

1. When a plaintiff's lawyer files a case, s/he generally does so after significant investigation. There are frivolous lawyers, but most plaintiffs' attorneys cannot afford to take cases that are complete bunk. They get paid if the client wins, so it only behooves the lawyer to take a case with a good chance of winning.

# Elements of Proving Negligence Breach of duty Proximate cause Damages Duty Must prove all four

4. After a motion to dismiss is denied, the parties engage in discovery. Depositions are taken. Interrogatories (written questions) are answered. Documents are exchanged. This is where all the specific facts about what happened come out.

2. For Electric Johnny from the shop class case to state a claim, he essentially has to allege: (1) the school and/or teacher had a **duty** to adequately supervise the class and keep them safe; (2) the school and/or teacher **breached that duty**; (3) the breach **caused Johnny's injuries**; and (4) Johnny has **suffered damages** as a result.

5. After discovery occurs, the parties may file a motion for summary judgment. The standard for summary judgment is: the moving party is entitled to judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. So in Electric Johnny's case, if Tommy Teacherspet says that Shop Teacher was watching the students like a hawk and Electric Johnny was super fast and sneaky while Robert Rebel says that Shop Teacher wasn't even in the room when in the room when it happened, then guess what? You have genuine issue of material fact. Credibility determinations are left to the jury, so the court has to draw all inferences in favor of the party opposing summary judgment. It is rare for the court to grant summary judgment in negligence cases because there is usually conflicting testimony; settlement or jury trial are more common.

3. The reasons that a case will get tossed out on a motion to dismiss are things such as: lack of personal jurisdiction (ie, the court has no authority over the defendant); statute of limitations (the claim was filed too late); and failure to state a claim. To prevail on a motion to dismiss for failure to state a claim, a defendant must show that even if all allegations in the complaint are true, the plaintiff has failed to state a claim. At this stage in the litigation, the court accepts all allegations in the complaint as true. So if Johnny alleges that the teacher was out of the room, that the teacher wasn't paying attention to the students, that the teacher never gave proper warnings, that the class size was too big, or just that the teacher was negligent, the court must accept this as true. It is not very common to get a negligence claim dismissed on a motion to dismiss for failure to state a claim.

6. At this point, the case goes to a trial, which is before a jury (unless the parties have previously agreed to a court trial). All those ridiculous, frivolous awards you're complaining about were handed down by a jury. And most negligence verdicts include a question that assigns liability based on percentage. In almost every negligence case I've seen, the plaintiff was found to be at least partially responsible.

7. After the jury renders a verdict, parties can make motions after the verdict. They can move to have the award lowered or vacated or can move for a new trial. Judges are loathe to overturn a jury verdict. A jury's verdict is largely considered sacrosanct in our legal system. The court will overturn a jury's verdict only if the verdict goes against the greater weight of the credible evidence, but once again, credibility determinations are generally left to the jury. In 2.5 years, I have seen one new trial ordered.

### **Work Based Learning & Safety**

What state and federal requirements?

Child Labor Laws

Student Learners are subject to the Federal
Fair Labor Standards Act (FLSA)

The prime law is the Child Labor Law

## **Work Based Learning & Safety**

Resources are located at

http://www.irvingisdlabsafety2012.weebly.com

http://www.ctesafetysolutions.weebly.com

### **Work Based Learning & Safety**

Click on the Child Labor Laws tab on the WBL website.

Part 570.50, Subpart D, General, (c) lists provisions pertaining to student-learners, age 16-17.

Link #1 shows the complete law.

### **Work Based Learning & Safety**

The school district is responsible for ensuring that each teacher assigned to <u>Career Preparation</u> or a <u>Practicum</u> course has completed appropriate training in <u>state and federal requirements regarding workbased learning and safety</u>. This requirement is effective beginning with the 2010-2011 school year.

### **Work Based Learning & Safety**

- (c) Student-learners. Some sections in this subpart contain an exemption for the employment of student-learners. Such an exemption shall apply when:
- (1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school and;

### **Work Based Learning & Safety**

- (2) Such student-learner is employed under a written agreement which provides:
- (i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training:
- (ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;
- (iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and
- (iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

These provision are NO LONGER part of the TEA sample Training Plan

### **Work Based Learning & Safety**

### **Student Transportation**

Click on the Student Transportation tab

### **Work Based Learning & Safety**

### **Training Plans**

(Portion pertaining to Child Labor Laws)

Is the training objective listed considered to be a hazardous occupation by the U. S. Department of Labor, Employment Standards Administration and the Wage and Hour Division: YES NO

If Yes, any exemption(s) for student-learners or apprentices will apply as described in the Youth Employment Provisions for Nonagricultural Occupations Under the Fair Labor Standards Act - Child Labor Bulletin 101 or Child Labor Requirements in Agricultural Occupations - Child Labor Bulletin 102. Current information for exemptions is available from the U. S. Department of Labor in the Wage and Hour Division or the website at www.dol.gov/esa/whd listed in the Guides.

### **Work Based Learning & Safety**

Do you drive students to their workstation, internship, clinical rotation?

Do you know what the Texas Education Code says about teacher immunity in reference to transporting students?

Look at the section titled
Teacher Immunity Pertaining to Transporting Students

### **Work Based Learning & Safety**

In Texas, a poster that describes the hazardous occupations and the exceptions is available. The poster can be access at the webpage under Hazardous Occupations.

