AN ANALYSIS OF LAWSUITS BASED ON STUDENT INJURIES IN PUBLIC SCHOOL PHYSICAL EDUCATION AND ATHLETIC PROGRAMS IN THE UNITED STATES FROM 1980 TO 1984

by

Deborah Anne Clarke

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APPROVED:

Margaret L. Driscoll, Chairperson

M. David Alexander

Richard K. Stratton

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(ABSTRACT)

The purpose of this study was to locate, examine, classify and analyze lawsuits based on student injuries due to alleged negligence in public school physical education and athletic programs in the United States during the period of 1980 to 1984. A preliminary investigation of the American Digest System revealed appropriate case citations for this study. Each citation was used to locate the lawsuit in the respective regional reporter of the National Reporter System. Each case was thoroughly studied and reported.

The analysis of cases revealed that 21 sports-injury lawsuits in physical education and 24 in athletic programs occurred during this time period. Twenty-one lawsuits involving playground or other injuries were also examined for related information. Each case was classified and discussed according to the primary area of alleged negligence. These primary areas included standard of care,

adequacy of instruction, adequacy of supervision, adequacy and safety of facilities and equipment, adequacy and safety of protective equipment and other related areas.

Of all of the cases discussed in this study, 23 were ruled in favor of the plaintiff, with 15 held for the defendant. The doctrine of governmental immunity was upheld in 28 of the cases. The legal liability of school districts and boards of education and that of physical education teachers and athletic coaches was determined from this analysis. The status of governmental immunity and current trends of the court decisions were also discussed. The study concluded with implications for the field and recommendations for further study.

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Chapter I

NATURE AND SCOPE OF THE STUDY

Introduction

The probability that a physical education teacher or athletic coach will be the defendant in a sports-related injury lawsuit has increased in the last twenty years (Baley & Matthews, 1984; Nygaard & Boone, 1981). Physical education and athletic programs are a leading source of injuries to students resulting in litigation. Students are injured more often in physical education and athletics than in any other school-related activity (Alexander & Alexander; Appenzeller, 1978; Clear & Bagley, 1983a).

Approximately 67 percent of all school jurisdiction accidents involving boys and 59 percent involving girls occur in physical education and sport programs (Nygaard & Boone, 1981). Baley & Matthews (1984) reported that in 1976 there were an estimated 16,767 trampoline-related accidents, 343,973 basketball-related, 355,898 baseball-related, and 384,502 football-related accidents.

In the state of Wisconsin alone, during the 1979-80 school year, over 7,800 sports-related injuries were reported to insurance carriers; an incidence rate of one injury per 22 participants (Clear & Bagley, 1983a). The

Insurance Company of North America reports that approximately 60-70 deaths and disabling injuries per year result from participation in varsity athletics, intramural sports, and physical education classes in colleges, high schools, and junior high schools. Football-related accidents account for approximately 54 percent of the total, gymnastics for about 26 percent, wrestling for about 9 percent, and the remaining 11 percent fairly evenly distributed between baseball, basketball, diving, hockey, and track and field (Loss Control for School Athletic Injuries, Brochure HH-1431).

Not all sports-related accidents result in a lawsuit, but the number of injuries that do result in litigation and the size of the monetary settlements in these suits increases every year:

> According to data collected by the American Mutual Insurance Association, 43 percent of all judgments in 1965 went to the plaintiff, with an average award of $11,644. By 1973, the percentage of judgments in favor of the plaintiff came to 54 percent with the average award at $79,940. (Nygaard & Boone, 1981, p. 11)

In 1982, $6.3 million was awarded to a Seattle, Washington high school football player who received an injury which left him a quadriplegic (Adams, 1982).

There are a number of reasons for the increase in sports-related lawsuits. An increased interest in sports

participation has resulted from the trend toward lifetime health and fitness, changing social attitudes toward female participation, and increased leisure time, allowing more people to participate in sports. Stimulation through television coverage of sports, the promotional efforts of the President's Physical Fitness Council, and the teaching of lifetime sports in schools and colleges have also contributed to an increase in sports participation. Given this increased participation in sports, there has been an accompanying increase in the number of sports-related injuries, and, thus, the number of resulting lawsuits (Baley & Matthews, 1984).

There are also other reasons for the increased incidence of sports-related lawsuits. The general public, through consumerism and changed laws, has become more lawsuit conscious and aware of their rights:

> Consumers today are aware of rights they either didn't have or didn't know they had in years past. As a result of our legislatures, the United States Congress and court decisions, the public has acquired a number of new rights. Consumer advocates and the media have made the public aware of these rights to the extent that the consumer is ready to sue at a moment's notice. These court decisions, the rise in consumer awareness, and the media's attention to the subjects are all parts of what is called "the sue syndrome." (Graham, 1982, p. 34)

Means for commencing litigation have become more available to the general public. Small claims courts have

improved the availability of legal services to people with median incomes. A greater number of attorneys will take cases on a contingency basis, where the attorney is only paid after winning the case. The probability of a plaintiff receiving an award in court has increased with the change, in most states, from contributory to comparative negligence (Baley & Matthews, 1984).

Physical education teachers and athletic coaches are not the only persons involved in sports litigation. Athletic directors, trainers, physicians, officials, school administrators, school boards, operators of sports facilities, equipment manufacturers, spectators, and other athletes are increasingly finding themselves as defendants in sports-related lawsuits (Appenzeller & Appenzeller, 1980; Graham, 1982).

Most injury lawsuits in physical education and athletics are brought to court under the tort law classification of negligence. Negligence is conduct which fails to meet a standard of care established by law and which results in injury to another person (Alexander & Alexander, 1984; Carpenter & Acosta, 1982). Sports-injury litigation appears to involve several major areas of negligence, including the adequacy of conditioning and training, the adequacy of instruction, the adequacy of

supervision, and the adequacy and safety of equipment and facilities. Other problem areas involved in sports-injury lawsuits include the necessity to warn, the enforcement of safety rules and regulations, the treatment of injuries, the qualifications of supervisory personnel, and the adequacy of professional preparation of personnel (Borowski, Edition III; Henderson, 1985).

The increase in expensive lawsuits has begun, and will continue, to change the present nature of physical education and sport. Schools are finding that the cost of insurance is increasing to a point that is becoming prohibitive (Appenzeller & Appenzeller, 1980). Some attorneys and administrators of athletic programs consider that litigations arising out of sports-related injuries are accelerating to the point of being out of control and that athletic programs may not survive if the trend continues (Baley & Matthews, 1984). Borowski (Edition III) was most emphatic in his statement that:

> The jury is out, however, when it comes to the present dilemma - the lawsuit. If anything has a chance to finally destroy the role of sport and physical education as an education experience for young people in America - it will be the present proliferation of sport injury lawsuits. Sport for the first time in our history is really faced with annihilation. (p. 1)

Purpose of the Study

The purpose of this study was to locate, examine, classify, and analyze lawsuits based on student injuries due to negligence in public school physical education and athletic programs in the United States. One method of obtaining knowledge pertaining to the legal liability of schools, administrators, physical education teachers, and athletic coaches regarding injuries to students is to examine and analyze sports-injury lawsuits. Careful study of previous litigation provides information regarding the types of injuries that are occurring, the causes of such injuries, in which activities these injuries take place, and the alleged areas of negligence. The findings of the courts and the reasoning for these findings provides the case law by which legal liability is determined. General conclusions and implications for the field were drawn from this information.

Need for the Study

In light of the increase in sports-injury litigation, it is imperative that physical educators, coaches, and school administrators become more knowledgable about the legal aspects of the profession. This knowledge not only provides teachers, coaches, and administrators with

procedures for defense if they become involved in a sports-injury lawsuit, but should also serve as a means to prevent student injuries from occurring. The best way to reduce the incidence of sports-injury lawsuits is to decrease the incidence of injuries to students.

Statement of the Problem

The Research Question

The problem investigated by this study was stated as two major questions:

1) What is the status of lawsuits involving student injuries due to alleged negligence in public school physical education and athletic programs in the United States during the period of 1980 to 1984?

2) What is the legal liability of schools and school personnel as decided in the above lawsuits?

