• Negligence is a tort – a civil wrong for which money damages may be awarded.
• In our current culture there are few accidents when fault is not alleged.
Negligence consists of four elements which must all be present:

- Duty,
- Breach,
- Causation, and
- Injury.
✓ Duty – Arises when an individual has an obligation to protect another from risk of foreseeable harm:
   - Students
   - Staff members
   - Others invited

- Does the duty of the school vary based upon the characteristics of the person?
- Yes. Students that are younger or have special needs, etc. owed higher duty.
• Does the duty of the school vary based upon the current existing situation?
• Yes. Science labs, field trips, and playgrounds hold greater risks.

• In the Maryland case of *Eisel v. Montgomery Co.*, a school counselor failed to warn parents of a potential suicide threat and was liable for the breach of duty to warn.
✓ Breach – A breach of duty arises from a failure to meet the appropriate standard of care required.

• Breach can occur by nonfeasance or by misfeasance.

• The standard of care is measured against a hypothetical reasonable and prudent person in a similar situation with normal levels of intellect, problem solving ability, and experience.
Causation – Direct causal connection or proximate cause must exist between the breach of duty and the injury, without intervening or superseding cause.
✓ Injury – Demonstrable and proven injury to person or property must occur; otherwise the old basketball adage, “No harm, no foul” applies.

• School negligence most commonly occurs from:
  ✓ failure to properly supervise students,
  ✓ failure to instruct adequately, and
  ✓ failure to maintain school facilities.
✓ Failure to properly supervise students can occur at any time during the school day including various non-instructional times (i.e. lunch & between classes).
The level of supervision must consider the age, experience, maturity, and mental capacity of students; and the nature and physical environment of the activity.
"Parents do not send their children to school to be returned to them maimed because of the absence of proper supervision or the abandonment of supervision."

Segerman v. Jones
✓ Failure to instruct students adequately occurs when the training provided for the participation in an activity does not establish safety for all.

• In the case of Kahn v. East Side HS, the failure of a swim coach to properly instruct a novice swimmer in a shallow racing dive was found liable for the 14 year old girl breaking her neck.
✓ Failure to maintain school facilities occurs when the physical plant or equipment used by the school is not regularly inspected and fixed to ensure safe conditions.
• In the case of *King v. Northeast Security, et al*, the school district and security firm hired were found liable for the failure to provide exterior security when a student was attacked and beaten.

• Maintenance records, documentation of safety steps taken, copies of medical screenings, permission slips, waiver forms, etc. must all be retained to document efforts.
• The Maryland statute of limitations for negligence actions is normally three years from the occurrence; but for minors it commences at age majority and thus extends to age 21.

• There are four defenses to claims of negligence:
  ✓ Sovereign immunity,
  ✓ Contributory negligence,
  ✓ Voluntary assumption of risk, &
  ✓ Waiver.
✓ Sovereign Immunity has roots in English common law ("the King can do no wrong") and Maryland has limited sovereign immunity capping damages at $100K which is insured.
✓ Contributory negligence applies when the person injured is also negligent and contributes to the injuries that they sustain; it bars all monetary recovery.

✓ Voluntary assumption of risk applies when a student by consent participates in a school activity that poses known and inherent risks of injury (i.e. football).
✓ Waiver exists when the parents of a student execute consent forms waiving the ability to hold the school liable in the event of an injury suffered by the student.
QUESTIONS?