

Legal aspects of sport



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Many physical education teachers are being sued for negligence while on the job for what may seem to be petty reasons. Each and every year there are hundreds of reported cases that make it to court that pin responsibility and liability on the part of the teacher. Simple accidents occur such as a student not wearing proper athletic shoes or slipping on the gym floor, have resulted in trail cases.

Other case studies put liability on the teacher for not explaining all the rules to floor hockey and in turn, a student breaking their nose in the process.

These are just a few short cases that are becoming a recent trend in high school athletic programs and physical education classes, and at an alarming rate. Physical education teachers are at risk each and everyday, and with more and more schools becoming impacted and having to deal with budget cuts, it becomes an environment with increasingly higher amounts of risk.

Teachers are limited to the amount of students they can watch at one time and unless the school districts want the proper curriculum to be taught, they need to figure out a way to supply more equipment and lower the amount of students per classroom in order to make the classroom a more effective learning environment. Physical educators should be focusing on the content and safety of their classrooms, but not to the extent of having to make sure every kid has his or her shoes tied tight.

We live in a society where blame needs to be placed on someone when a student gets injured and instead of looking at the teachers and administration, we need to sometimes look at the parents and their true motives. How can teachers be protected from such malice blame?

Background Major Cases related to the issue: There were a slew of incidents involving substitute physical education teachers and educators who were in charge of over one hundred kids at a single time. These cases appeared some thirty years ago but set the stage for government intervention and laws to protect teachers.

It also set a precedent in the procedures regulating substitutes and the hiring process. In a Michigan case an elementary school student was injured playing "kill" at recess under the supervision of a substitute teacher. It was common practice in the school for the game to be played and the principal was aware of its use. The student filed suit naming the absent teacher, the principal and the school district as defendants. The court felt that the use of the game was inappropriate and constituted negligence.

In determining the liability of the regular classroom teacher, the court noted that the "threshold element of a negligence case is that there must exist a duty. . . ." (Cook v. Bennett, at 610) Although the teacher owed a duty to exercise reasonable care over students in his charge, this duty "is coterminous with the teacher's presence at school. Supervision implies oversight. In order to oversee student activity, a teacher must be present to observe and control." (Cook v. Bennett, at 610)

The court found that the regular teacher, by not being present at the school owed no duty to supervise his pupils and was therefore, not liable. The school district, though normally liable for the negligence of its employees, was protected by governmental immunity by Michigan law. In contrast, the court ruled that the supervisory function of the principal was ministerial in

nature and not protected by immunity. The principal enhanced the likelihood of the injury by failing to properly supervise the teacher and by failing to establish rules and guidelines for the safety of the pupils.

Thus she was found negligent. In most high school physical education classes, it is not uncommon for one teacher to supervise two classes at the same time. Teachers work out deals to leave early for doctors appointments or to leave early for the day. So many a time one teacher is left with two major responsibilities and a serious risk of negligence. In a Missouri case, two teachers had physical education classes of eighth and ninth grade boys at the same period. (Kersey v. Harbin, 1979) When one teacher was absent, in lieu of hiring a substitute, the principal assigned the other teacher to cover" both classes.

An incident of rowdy behavior resulted in the death of a student from the class of the absent teacher. The school district was protected by governmental immunity and the absent teacher was held not liable. The superintendent and the principal were charged with failure to provide adequate supervision. The teacher was charged with negligent failure to supervise even though he was assigned the difficult task of supervising two classes. The evidence regarding the superintendent, principal, and teacher was sufficient to remand the case for trial to determine if any of them was negligent.

In another case involving a substitute teacher, they were placed in charge of two classes, the court found the school district negligent in failing to provide for adequate supervision. (Rollins v. Concordia Parish School Board, 1985) In

this instance, combining two classes for recess was a common practice in order to give one of the teachers a free period. The court deemed the supervision inadequate, " especially in light of the fact that another teacher was available but not used to help supervise. . . . " (Rollins v.

Concordia Parish School Board at 219) Finally a case involving two new teachers directing a physical education class were sued for breach of supervisory duty when a student stepped in a puddle of water on the gym floor and was injured. (Best v. Houtz, 1989) Testimony indicated that neither teacher knew of the puddle or had reason to know of it and thus had breached no duty. There is a very fine line between negligence and no breach of duty as stated in the case above, but these cases show teachers and administrators that breach of duty to supervise can be easily found negligent in the court of law.

Substitute teachers are held to the same standard of care as the full-time regular teachers: 1) The substitute is held to the same standard of care as the regular teacher and may be held personally liable for his or her negligent acts. 2) When absent from school, the regular teacher has no supervisory duty toward the students and thus no liability. 3) When a substitute is present, the principal has the same supervisory duties to the students in his or her charge as when the regular teacher is present.

These duties may entail more direction and closer supervision of a substitute than of a regular teacher.) The school district is liable for the negligent acts of a substitute to the same extent as it is liable for those of a regular teacher. Current Status Today, with an increase in the number of lawsuits,

most physical educators know a little about negligence and legal liability. Most know that negligence is essentially the failure to act as a reasonable, prudent professional would under the circumstances. Many also know that the required elements for negligence to exist are 1) a duty to the injured person; 2) a violation or breach of that duty; 3) the breach of duty must be the proximate cause of the injury; and 4) there must be an injury.

In the past, school systems were protected by governmental immunity and were not liable for negligence committed by employees. In the last 40 years, however, the trend has been toward elimination of governmental immunity in favor of state tort claims acts which allow the state to be sued. In spite of this tendency, many states continue to have immunity legislation that protects the school district or university from liability for its own negligence or the negligence of its employees.

Some states have extended immunity to include state employees and many state legislatures have granted immunity to select types of volunteers in the system. Some states have also passed legislation designed to protect students learning to teach from liability for their own negligence. Barring immunity,[1] three groups are susceptible to liability in the event of negligence. These groups include 1) the program leadership personnel (i. e. , teachers, assistant coaches), 2) administrative or supervisory level personnel (i. e. principals, department heads, head coaches, superintendents), and 3) the corporate entity (i. e. , the school district, the college or university). A more current case which sadly led to the death of a teenage boy because of the breached duty to exercise reasonable care has given school districts around the country a guideline of what not to do during physical education.

In June of 2005, a wrongful death lawsuit that involved a 16 year old collapsing on the gym floor during a basketball game due to heat stroke and ultimately cardiac arrest was taken to the Louisiana Supreme Court. James v. Jackson) The Louisiana Court of Appeal upheld a trial court decision awarding \$560, 000 in damages to Juanita James. The Orleans Parish School Board then appealed this ruling to the state high court. The court has not yet decided whether it will accept the case. The appellate court found that the district did not exercise 'reasonable care'. In reviewing the facts, the court noted that a substitute art teacher conducted the physical education class that day. The teacher himself participated in the basketball game and did not ask or require students to take water breaks.

The case also points out the potential danger of physical exertion, particularly by students who are obese and playing in hot conditions. The major point is where do we draw the line? A 325 pound student is a major liability on any sports team and in the P. E. class, but is it fair and against constitutional rights to sit them out because of fear of a negligent lawsuit from the family if anything were to happen? These are the types of situations physical educators, athletic directors and administration are facing on a daily basis.