Subsidiary Questions

Ten subsidiary questions served as the basis for obtaining information necessary to answer the major research questions:

1) In what physical education and athletic activities are students injured?

2) What types of injuries are occurring to students in the above activities?

3) What parties are included as defendants in sports-related activities?

4) What is the relief sought by plaintiffs in these lawsuits?

5) What are the specific areas of negligence involved in sports-related lawsuits?

6) What are the findings of the trial courts?

7) What are the findings of the appellate courts?

8) What are the reasonings for the above findings?

9) What points of significance result from these findings?

10) What implications do these findings have on the field of physical education and athletics?

Delimitations of the Study

In order to obtain the most recent information regarding sports-injury litigation, this study focused on those lawsuits which have been decided in the past five years. This study was limited to lawsuits involving student injuries in public school physical education and athletic programs in the United States during the period of 1980 to 1984. Some related cases, such as playground injuries, were also examined for pertinent information.

Research Methods and Sources of Data

Preliminary Study

An investigation of the abstracts of cases reported in the American Digest System Ninth Decennial Digest and General Digest, the National Organization on Legal Problems of Education NOLPE School Law Reporter, and Sports and the Courts: Physical Education and Sports Law Quarterly revealed 84 lawsuits based on injuries occurring in public school physical education, athletics, and other related areas, in the United States during the period of 1980 to 1984. The citations of the cases located in this preliminary study were categorized using the West's Law Publishing Company Key Number Classification System utilized in the American Digest System. Case abstracts were found under the general heading of "Schools." Public school sports-injury cases were listed under twenty-three Key Numbers (Appendix A).

Method of Analysis

Each citation from the preliminary study was used to locate the lawsuit in the appropriate regional reporter of the National Reporter System (Appendix B). Each case was thoroughly studied and analyzed. Pertinent information from each case was recorded on a Case Summary Form (Appendix C).

The actual analysis of each case revealed that 21 sports-injury lawsuits in physical education and 24 in athletic programs based on alleged negligence occurred in the public schools during the period of 1980 to 1984. Twenty-one lawsuits involving injuries on playgrounds and in other related areas were also examined as the findings of the courts on these cases were directly related to the legal liability of schools and school personnel involved in physical activities. Upon closer inspection, 18 cases from the preliminary study either did not pertain to this study or did not provide necessary information for discussion and were, therefore, not included in this analysis.

Each court case was classified and discussed according to the primary area of alleged negligence. The following are the areas of negligence used for the classification of cases in this study:

1) Standard of care.
2) Adequacy of instruction.
3) Adequacy of supervision.
4) Adequacy and safety of facilities and equipment.
5) Adequacy and safety of protective equipment.
6) Other related areas.

The Shepard's Citations system was reviewed to determine whether each case was affirmed, reversed,

modified, vacated, or dismissed on appeal. Shepard's Citations was also useful in determining if later cases criticized, questioned, explained, followed, overruled, distinguished, or limited the holding of each case. Other sources that were consulted regarding additional information and the interpretation of cited cases included American Jurisprudence, American Law Reports, Corpus Juris Secundum, and the Index to Legal Periodicals.

General conclusions are derived from the information obtained during the analysis of the court cases. Among the findings analyzed is the legal liability of school districts and boards of education and that of physical education teachers and athletic coaches. The trends and patterns of these court decisions, the resulting implications for the field, and recommendations for further study are also discussed.

Definition of Terms

The field of law utilizes a vocabulary unfamiliar to most laymen. An attempt was made to keep the legal vocabulary of this study to a minimum, however, it was necessary to include some terms. A glossary of legal and technical terms can be found following the Appendix section of this study.

Organization of the Remainder of the Study

Chapter Two of this study gives a brief overview of tort law in order to provide the reader with a general understanding of liability and negligence. Legal defenses against alleged negligence are also included in this chapter.

The cited cases of this study are analyzed and discussed in Chapter Three. Each Court case is classified according to the primary area of alleged negligence. Six primary areas of negligence were used for the purpose of this study.

The final chapter of this study discusses general findings and conclusions derived from the analyses of the sports-injury lawsuits. The status of these lawsuits and the legal liability of schools and school personnel are determined from this analysis. The trends and patterns of recent court decisions, the resulting implications for the field, and recommendations for further study are also outlined.

Summary

The probability that a physical education teacher or athletic coach will be the defendant in a sports-related injury lawsuit has increased in the last twenty years.

Physical education and athletic programs are a leading source of injuries to students resulting in litigation. Students are injured more often in physical education and athletics than in any other school-related activity.

Not all sports-related accidents result in a lawsuit, but the number of accidents that do result in litigation and the size of the monetary settlements in these suits increases every year. There are a number of reasons for this increase in sports-related lawsuits.

Most lawsuits in physical education and athletics are brought to court under the tort law classification of negligence. Negligence is conduct which fails to meet a standard of care established by law and which results in injury to another person.

The increase in expensive lawsuits has begun, and will continue, to change the present nature of physical education and sport. Some attorneys and administrators of athletic programs consider that litigations arising out of sports-related injuries are accelerating to the point of being out of control and that athletic programs may not survive if the trend continues.

The best way to reduce the incidence of sports-injury lawsuits is to decrease the incidence of injuries to students. One method of obtaining information regarding

injuries to students and the legal liability of schools and school personnel is to examine and analyze sports-injury lawsuits. This information not only provides teachers, coaches, and administrators with procedures for defense if they become involved in a sports-injury lawsuit, but should also serve as a means to prevent student injuries from occurring.

A preliminary study revealed 84 lawsuits based on injuries occurring in public school physical education, athletics, and other related areas, in the United States during the period of 1980 to 1984. The citations of cases from the preliminary study were used to locate the lawsuits in the appropriate regional reporter. Each case was thoroughly studied and analyzed. As a result of this analysis, 66 cases were chosen for the purpose of this study.

Chapter Two of this study gives a brief overview of tort law in order to provide the reader with a general understanding of liability and negligence. The cited cases of this study are analyzed and discussed in Chapter Three. Each court case is classified according to the primary area of alleged negligence. The final chapter of this study discusses general findings and conclusions derived from the analyses of the sports-injury lawsuits.

Chapter II

TORT LAW

Introduction

Law may be best described as a body of rules or principles of human conduct. These rules are self-imposed by society and are for the purpose of the regulation of human behavior. The laws of society require a person to do what state law determines as right and forbids doing what state law mandates as wrong (Arnold, 1983).

Law comes in the form of both written law and unwritten law. Among the sources of written law are federal and state constitutions, legislative statutes, and contracts between parties. Professional standards, association bylaws and operating codes, and legally recognized policies also make up the written law. Unwritten law, also known as common law, was founded in English usage and custom and was brought to this country by the early colonists. Common law is based upon judicial decisions rather than constitutional or legislative law. These principles may change with time to apply to new conditions, interests, and relationships (Arnold, 1983; Nolte, 1980; Strope, 1984).

Another distinction in law is made between criminal and civil law. In criminal law, action is brought against an

individual by the state in order to protect the interests of the public. Civil law pertains to those rules that govern the noncriminal legal affairs of citizens. Each individual has certain personal rights with regard to the conduct he or she may expect from others. Some of these rights are established through the execution of a binding agreement, or contract, between individuals. Each individual is also granted by law certain rights which are not contractual in nature, such as freedom from personal injury and security of life, liberty, and property. All persons have a legal duty and responsibility to respect these rights of others (Alexander, 1980; Arnold, 1983).

Torts

Under common law, all persons are held responsible for a certain standard of behavior in all situations. A tort is a civil, as opposed to criminal, wrong done to another person, that does not involve a contract. Tort law is concerned with those rights that are created by common law and not by an agreement between parties that exists due to the conditions of a contract (Alexander & Alexander, 1984; Clear, 1983a; Nygaard & Boone, 1981).

A tort may be intentional or malicious or it may be the result of negligence or disregard for another's rights.

