons/unit538/lesson1.html>

Grades: 6–8 (middle school)**PURPOSE:**

Learners experience an opportunity to practice self-discipline, and they compare and contrast discipline and self-discipline.

DURATION:

One 20-minute lesson

OBJECTIVES:

The learner will:

- participate in an experiment that demonstrates delayed gratification and impulse control.
- define discipline, self-discipline, delayed gratification, and impulse control.

MATERIALS:

Individually wrapped chocolate candies, enough for two for each student (i.e. chocolate “Kisses”).

Note: *Be sure to have an alternative for students who have food allergies or limitations.*

INSTRUCTIONAL PROCEDURE(S):**Anticipatory Set:**

Before students enter the room, place one piece of chocolate candy on each desk. As soon as the students arrive, ask them to unwrap the candy. Tell them that they have a choice: they may eat the candy immediately, or they may leave the uneaten candy on their desks until the end of the class period, in which case they will receive a second piece of candy.

Teacher Note: If the candy on student desks might be a temptation to other students, instruct the class to rewrap and take their piece of candy with them when they form groups. “Resisting temptation” could also be included in the experiment discussion at the end of this lesson.

- Ask the students to take out a piece of “scrap” paper and label two columns “discipline” [training to act according to rules] and “self-discipline” [restraint of oneself or one’s actions, such as anger]. Then ask them to brainstorm and list all the words and phrases they can think of for each concept.

- After a few minutes, have the students form groups of 3 or 4 students to discuss their lists. Distribute two pieces of paper to each group – the blank back of “scrap” paper is fine. Ask them to label one paper “Discipline” and the other “Self-Discipline,” and to write their agreed-on words or phrases about each concept on the papers. (They should write clearly and large enough to be read when the papers are posted on the wall.)
- Have the students tape their notes about discipline on one classroom wall and about self-discipline on an opposite wall.
- Allow the learners to do a “walk-about” to read each group’s notes. Leave these posted on the walls for the next lesson.
- Just before the end of the class period, give each student who still has his or her piece of chocolate a second piece and tell them it’s now okay to eat the candy.
- Write “delayed gratification” [to put off immediate reward to pursue a longer term goal] and “impulse control” [the ability to think before acting] in a display area. Tell the students that they were participating in a variation of an experiment done with 4 year olds in the 1960s by a psychologist at Stanford University. He offered them one marshmallow to eat immediately or two marshmallows if they could wait for him to return in 20 minutes. Then he left the children alone with some toys. He was testing their ability to delay gratification and control impulse (point to the phrases and their definitions) in an effort to test his theory that these are important traits for attaining wealth and being successful. Some of the children ate the one marshmallow and some waited to receive two later. The scientist tracked the children for the next 14 years and compared their ACT College Entrance Exam scores. He found that the children who chose to eat one marshmallow immediately scored an average 210 points lower than the children who delayed gratification to get two marshmallows.
- Ask the students what this experiment helps them understand about self-discipline.

LESSON PLAN # 2

BENJAMIN FRANKLIN'S WISDOM

Source:

<http://learningtogive.org/lessons/unit538/lesson3.html>

Grades: 6–8 (middle school)**Purpose:**

In this lesson the learners express their point of view related to a quotation about self-discipline. They learn about Benjamin Franklin's personal accomplishments and his contributions to the common good, and examine his wisdom about self-discipline.

Duration:

One 20-minute lesson

Objectives:

The learner will:

- agree or disagree with a quotation and apply it to themselves.
- examine the life and wisdom of Benjamin Franklin related to self-discipline.
- document three acts or examples of self-discipline.

Materials:

Student copies of Handout One: Benjamin Franklin (p. 6)

Instructional Procedure(s):**Anticipatory Set:**

Write this quote in a display area and read it to the students:

"If we don't discipline ourselves, the world will do it for us." - William Feather

Ask the students if they agree or disagree with the quote and why. Ask them what "worlds" are disciplining them right now. Will those worlds always be disciplining them?

- Distribute Handout One: Benjamin Franklin (reproduced on p. 6). Ask the students to read it silently, or read it to the class as they follow along. Ask the students what evidence they find in this account of Benjamin Franklin's life that he exercised his self-discipline muscles.
- Arrange the class in groups of three or four students. Give each group a piece of blank paper and assign each group one of the quotes found at the end of the Franklin handout. Ask the groups to discuss the meaning of the quote and to paraphrase it in their own words on the paper.
- Ask the groups to share their version of Franklin's wisdom with the class.
- Homework: Ask the students to think about or watch for when they or others (friends, classmates, teachers, family members) use self-discipline. Tell them to write down at least three examples to bring to the next class session.

TERRIFIC TECHNOLOGY FOR TEACHERS

This site includes a summary of the elements of tort law, and the trends in cases of student-initiated negligence claims against schools and/or personnel.

<http://bit.ly/1vXS45U>

Here's a five-step guide to teacher liability, designed to help teachers avoid getting sued.

<http://bit.ly/1vXSrxb>

Here's a lawyer's perspective on teacher tort liability. The article defines torts, distinguishes between negligence and intentional torts, and gives examples of situations that teachers encounter.

<http://bit.ly/1BnaXAv>

This short video shows a teacher negligently failing to prevent bullying, and showing how the teacher should have handled the situation.