Click on the link under Hazardous Occupations

### **Work Based Learning & Safety**

Immunity from liability - §22.0511, Education Code

Professional employees of school districts are not personally liable for acts incident to or within the scope of their duties that involve the exercise of discretion, other than:

- 1) using "excessive force" or "negligence resulting in bodily injury" while disciplining a student, or,
- 2) operation or maintenance of a motor vehicle.

# Work Based Learning & Safety

How do your students get to their Training Stations?

Do you want to KNOW?

Do you document your knowledge?

### **Work Based Learning & Safety**

Are there other transportation issues other that students getting to work?

- Field trips
- Youth organization competitions

### **Work Based Learning & Safety**

The recommendations from Education Service Center 112
Risk Management Division in the state of Washington
provides recommendations that are posted under
Student Transportation.

An addition sample for can be downloaded at the link 01samplesofstudentparentcommunicationanddocumentation.pdf

Scroll down to page 6 and review the

SAMPLE WBL TRANSPORTATION AGREEMENT

### **Work Based Learning & Safety**

Any other state and federal requirements?

### **Work Based Learning & Safety**

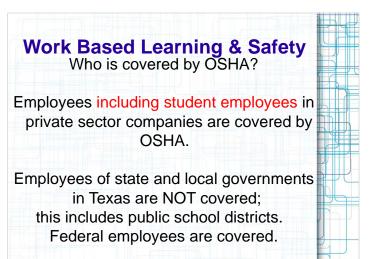
Do any of you use a WBL Transportation Agreement?

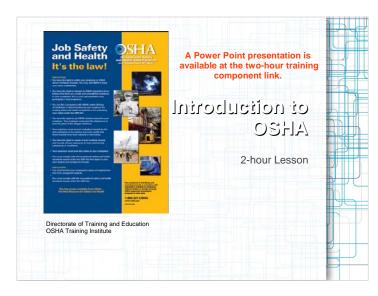
### **Work Based Learning & Safety**

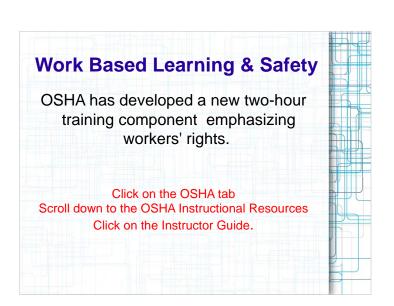
**OSHA** 

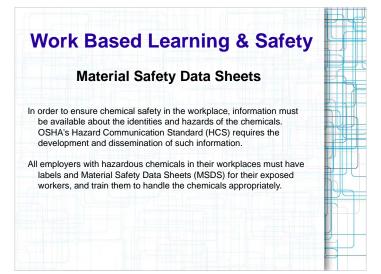
What does OSHA stand for?

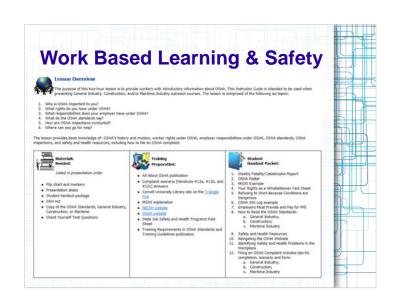
Occupational Safety and Health
Administration

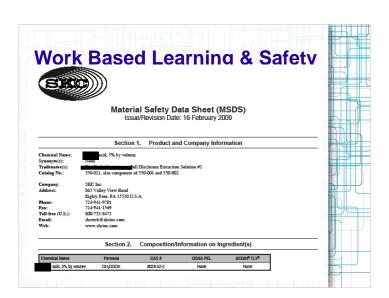












## **Work Based Learning & Safety**

Section 4. First Aid Measures

### Inhalation

Remove to fresh air. Support breathing (give oxygen/artificial respiration)

Flush with copious amounts of water. Call physician.

Flush immediately and thoroughly with water for at least 15 to 20 minutes (timed by a clock). Call a physician.

Large amounts of water should be consumed to dilute. Do not induce vomiting. Do not give emetics or baking soda. Call a physician.

### **Work Based Learning & Safety**

What is were them at work?

### **Work Based Learning & Safety**



Material Safety Data Sheet (MSDS) Issue/Revision Date: 16 February 2009

Section 1. Product and Company Information

Acetic acid. 5% by volum

# **Work Based Learning & Safety**

Are there any regulations coming from the government?

Changes were proposed in October 2011 for teen agriculture workers.

# **Work Based Learning & Safety**

Is this one of your students?



### **Work Based Learning & Safety**

3. Prohibit young hired farm workers from using electronic communication devices while operating or assisting to operate power-driven equipment. This would include, but not be limited to, participating in a conversation electronically; using the Internet; sending or receiving text messages, e-mail, instant messages, "chats," "status updates," or "tweets," playing electronic games; or entering data into a navigational device or GPS. This would NOT include listening to music or other recorded information on a oneway,

noninteractive device such as a radio or mp3 player, as long as the device is being operated "hands free" without headphones or earbuds. Glancing at a GPS, using a cell phone to call 911 in an emergency, and wearing appropriate hearing protection would not be prohibited under the proposal.