Tort liability results when an individual's act or failure to act causes injury or damage to the rights or interests of another person. The injured party may seek compensation for damages suffered by filing an action in law against the party allegedly committing the tort. Tort law does not intend that the injured party profit from being wronged, but to make whole again as much as it is possible to do so by monetary compensation. Grounds for action in tort are generally classified into three categories: (1) intentional interference, (2) strict liability, and (3) negligence. Negligence is the most common tort in school-related legal action (Alexander, 1980; Arnold, 1983; Nygaard & Boone, 1981).

Liability

All persons are legally responsible, or liable, for their own behavior. Legal liability implies that there is a responsibility or obligation between parties that the courts recognize and enforce. Individuals are held legally liable when their own negligent behavior causes injury or harm to another party whom they owe a duty (Arnold, 1983; Baley & Matthews, 1984).

Schools and school personnel owe children a safe place in which to study and play, as the state has taken the

children away from their natural parents and has placed them in a state institution, the public school. Adults in charge of students are liable for their conduct because the state has created the doctrine of in loco parentis, or in the place of the parent (Nolte, 1980).

School personnel owe their students the duty to carry out their responsibilities in a prudent and careful manner. They are expected to use reasonable care so as not to subject their students to an unreasonable risk of injury or harm. Societal values and norms provide the basis for legal precedent as to what is considered prudent and reasonable conduct. The key to liability is the presence of negligence (Appenzeller, 1978; Arnold, 1983).

Negligence

Negligence is a breach of a legal duty to protect others from unreasonable risks of injury or harm. It is conduct which falls below an established standard of care and which results in injury or harm to another person. Negligent conduct can take one of the following three forms: (1) malfeasance is the committing of an unlawful act, (2) misfeasance is the improper performance of a lawful act, and (3) nonfeasance is the failure to perform a required act (Alexander & Alexander, 1984; Appenzeller, 1978; Clear, 1983a).

Standard of Care

The standard of care used to determine negligence is that which a reasonably careful and prudent person would have done under the same or similar circumstances. In general, a reasonably careful and prudent person is described as one who avoids doing things that could foreseeably result in injury or harm to others. Although the law of negligence is generally based upon legal precedent, what constitutes negligence in one situation may not be negligence under a different set of circumstances. It is the duty of the courts to decide, based on the evidence.

School personnel are expected to meet the standard of care of a reasonably prudent professional. Professionals are expected to uphold a higher degree of care than that of ordinarily prudent persons because of their education, training, and experience in the field. It is also expected that the training is current and that the professional is fully qualified to perform his or her duties (Arnold, 1983; Loss Control for School Athletic Injuries, Brochure HH-1431).

A higher standard of care is expected of the physical education teacher and athletic coach than of classroom teachers due to the nature of physical activity. Physical

educators and coaches owe students a standard of care that includes proper precautions to prevent injuries from occurring, and proper treatment of injuries that do occur. This standard is based on what the professional should know as well as what he or she actually knows (Adams, 1982; Carpenter & Acosta, 1982; Clear, 1983a).

Elements

Four prerequisites, or elements, comprise the existence of negligence. In order to hold a person legally liable for negligence, the injured party must establish that all four of the following conditions are present: (1) that there was a legal duty to conform to a certain standard of conduct, for the protection of others against unreasonable risks of injury or harm, (2) that there was a failure to conform to the standard required; a breach of duty, (3) that this breach of duty was the proximate or legal cause of the injury, and (4) that actual injury, loss, or damage resulted from the breach of duty (Appenzeller, 1978; Carpenter & Acosta, 1982; Thomas & Alberts, 1982).

Defenses

There are several defenses which can be used in a court action claiming negligence. The best defense against a claim of negligence is to prove that one or more of the four

elements required for negligence are not present (Appenzeller, 1978; Arnold, 1983). A person cannot be held legally liable where no legal duty was present, where there was no breach of a legal duty, where there was no causal connection between the conduct and the injury, or where there was no actual resulting injury or damage.

Another strong defense against negligence is the ability to prove that the injury resulted from an unforeseen accident (Alexander & Alexander, 1984). An accident which is unavoidable and could not have been prevented by reasonable care does not constitute negligence. One must be aware, however, that what first appears to be an accident may be traced to someone's negligent conduct.

A common defense against negligence is the assumption of risk. This defense means that an element of risk is always inherent in physical activities. It must be established that the injured party knew, understood, and appreciated those risks incurred by participating in the activity and that he or she assumed those risks by voluntarily engaging in such activity (Arnold, 1983; Nygaard & Boone, 1981).

In some states, an injured party who is at fault, to even the slightest degree, in causing his or her own injury is barred from any recovery of damages under the defense of

contributory negligence. This defense means that conduct on his or her part contributed as a legal cause to the harm suffered (Appenzeller, 1978; Baley & Matthews, 1984).

In past litigation, finding that the injured party was contributorily negligent has prevented any recovery on his or her part. As this result has been determined to be unfair to the injured party, many states have statutorily adopted the doctrine of comparative negligence. In this situation, the degree of negligence of both parties is compared and damages are awarded to both sides on a proportionate basis (Arnold, 1983; Nygaard & Boone, 1981).

In litigation where either the defense of assumption of risk or contributory negligence is claimed, the age, knowledge, discretionary ability, physical capabilities, training, and experience of the injured party are significant factors in determining the effect of the defense. One cannot be held to have assumed risks that he or she could not reasonably have been expected to know, understand, or appreciate. The conduct of students is only compared to the standard of conduct and degree of care ordinarily exercised by children of similar age and experience, and under the same or similar circumstances (Appenzeller, 1978; Arnold, 1983).

Two other defenses against alleged negligence which are used less often are an Act of God and governmental immunity. There is no liability present when the proximate cause of an injury is an Act of God, or Act of Nature, where something occurs due to the forces of nature and is beyond the ability of a person to control (Appenzeller, 1978; Nygaard & Boone, 1981).

In general terms, the doctrine of governmental immunity states that no one can sue the government or any of its agents. Only a few states have retained this doctrine, whereby state employees, in their official capacity, cannot be sued since they are performing a state-approved function. This doctrine has almost disappeared as a defense against claims of negligence (Baley & Matthews, 1984; Nolte, 1980).

Summary

Law is a body of rules or principles self-imposed by society for the regulation of human conduct. Law comes in the form of both written law and unwritten, or common, law. A distinction in law is also made between criminal and civil law. Under civil law, citizens have certain personal rights with regard to the conduct they may expect from others. These rights may or may not be contractual in nature. All persons have a legal duty and responsibility to respect the rights of others.

Under common law, all persons are held responsible for a certain standard of behavior in all situations. A tort is a civil, as opposed to criminal, wrong done to another person, that does not involve a contract. Tort liability results when an individual's act or failure to act causes injury or damage to the rights or interests of another person. The injured party may seek compensation for damages suffered by filing an action in law. Negligence is the most common tort in school-related legal action.

All persons are legally responsible, or liable, for their own behavior. Individuals are held legally liable when their own negligent behavior causes injury or harm to another party whom they owe a duty. Adults in charge of students are liable for their conduct because the school is considered to be a safe place, and because they are acting in loco parentis. The key to liability is the presence of negligence.

Negligence is conduct which falls below an established standard of care and which results in injury or harm to another person. The standard of care used to determine negligence is that which a reasonably careful and prudent person would have done under the same or similar circumstances. School personnel are expected to meet the standard of care of a reasonably prudent professional. A

higher standard of care is expected of the physical education teacher and athletic coach than of classroom teachers due to the nature of physical activity. The four elements which must be present in order to establish negligence are a duty owed, a breach of duty, proximate cause, and actual injury, loss, or damage.

There are several defenses against negligence used in court action. The best defense is to prove that one or more of the four elements required for negligence are not present. Other common defenses against negligence include, unavoidable accidents, assumption of risk, contributory negligence, and comparative negligence. Two other defenses which are used less often are an Act of God and governmental immunity. The doctrine of governmental immunity as a defense against negligence has been abrogated by most states.

Chapter III

ANALYSIS OF COURT CASES

Introduction

Public schools, teachers, and coaches owe students a duty of care commensurate with the nature of the activity. The duty owed a student in physical education and athletics takes the form of giving adequate instruction in the activity, providing proper supervision of the activity, supplying proper protective equipment, making a reasonable selection or matching of participants, and taking proper post-injury procedures to prevent further aggravation of the injury. Schools and school personnel are liable for negligence in the performance of these duties (American Law Reports, 1971).