<http://youtu.be/hkjcCq-8fPE>

The Kansas Bar Foundation, with Interest on Lawyers' Trust Accounts funding, provides support for this publication. *Law Wise* provides general information about law-related matters of interest to teachers, students, and the public in Kansas, but does not provide any legal advice, so readers should consult their own lawyers for legal advice. For further information about any projects or articles, contact Kathryn Gardner, Topeka, (785) 338-5366; or Anne Woods, public services manager, (785) 234-5696. *Law Wise* is published by the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806, during the school year.

BUZZING IN ON THE JUDICIAL BRANCH

@ THE LAW-RELATED COLLECTION, EMPORIA STATE UNIVERSITY, TEACHERS COLLEGE RESOURCE CENTER

The Supreme Court is known as the Court of last resort. The nine justices appointed for life make monumental decisions that govern our daily lives. The generosity of our own Kansas Bar Association has made available materials that will enhance learning in this area, as well as many other law-related areas.

The Center has several DVDs that will shed light upon the inner workings of the Supreme Court, some of the important decisions reached, and some of the players involved in those great decisions. A four-volume set called "The Supreme Court" offers the following titles: "One Nation Under Law"; "A New Kind of Justice"; "A Nation of Liberties"; and "The Rehnquist Revolution." Another DVD focuses upon "Supreme Court

Decisions that Changed the Nation: *Marbury v. Madison*." These resources and many others are at your fingertips when you search at the Center.

For your online convenience, go to emporiastate.worldcat.org and choose Resource Center from the Drop Box. If you would like to call to order and check out items, the number is (620) 341-5292, and our hours are 9 a.m. – 6 p.m. Monday through Thursday, and 9 a.m. – 5 p.m. on Friday. You may also email me to check out items: jromeise@emporia.edu. These items will come to you postage paid and will have a return envelope also postage paid, a courtesy of the Kansas Bar Association. We welcome you to our growing list of patrons!

DEAR READERS,

Law Wise is provided as a public service and is a publication funded by the KBA Law Related Education Committee through a grant from the Kansas Bar Foundation.

We are interested in your thoughts, ideas, and suggestions about current and future issues. In an effort to provide a format for subscribers to share information, we have created a new way to register and to receive *Law Wise*. If you do not currently receive *Law Wise* via your inbox but would like to, we need for you to let us know. Here are some simple instructions to do that.

How to Subscribe

KBA members:

Send Anne Woods, public services manager, an email at awoods@ksbar.org and request to be added to the *Law Wise* group.

Not a KBA member? Not a problem.

To register, follow these steps:

- 1) Visit www.ksbar.org
- 2) Click on the Join/Renew tab at the top left of the main menu
- 3) Click on the New Members "Click here to Join" button at the top
- 4) Scroll to the bottom of the page and select the **Educator** or **Guest** button and click Continue
- 5) Create a **username** and input your **first** and **last names**
- 6) On the Education drop down menu select **Law Wise**
- 7) Complete the form.

Why are we making this change?

You will then be part of the *Law Wise* group and will receive your issue via email. You will also be able to post information and comments to the group that contains like-minded people.

Unsubscribe

If you decide in the future to unsubscribe, simply login, and on the *Law Wise* group page select the "Options" button at the top and select "Leave this Group."

BENJAMIN FRANKLIN

(1706-1790) • writer, printer, editor, free-thinker, inventor, diplomat

Benjamin Franklin was born in Boston, Massachusetts, the 10th of 17 children. He was raised as a Quaker, valuing thriftiness, perseverance, and hard work.

At the age of 12, Franklin became an apprentice [somebody trained by a skilled professional] to his older brother James, a printer. When he was 16 years old he moved to Pennsylvania with no relatives or acquaintances, no job prospects, and one Dutch dollar and a copper shilling in his pocket. He quickly found work in the print shop, which he later was able to purchase.

At the age of 24, Franklin was a success as a printer. He said his success was due to hard work, being careful with his money, and creativity. Franklin began a number of institutions that are part of today's American way of life—the first library, the first political discussion group, the first fire department, and the first postal system. He also wrote and printed the *Poor Richard's Almanack*, a very popular book of down-to-earth wisdom.

Franklin was interested in science, especially electricity, and loved to invent practical things. He invented the lightning rod that protected buildings from lightning damage, the safe-burning Franklin Stove, bifocal glasses, and an odometer for tracking traveling distance.

He served as a representative of Pennsylvania to the Colonial Congress, was a writer and signer of the Declaration of Independence, and helped in writing the U.S. Constitution. During his life, he received degrees from Yale University, Harvard University, and Oxford University in England.

Franklin combined his love of his country with his commitment to personal achievement in order to improve his life and the lives of his fellow Americans.

Quotes from Franklin's *Poor Richard's Almanack*:

1. Sloth makes all things difficult, but industry all things easy.
2. Have you somewhat to do tomorrow? Do it today.
3. 'Tis easier to suppress the first desire than to satisfy all that follow it.
4. A penny saved is a penny earned.
5. A place for everything, everything in its place.
6. Energy and persistence conquer all things.
7. He that is good for making excuses is seldom good for anything else.



Franklin Memorial, Philadelphia