Legal action for a sports-related injury may be based on a number of grounds. These grounds include failing to provide proper instruction or training, failing to provide adequate supervision of the activity, or providing unsafe facilities or equipment. Permitting injured, unfit, or mismatched players to participate, negligently moving an injured player, failing to employ competent teachers and coaches, and failing to supervise the actions of teachers and coaches are also grounds for a negligence suit (American Law Reports, 1971).

An analysis of public school sports-injury lawsuits decided during the period of 1980 to 1984 revealed several grounds of alleged negligence. Most cases came to court on more than one ground of negligence. However, for the purpose of organization of this chapter each case has been classified and is discussed according to the primary area of alleged negligence. Secondary grounds of negligence are included in the discussion of each case.

The primary areas of alleged negligence for public school sports-injury lawsuits decided during the period of 1980 to 1984 are standard of care, adequacy of instruction, adequacy of supervision, adequacy and safety of facilities and equipment, and adequacy and safety of protective equipment. Other related areas, including corporal punishment, assault, doctrine of respondeat superior, medical examinations, responsibility for medical expenses, and association regulations are discussed in the final classification. Each classification area is discussed according to the outcome of the case, whether it be recovery of damages by the plaintiff or judgment for the defendant. Although the doctrine of governmental immunity has been abrogated by most states, a large number of lawsuits came to court during this time period in states in which such immunity still exists. Each classification area, therefore,

also includes a discussion of these cases. Cases within each subclassification are discussed in chronological order.

Standard of Care

Recovery by Plaintiff

In an action against two school teachers and their insurer, the school board and its insurer, and the automobile driver, the parents of a 17-year-old mentally retarded boy received $50,000 after their son died from injuries sustained when he was hit by an oncoming car. The student was a member of the Special Olympics basketball team which was walking to practice from school to a municipal facility. The physical education teacher in charge was still teaching a class, so her assistant decided to take the students along the previously decided route by himself. He gave the team safety instructions ahead of time, but lost control of the group as some of them ran off ahead. Plaintiff's son was run over when he dashed out into the street, saw the oncoming car, suddenly stopped and his feet slid out from under him.

The school board was found not guilty of independent negligence as it had no duty to build a separate gymnasium and had issued a safety manual for the guidance of school personnel for trips of this nature, but was held liable for

the negligence of its employees under the doctrine of respondeat superior. It was reasoned that because of the special relationship existing between them and their students, teachers on campus are under a general duty to conduct their classes so as not to expose their students to unreasonable risk of injury. (Green v. Orleans Paris School Board, 365 So.2d 834). That duty becomes more onerous when the student body is composed of mentally retarded youngsters. Personnel responsible for the team had a duty to maintain closer supervision over the students than if they had remained on campus.

The physical education teacher was found negligent in her failure to provide other transportation, failure to supervise, failure to adequately instruct, and negligent in her choice of route to the park. Her assistant was negligent in failing to provide alternate transportation, failing to wait for the physical education teacher before undertaking the trip, failing to adequately instruct or supervise the students, and failing to maintain control over the youngsters. The automobile driver was abolished as it was concluded that the accident was unavoidable as far as the car operator was concerned. Foster v. Houston General Insurance Company, 407 So.2d 759 (La.App. 1981).

The Board of Education was held liable for injuries sustained by a fifth grade student who had five teeth severed when he was struck in the mouth by the blade of another student's hockey stick during an after-school hockey game in the school gymnasium. The 11-year-old plaintiff recovered $83,190 and his parents received $1,810 when the court determined that there was enough evidence to support that the duty of care imposed upon the school board to provide for the safety and welfare of its students had been breached.

The supporting evidence stated that the student's coach was familiar with safety and protective equipment for the sport, that he was aware that mouth injuries were recurring consequences of playing floor hockey, and that the coach had requested on at least two occasions during the prior school year that the school board purchase safety equipment for the students, but the board had failed to authorize the purchase of such equipment. It was also ruled that the absence of a state regulation requiring mouth guards in floor hockey games had no bearing on the school board's general duty of care for the safety and welfare of students and that plaintiff was incapable of contributory negligence and assumption of risk because of his tender age and limited intelligence, experience, and information. Berman v.

Philadelphia Board of Education, 456 A.2d 545 (Pa.Super. 1983).

A directed verdict for the school board by the trial court in Leahy v. School Board of Hernando County, 450 So.2d 883 (Fla.App.5 Dist. 1984) was reversed and remanded for a new trial when it was determined that the evidence was a sufficient basis upon which a jury could conclude that the school board, through its employees, failed to exercise reasonable care under the circumstances for the protection of appellant. A directed verdict is proper only when no evidence has been presented which would support a verdict for plaintiff.

This suit resulted when a freshman football player sustained facial injuries and had his front teeth shattered while participating in an agility drill without a helmet and mouthguard. Plaintiff had not been issued a helmet and his face collided with another player's helmet when the drill became more aggressive. It was reasoned that the school board owed a duty to the participants to properly supervise the football drill, which was an approved school activity and one in which the school's employees had authority to control the behavior of the students, though a teacher has no duty to supervise all movements of all students all of the time. There was evidence upon which a jury could

conclude that the school board, through its employees, negligently failed to provide proper supervision, instruction, and equipment and that such negligence was a legal cause of the appellant's injuries.

Judgment for Defendant

Action against the school district and another student was dismissed where a student was injured when he was kicked by the other student while playing basketball in a required high school physical education class. The action claimed that the school district violated National Federation of High School Association rules governing the protection and safety of participants in basketball games, and charged the other student with ordinary negligence. The court ruled that the complaint failed to state cause of action and that liability for injuries sustained as a result of a breach of a safety rule in athletic competition involving bodily contact cannot be predicated upon ordinary negligence, but rather, willful and wanton misconduct must be shown to permit recovery. Oswald v. Township High School District No. 214, 406 N.E.2d 157 (Ill.App. 1980).

In a playground recess case, summary judgment was granted to the defendant community school corporation where a seven-year-old second grader collided with a six-year-old

first grade student on the playground during the school's supervised morning recess. Seven or eight of the ten teachers assigned to supervise were present, for approximately 188 students, which exceeded the normal supervision requirements for recess periods. The court held that:

> ...the common law of this state recognizes a duty on the part of school personnel to exercise ordinary and reasonable care for the safety of the children under their authority.
>
> It should be emphasized here, however, that schools are not intended to be insurers of the safety of their pupils, nor are they strictly liable for any injuries that may occur to them. The duty imposed by this legal relationship is a practical recognition by the law that school officials are required to exercise due care in the supervision of their pupils; that while they are neither an insurer of safety nor are they immune from liability. (Pierce v. Horvath, 233 N.E.2d 811 (1968) and Miller v. Griesel, 308 N.E.2d 701 (1974)).

Thus, it was held that the school district could not be held liable for the injuries since children running on the playground was not an unreasonably dangerous condition, and since the collision took place suddenly, there was no duty on the teachers to warn of possible injury. Duty to warn contemplates the opportunity to know of the danger and to have time to communicate it to others. Norman v. Turkey Run Community School Corporation, 411 N.E.2d 614 (Ind. 1980).

In another playground suit, recovery was denied to six-year-old plaintiff for an elbow fracture sustained when she fell off a slide while playing on the school playground during class recess. The jury was fairly and accurately apprised of the law to be applied by jury instructions that a school must exercise ordinary care to keep its premises and facilities in reasonably safe condition for the use of minors who foreseeably will make use of the premises and facilities, and that a school has the duty to insure the safety of their students during playground activities as well as to properly maintain the premises. Also, a school has the duty to children to exercise such care for them as parents of ordinary prudence would observe in comparable circumstances, that the duty of care owed a child is greater than that owed an adult against unreasonable risk of injury, with the degree of care owed increasing with the immaturity of the child, and that an infant is held to the standard of care which would be exercised by an ordinarily prudent child of his own age, capacity, intelligence, and experience.

Evidence that the teacher's aide, who was supervising the playground and was stationed near the child and had watched her correctly climb to the top of the slide and begin her descent down, but was not watching when the child fell from near the bottom of the slide, was sufficient for

the jury to conclude that negligent supervision was not the proximate cause of the child's injury. The jury's finding that negligent maintenance of the school playground was not the proximate cause of the injury was also supported by substantial evidence. Besette v. Enderlin School District No. 22, 310 N.W.2d 759 (N.D. 1981).

Suit was brought against the school board and three physical education teachers where a 14-year-old boy was rendered a quadriplegic after landing on his neck and shoulders while attempting a running front flip on to a crash pad. Because of bad weather, plaintiff's physical education class was held in the school gymnasium with approximately 63 students participating in a "free exercise" day with three teachers present. The suit cited the teachers for negligence in allowing plaintiff to engage in a dangerous activity without proper supervision, failing to properly train plaintiff before permitting to engage in the activity, and failing to provide proper equipment to protect plaintiff. The school board was cited for failing to properly train defendant teachers. The finding of the court was for the defendants, based on contributory negligence. The appellate court stated that:

> Maryland cases do not reflect any general dissatisfaction with the contributory negligence doctrine. Indeed, the doctrine is a fundamental principle of Maryland negligence law, one deeply

> imbedded in the common law of this State, having been consistently applied by Maryland courts for 135 years. Nor have we heretofore been confronted with a claim of a pressing societal need to abandon the doctrine in favor of a comparative fault system. ...All things considered, we are unable to say that the circumstances of modern life have so changed as to render contributory negligence a vestige of the past, no longer suitable to the needs of the people of Maryland. In the final analysis, whether to abandon the doctrine of contributory negligence in favor of comparative negligence involves fundamental and basic public policy considerations properly to be addressed by the legislature.

Harrison v. Montgomery County Board of Education, 456 A.2d 894 (Md. 1983).

Judgment was granted to the defendant school board in an action where an 11-year-old boy received a concussion and permanent hearing loss in his right ear after being assaulted with a baseball bat by a fellow student during physical education class. One physical education teacher was in charge of 50 to 60 students on the playground. Plaintiff's father had discussed with the school principal several weeks prior about the other students' alleged acts of picking on plaintiff and disturbing him in class. It was alleged that the school board was under an express or implied contractural obligation to maintain a safe atmosphere for students under its supervision during school hours.

It was held that in order for plaintiff to recover under the evidence presented in the complaint filed, the court would have to breathe life into a cause or causes of action that have heretofore never existed in the state. There being no cause of action in implied contract or strict liability, no amount of evidence would be sufficient to allow plaintiff to recover damages for his injuries. Even if plaintiff had tried his case under a negligence theory, the only negligence that plaintiff could possibly point to would have been the failure of the school board to have more than one teacher in charge of 50 to 60 students at physical education classes on the playground. Brown v. Calhoun County Board of Education, 432 So.2d 1230 (Ala. 1983).

Governmental Immunity

In an action where a high school student suffered a broken left ankle while wrestling in a required physical education class, summary judgment was granted to defendant school district and physical education teachers due to sovereign immunity. It is the settled law in the State of South Dakota that:

> School districts are state agencies exercising and wielding a distributive portion of the sovereign power of the state, and the officers of school districts are the living agencies through whom the sovereign state act is carried into effect. A school district officer in the performance of his duties acts in a political capacity, as much so as the governor of a state, and is not liable for

> negligent acts of omission occurring in the performance of such political or public duties, unless the sovereign power of a state has authorized and consented to a suit for such negligence. (Plumbing Supply Co. v. Board of Education, Etc., 142 N.W. 1131 (1913)).

School districts are not a governmental unit below the state level whose traditional immunity had been statutorily waived at the time of this injury. No permission to sue the defendants in tort on this type of action had been granted by the legislature. In the absence of such permission, no suit could prevail. Also, the purchase of liability insurance does not waive such immunity. Merrill v. Birhanzel, 310 N.W.2d 522 (S.D. 1981).

In a similar case, a junior high school student sustained a dislocated hip while wrestling in a physical education class. Action was brought against the physical education teacher and the school system for negligence in the performance of his duties as a teacher, failure to supervise in a manner and method commensurate with the expert standard of care chargeable, and failure to obtain written authorization for participation in the activity from the parent. The court granted summary judgment to the teacher and school system based on the doctrine of governmental immunity. The court stated that the proper test to apply to determine whether an employee is cloaked

with governmental immunity is to determine whether he was acting within the scope of his employment (Bush v. Oscoda Area Schools, 275 N.W.2d 268 (1979); Gaston v. Becker, 314 N.W.2d 728 (1981); Everhart v. Board of Education of the Roseville Community Schools, 310 N.W.2d 338 (1981)). Since plaintiff's allegations clearly claimed that defendant was negligent in the performance of his duties as a teacher, defendant was cloaked with governmental immunity. Lewis v. Beecher School System, 324 N.W.2d 779 (Mich.App. 1982).

In an action stemming from a professional photographer, while taking photographs at a high school football game for the school yearbook, being struck and injured by players running out of bounds during a play, it was alleged that the school district was negligent in failing to warn of impending danger and to provide plaintiff with a reasonably safe place to work. Relief was barred under the state governmental immunity statute, which permits tort claims only for those whose injuries arise from public employee's operation of a motor vehicle or conditions of a public entity's property, and which did not violate the equal protection doctrine. Winston v. Reorganized School District R-2, Lawrence County, Miller, 636 S.W.2d 324 (Mo.banc 1982).

The doctrine of governmental immunity (Bush, supra; Gaston, supra; Everhart, supra; Lewis, supra) barred recovery by a 13-year-old girl who was attacked and injured by a fellow student while participating in physical education class. Action against the physical education teacher alleged failure to exercise reasonable care and precaution for the safety of the students and negligence in controlling the fellow student. The court maintained that a public employee is immune from suit where the allegedly tortious conduct falls within the scope of employment. The public school teacher was immune from suit for alleged negligence in controlling the fellow student since the duty alleged to have been breached, that of exercising reasonable care and precaution for the safety of the students, was a duty imposed upon the teacher by her public employment. Pope by Pope v. McIntyre, 333 N.W.2d 612 (Mich.App. 1983).

Where it was alleged that the junior high school football coach negligently managed practice resulting in plaintiff sustaining a broken leg, defendant's demurrer to petition was sustained on grounds of sovereign immunity. Defendant's demurrer to petition relied upon the Political Subdivision Tort Claims act which states that, "A political subdivision or an employee acting within the scope of his employment shall not be liable if a loss results from: (20)

Participation in or practice of any interscholastic athletic contest." 51 O.S. 1981, sec. 155(20). Herweg, Etc. v. Board of Education of Lawton Public Schools, 673 P.2d 154 (Okl. 1983).

In Kain v. Rockridge Community Unit School District No. 300, 453 N.E.2d 118 (Ill.App.3 Dist. 1983), action against the school district and football coach was dismissed on the basis of statutory immunity. Plaintiff alleged negligence in allowing plaintiff to participate in the football game, in directing plaintiff to play in the game although he had not participated in the minimum amount of practice sessions required by Rule 5.062 of the Illinois High School Association, making plaintiff ineligible to play under IHSA rules, and in violating doctor's orders. This holding follows that of Kobylanski v. Chicago Board of Education, 347 N.E.2d 705 (1976) where the Illinois Supreme Court ruled that this statute conferred immunity and the status of in loco parentis on teachers and school districts for the supervision of activities connected with school programs. The court reasoned, therefore, that teachers standing in loco parentis should not be subjected to greater liability than parents. Since parents are not liable to their children for negligence, teachers are also not liable for negligence when they are acting in loco parentis. The court

in Kain further ruled that this statute which confers immunity was not rendered inapplicable because the school district and coach allegedly violated an IHSA rule prohibiting students from playing football without adequate practice.

In an action against the school district and high school principal in the State of Texas, the court granted summary judgment for the defendants where plaintiff, a senior in high school, received burns to her face, neck and chest while lighting the homecoming bonfire at the pep rally before the high school football game. Under the doctrine of governmental immunity, it was held that the school district was not liable for injuries sustained by plaintiff since the event was so interrelated with the school's football program as to constitute a governmental function. The school's principal, who monitored the event, was also immune from liability, under the statutory grant of professional immunity, where there was no evidence that at the time the injury occurred the principal was performing or failing to perform a disciplinary duty. McManus v. Anahuac Independent School District, 667 S.W.2d 275 (Tex.App.1 Dist. 1984).

Adequacy of Instruction

Recovery by Plaintiff

Where a middle school student injured his knee and teeth while attempting to perform a flip on the trampoline, it was ruled that a school employee may be made party defendant in an action for personal injuries allegedly occasioned by the employee's negligence while acting in the scope of his employment. This Florida Supreme Court case affirmed the appellate court's reversal of the dismissed complaint against the physical education instructor by the trial court. It was alleged that the instructor was negligent in improper instruction and regard for the safety of the student when he ordered plaintiff to perform certain acrobatics on the trampoline and when the student refused, picked him up and placed him on the trampoline, twice more ordering him to perform.

The court reasoned that this decision continues a long-established policy in this state of holding public officers, employees and agents liable for their tortious acts. Individual suit against a state employee, but not against the state, is possible whenever the employee was not acting within the scope of his employment or, while within his employment, was acting in bad faith or with malicious purpose or in a manner exhibiting wanton and willful

disregard of human rights, safety or property. District School Board of Lake County v. Talmadge, 381 So.2d 698 (Fla. 1980).

The decision of the lower court was reversed and, plaintiff, whose 16-year-old son sustained a fractured leg in a track and field contest, was granted leave to file a late claim in an action against the school district. Plaintiff sought legal advice approximately six months after the injury occurred and sought leave to late file a claim six months subsequent, alleging failure to properly train and indoctrinate his son in the sport of track. The court stated that:

> On the record before us, we cannot say that defendants were prejudiced by the delay in filing so as to impede their efforts to investigate the allegations of negligence. ...Since it does not appear to us that defendants cannot adequately meet the alleged charges of negligence in the proposed claim, we conclude that the relief sought should have been granted.

Bureau v. Newcomb Central School District, 426 N.Y.S.2d 870 (App.Div. 1980).

In a sixth grade student's negligence action against the school district to recover for injuries sustained when she ran into a concrete wall while performing a vertical jump in physical education class, the trial court erred in entering judgment for the school district without submitting cause to the jury. The court held that:

> ...judgment on the evidence is proper only where there is lack of evidence of probative value upon one or more of the factual issues necessary to support a verdict, and no reasonable inference in favor of the plaintiff can be drawn from this evidence... or if the evidence conflicts such that reasonable minds might draw differing conclusions... Only where the evidence is without conflict and susceptible to one inference in favor of the moving party should judgment on the evidence be rendered.

Plaintiff's testimony supported allegations of the teacher's negligence in improperly instructing, discharging her duty to exercise reasonable care for the safety of the students, and subjecting the students to unreasonable risk of harm, in that the teacher explicitly instructed the students to run toward the wall to improve their performance. An expert witness testified as to the safe and proper way to perform the exercise and evidence supported the conclusion that the physical education teacher's alleged negligence was the proximate cause of the injury, in that the student neither fell nor stumbled as she approached the wall and encountered to intervening events, such as another student tripping her or obstructing her path. Dibortolo v. Metropolitan School District of Washington Township, 440 N.E.2d 506 (Ind.App. 1982).

In a similar case, the trial court erred in dismissing the complaint of a 14-year-old girl who dislocated her right elbow when she struck the gymnasium wall while running the

speed portion of the New York State Physical Fitness Screening Test. The injury occurred when plaintiff, while going toward the finish line, started falling and put her hand up to stop from hitting the wall. The cones used to mark the course were placed eight feet from the wall instead of the 14 feet recommended in the test manual.

The court reasoned that there is no question that the defendant owed a duty to the student; that a school has the duty to exercise the same degree of care toward its students as would a reasonably prudent parent would under comparable circumstances. There was sufficient proof from which a jury could conclude that the failure to follow the instructions in the manual constituted a breach of this duty to the plaintiff and that defendant was negligent with respect to both the design of the course and failure to give proper instructions. The jury could thus reasonably infer that defendant was under a duty to foresee the risk involved in not designing the course in the recommended manner and that its failure to do so was the proximate cause of plaintiff's injury. Ehlinger v. Board of Education of New Hartford Central School District, 465 N.Y.S.2d 378 (A.D.4 Dept. 1983).

Judgment for Defendant

(No cases reported)

Governmental Immunity

A leading case regarding the present doctrine of governmental immunity in the State of Michigan is Churilla v. School District for City of East Detroit, 306 N.W.2d 381 (Mich.App. 1981). In this case it was established that the day-to-day operation of a public school is a governmental function. The public school, in administration and supervision of its athletic program, is engaged in a governmental function and is, therefore, entitled to immunity for tort liability where plaintiff was injured in a junior high school football team practice.

In an action against the school district and physical education instructors for an injury sustained when the student fell and landed on the exposed springs of the trampoline, the trial court erred in dismissing the entire suit on the basis of sovereign immunity. The court ruled that the doctrine of sovereign immunity barred the student's personal injury suit against the school district, arising from an injury which occurred prior to the date that abrogation of the doctrine became effective, even though the school district had liability insurance. This doctrine

afforded to the school district did not, however, extend to the physical education instructors where the student alleged that the teachers acted individually. Spearman v. University City Public School District, 617 S.W.2d 68 (Mo.banc 1981).

In Boulet by Boulet v. Brunswick Corporation, 336 N.W.2d 904 (Mich.App. 1983), plaintiff brought action against the football coaches and helmet manufacturer when his son suffered a neck injury during a junior varsity high school football game, rendering him a quadriplegic. Plaintiff alleged negligence in the failure to properly instruct, train, and supervise his son in the skills of football. The trial judge granted a summary judgment motion ruling that coaches are protected from tort liability by the doctrine of governmental immunity. The appellate court upheld this holding, reasoning that a public school in the operation of its athletic program, including the administration and supervision of a football program, is a governmental function and is entitled to immunity (Churilla, supra). Further, teachers and supervisors of the programs are entitled to governmental immunity when they have performed ther duties within the scope of their employment (Regulski v. Murphy, 326 N.W.2d 528 (1982)). A judge who dissented in this case stated that this doctrine, "leaves a

quadriplegic uncompensated for injuries allegedly due to someone else's negligence or an approach that forces the student to realize the risks ahead of time, but compensates him through insurance."

Where negligence action against the school district alleged failure to instruct the students regarding running the bases and sliding techniques used in softball, failure to maintain a first base line and provide a secure first base, and failure to provide a safe field, the appellate court reversed the finding for the plaintiff student for $62,420.65. Plaintiff sustained an injury to the ankle and knee when covering first base and was hit from behind by the batter who slid into first base, moved the base, and knocked plaintiff to the ground.

The appellate court ruled that absent proof of willful and wanton misconduct, educators are immune from tort liability for personal injuries sustained by students during school activities (Kobylanski, supra). To impose liability upon educators, a plaintiff must allege and establish that when the educators acted, or failed to act, it was with knowledge that such conduct posed a high probability of serious physical harm to others. Also, to constitute willful and wanton misconduct, the educator must be conscious, or should have been conscious, of the risks and

dangerous consequences of the act or failure to act (Pomrehn v. Crete-Monee High School District, 427 N.E.2d 1387 (1981)).

The school district was found not guilty of willful and wanton misconduct and thus was immune from tort liability where the school district maintained an established curriculum regarding the teaching of softball in physical education classes, the student's physical education teacher adequately supervised softball games, and the students in the class, including plaintiff, had substantial experience playing baseball and softball. Also, there was no showing of a substantial defect in the field or equipment, the condition of the field was not shown to have in any way been the cause of the injury, and the failure to employ a secured first base did not amount to willful and wanton misconduct. Weiss v. Collinsville Community Unit School District No. 10, 456 N.E. 2d 614 (Ill.App.5 Dist. 1983).

Adequacy of Supervision

Recovery by Plaintiff

The Supreme Court of Oregon reversed the decision and remanded to the trial court to reinstate judgment for plaintiff where a 61-year-old school cafeteria employee suffered a broken hip when she was knocked to the floor by

students playing ball as she walked across the school gymnasium floor. Plaintiff, who was on a medical leave of absence from her job, was attending, by invitation, a birthday party for the school cafeteria manager. The teacher responsible for the supervision of the students playing in the gymnasium was not present as the plaintiff and cafeteria manager walked across the gymnasium floor to the cafeteria.

The court held that where plaintiff was lawfully on the premises, whether she was an invitee or licensee, defendant school district had an obligation to exercise reasonable care in the conduct of its activities. Evidence that teachers were instructed not to leave classes unsupervised and that occasions such as the one attended by plaintiff were common and condoned by the school administration supported the jury's conclusion that failure to supervise the physically active gym class was conduct creating an unreasonable risk of injury to plaintiff. Ragnone v. Portland School District No. 1J, 633 P.2d 1287 (Or. 1981).

Judgment for Defendant

The Board of Education was not liable for injuries suffered by plaintiff while he was shooting baskets in the school gymnasium after school hours. The open gym was made available as a Jersey City Recreation Department activity.

The supervisor present was sitting at a desk at the door reading a newspaper at the time of the accident. The appellate court judge found no causative nexus between the school board and the accident where the board's only connection in any respect was that it owned the building. No defect in the premises was suggested and no facts were presented which might impose on the board any duty to supervise. The city was also not liable for plaintiff's injuries, where it was immune for alleged failure to provide supervision, and evidence did not support any inference of assumed supervision. Morris v. City of Jersey City, 432 A.2d 553 (N.J.Super.A.D. 1981).

In a playground accident, negligence action was brought against the school district by the mother of a 12-year-old boy who was struck in the mouth by a rock thrown by another child while he was playing basketball on the paved area of the playground during noon recess. Approximately 170 students were playing in the yard with three school teachers on duty to supervise. The appellate court found that the record supported the trial court's conclusion that the playground area was well supervised and that this incident happened so quickly that it was over before the teachers were aware of it despite the fact that they were right on the scene performing their duties. The law requires that

such supervision be reasonable, but there is no requirement that the supervisor have every child under constant scrutiny. Evidence also indicated that the dirt portion of the school playground was not covered with rocks or debris, but that rocks would occasionally come to the surface as a result of use of the area, and thus the unpaved area did not constitute an unreasonably hazardous condition. Hampton v. Orleans Parish School Board, 422 So.2d 202 (La.App. 1982).

The holding of the trial court for plaintiff was reversed in another playground suit on the finding that there was no showing that a violation of the reasonable standard of care was the proximate cause of the injury sustained. The trial court granted $120,000 in favor of plaintiff and $30,000 in favor of his parents for the loss of plaintiff's left eye as a result of being hit in the eye by a stick thrown by another kindergarten student. The appellate court did not find a failure to exercise reasonable supervision or breach of duty on the part of the school district as the operative supervisory plan was being followed. The court determined that the injury was a consequence of an unforeseeable, intervening act of a third party which could neither be anticipated nor prevented and for which the District cannot be held liable under the common law tort principles of negligence and proximate

cause. District of Columbia v. Cassidy, 465 A.2d 395 (D.C.App. 1983).

In Smith v. Vernon Parish School Board, 442 So.2d 1319 (La.App.3 Cir. 1983), 15-year-old plaintiff sustained a broken right wrist and arm when she fell while bouncing on the trampoline with four of her classmates. The facts of this case indicate that plaintiff, who had received more than four years of instruction in the use of trampolines, was using the trampoline set up on the stage of the gymnasium with her classmates. As per the steadfast and absolute rule of the instructor regarding no more than two persons jumping on the trampoline at any time, two students began bouncing on it while the instructor watched for a few minutes. The instructor then left the stage to talk to another teacher who was conducting a class in the gymnasium. The curtain was closed on the stage and after a classmate was sent to make sure the instructor could not see them, five girls mounted the trampoline and began bouncing. After one bounce, all five fell to the trampoline mat and plaintiff was injured.

After consideration of all of the circumstances surrounding the accident, the court concluded that defendant exercised reasonable supervision over the girls and that his absence from the area for a few minutes was not a breach of

the reasonable care rule. The teacher was not found negligent in his supervision, where he repeatedly instructed students that no more than two persons were to jump on the trampoline at the same time, and the students were well aware of the rule and the fact that a violation of it would increase risk of injury. It was also ruled that the trampoline was not an inherently dangerous object requiring a greater degree of care, and had the students followed the instructions of the teacher, the activity was not one where it was reasonably foreseeable that an accident or injury might occur.

Governmental Immunity

Tort action was brought against an elementary school teacher and the school principal where a minor plaintiff was seriously and permanently injured while playing the game "kill" during recess. A substitute teacher was present for defendant teacher on the day of the accident, however, plaintiff alleged that defendant teacher negligently breached his duty to supervise the recreational activities of his students and had allowed the students to play "kill" during recess on numerous occasions. Allegations against the school principal included a negligent breach of duty to supervise techers and set rules and guidelines for the safety of minor pupils under her supervision, and a

negligent breach of duty to supervise school instructors and substitutes so that they would act in a safe and prudent manner. Testimony indicated that the principal had observed the game of "kill" being played on the school grounds on numerous occasions and had failed to stop the game.

The trial court granted judgment for both defendants on the basis of governmental immunity in the State of Michigan. The appellate court upheld this verdict for the teacher, but reversed it as to the school principal. The higher court reasoned that the defendant teacher could not have breached any duty since he was not present nor were any children placed in his charge at the time of plaintiff's injury. For the school principal, even though her supervisory powers are incident to her public function, she has a duty to reasonably exercise these powers in such a way as to minimize injury to students in her charge. Where the principal negligently performs this duty, governmental immunity does not operate to insulate her from all liability. Cook v. Bennett, 288 N.W.2d 609 (Mich.App. 1980).

In a similar case, the decision in Cook, supra, was followed where action was brought against the athletic director, high school principal, school superintendent, and the school district when a 15-year-old boy fell and received

injuries resulting in paraplegia while attending the first of a scheduled series of weight lifting training sessions in preparation for the high school football team. Allegations included negligent supervision of the coach in allowing him to abuse students and to threaten and pressure them into attempting athletic feats beyond their capabilities, and that the gymnasium facilities were inadequate and defective because a lack of sufficient ventilation caused plaintiff to perspire excessively, thus contributing to his injuries.

As in Cook, the trial court accelerated judgment to the defendants on the grounds of governmental immunity. The appellate court reversed this decision in part, affirmed in part, and remanded for trial. This court held that a lack of supervision, not a defect in the building, was the cause of the injury and, thus, the allegation did not fall within the statutory public building exception to governmental immunity. The decision was affirmed where possible negligence of the coach and other school employees could not be imparted to the school superintendent merely because he was in a supervisory position. The school principal was not protected by governmental immunity where he had a duty to reasonably exercise supervisory power over the actions of the coach and use and condition of the facilities. Whether the school athletic director was negligent was a question to

be left to the jury. Vargo v. Svitchan, 301 N.W.2d 1 (Mich.App. 1981).

The school district, school board, the nine school board members, the superintendent, the school principal, a teacher, and another student were all named as defendants in an action stemming from an incident where a high school girl was assaulted by a high school boy. The Supreme Court of South Carolina affirmed the lower court's ruling to sustain demurrers by the school district and school officials and that trial may proceed only against the remaining defendants. The court upheld that neither the state nor any of its political subdivisions is liable in an action ex delicto unless express statutory provision to that effect has been made. Action was barred, therefore, on grounds of sovereign immunity insofar as such complaint was against the school. Tucker v. Kershaw County School District and Board of Trustees, 279 S.E.2d 378 (S.C. 1981).

In an action against the school district for injuries sustained in a high school football game, it was alleged that the school district failed to employ trained personnel, failed to supervise its employees properly, failed to promulgate and enforce staff rules for procedures to be taken when students are injured, and that the school

district and employees failed to provide plaintiff student with prompt medical attention when he was injured. Judgment was granted to the defendant whereas a school district is immune from suit under the Political Tort Claims Act. Appellant's allegations of district personnel negligence did not fall within the eight enumerated exceptions to that general rule. Wimbish v. School District of Penn Hills, 430 A.2d 710 (Pa.Cmwlth. 1981).

In Everhart v. Board of Education of Roseville Community Schools, 310 N.W. 2d 338 (Mich.App. 1981), summary judgment was granted to the defendant school board, principal, and teacher on the authority of Churilla, supra; Smith v. Mimnaugh, 306 N.W.2d 545 (1981); Deaner v. Utica Community School District, 297 N.W.2d 625 (1980); and Bush, supra. Where an elementary school student was struck and knocked to the paved school playground by another student who was running during recess, the defendants were alleged to have intentionally or negligently created a nuisance by failing to hire and supervise competent personnel, to instruct students on proper conduct, and to warn students of danger. Based on Bush, supra, the review of the law lead the court to conclude that the prevalent and correct standard is that the operation of a public school is a governmental function and that employee actions performed

within the scope of a governmental function are cloaked with governmental immunity.

Action against the school district by a member of the high school girls' varsity softball team, brought allegations that the school district was guilty of willful and wanton misconduct in intentional action in preventing the designated supervisor from being present at the practice site when the girls arrived prior to the scheduled practice time. The facts of this case are as follows. Softball practice was held at 5:50 p.m. at a nearby elementary school. Freshman and sophomores were transported to the field by school bus, where upperclassmen supplied their own transportation. The team coach was required to remain at the school until 5:45 p.m. under her duties as a teacher under split shift attendance procedures, although it was common for teachers to leave at 5:30 p.m. Prior to the date of the accident, the coach left the school at 5:30 p.m. and arrived at the practice field at 5:35 p.m. and was usually there as the girls arrived from school. The previous day she had been requested to remain at school until the mandated time of 5:45 p.m. (such action being taken by the principal for harassment purposes in response to several discrimination suits filed by the coach against the school district).

Plaintiff arrived at practice at 5:30 p.m. and shortly thereafter left in another girl's car to run a personal errand. Upon returning to the practice field, plaintiff rode on the trunk of the car and was thrown off the back when the driver attempted a left turn off the roadway onto a grassy area adjacent to the playing field. As a result of the fall, plaintiff sustained severe and permanent brain injury.

In granting summary judgment to the defendant school district based on governmental immunity, the court reasoned that to sustain a claim of willful and wanton misconduct, plaintiff must allege and establish that when defendant acted, or failed to act, he had knowledge, or should have had knowledge under the circumstances, that his conduct posed a high probability of serious physical harm to others. It was determined that, by preventing the coach from arriving at the field prior to 5:45 p.m. for a 5:50 p.m. practice, the school district did not recklessly disregard probable injurious consequences to team members. There was no evidence of any special dangers present during the time between the end of classes and the beginning of softball practice, or of prior problems or hazards with the softball team members, or the practice area. The court further stated that:

> Certainly there is a risk of injury and a danger involved in almost any gathering of teenagers. Yet this general potential for danger within groups of children is not sufficient to support a charge of wilful and wanton misconduct.

Pomrehn v. Crete-Monee High School District, 427 N.E.2d 1387 (Ill.App. 1981).

In Grames v. King, 322 N.W.2d 615 (Mich.App. 1983), the appellate court reversed the decision of the lower court and granted summary judgment to the defendants based on Churilla, supra; Deaner, supra; and Bush, supra. A member of the girls' high school basketball team brought suit against two school districts, various school employees, other students and their parents for injuries she received when assaulted in the locker room following a basketball game in the other school.

In the opinion of the court, a school district's operation of extracurricular sports programs provides opportunities to student athletes which, as a practical matter, could not be provided except through the operation of the public schools. The court also viewed such programs as adjunct to the school district's statutory mandate to provide students with physical education, and, thus, are an aspect of the school's day-to-day operations. Since the school district's planning and carrying out of the girls' basketball program was a governmental function, the suit

against the school districts and their employees was barred by governmental immunity.

Where a student was struck in the eye by an object allegedly shot at him by another student, the classroom teacher and school district were granted summary judgment under the doctrine of governmental immunity. Action for negligent supervision of the classroom was barred by a statute providing that no professional employee of any school district shall be personally liable for any act incident to or within the scope of his duties of his position of employment. Total immunity exists for professional school employees except in circumstances where disciplining a student the employee uses excessive force or his negligence results in bodily injury to the student. Diggs v. Bales, 667 S.W.2d 916 (Tex.App.5 Dist. 1984).

Adequacy and Safety of Facilities and Equipment

Recovery by Plaintiff

Plaintiff received an award of $7,500 for pain, disfigurement, and future cosmetic surgery expenses where her six-year-old daughter lacerated the inside of her left thigh when she slid down a tetherball pole, which was next to the monkey bars and which had a protruding screw. The accident occurred during free play on the playground before

school and where approximately 150 to 180 children in the school yard were under the supervision of one teacher.

The school board was found liable for lack of adequate supervision and for the location and condition of the tetherball pole. The court stated that:

> There is no explanation why the pole was located next to the bars. The fact that it was situated in such close proximity provided a natural inclination or impulse for a young child to switch from the bars to the pole and slide to the ground. The pole, in proper use and without the protruding screw, is not per se dangerous, however, when situated next to the bars with its protruding screw the pole becomes a dangerous instrumentality. In fact, it was foreseeable that a child using the bars would be tempted to swing over to the pole.

Gibbons v. Orleans Parish School Board, 391 So.2d 976 (La.App. 1980).

Plaintiff recovered $1,400,000 for wrongful death where the railing gave way when the decedent grabbed hold of it in his attempt to climb up from a stepladder to a platform in the school gymnasium. Evidence sustained the finding of negligence on the part of the school district in that the nut and bolt which should have secured the railing around the platform were not in place, that the school had no program of preventive maintenance or inspection of the facilities in the gymnasium, and testimony indicated that the construction of the railing and post was not in

accordance with proper construction practice. Testimony that platforms in the school gymnasium were used extensively for various school functions, that students would often go up on them without permission, and that students had been seen hanging onto the railings and doing sommersaults on them sustained the determination that it was foreseeable that injury would occur if the railings were not properly constructed or maintained. Woodring v. Board of Education of Manhasset Union Free School District, 435 N.Y.S.2d 52 (App.Div. 1981).

In Wilkinson v. Hartford Accident and Indemnity Company, 411 So.2d 22 (La. 1982), the trial court improperly found that injured plaintiff was contributorily negligent where the appellate court determined that negligence of the school board was the sole cause of the accident. This suit was brought against the athletic coach, the school board, and the school's liability insurer when a 12-year-old boy received multiple cuts to his arms and right leg when he crashed through a plate glass panel in the foyer of the gymnasium.

The facts of this case indicate that relay races were being conducted between two teams at a time in a seventh grade physical education class. Teams were instructed to sit along the wall of the gym and await their next turn.

While the boys had been instructed not to linger or engage in horseplay in the lobby, they were permitted to go into the lobby to get water from the fountains. Plaintiff and the other members of his team went into the lobby for a drink of water and decided to conduct a race of their own to determine the order of position for the next race. Plaintiff was running at full speed when he pushed off the glass panel with both hands, causing the glass to break, whereupon he fell through the glass onto the outside of the building.

The school board was found negligent since it had actual and constructive knowledge that existence of plate glass in the gymnasium foyer was dangerous. An identical panel had been broken several years earlier when a visiting coach walked into it and had been replaced by safety glass. Also, the location of the plate glass being less than five feet from the traffic pattern to the basketball court was so inherently dangerous that school authorities should have known of the hazard it created. Further, although the class had been warned not to engage in horseplay in the lobby, participating in an unsupervised race in the foyer was considered to be normal behavior for 12-year-old boys under the circumstances and that plaintiff had no reason to be aware that the panel through which he fell was plate glass

as opposed to safety glass or to anticipate that pushing against the panel would cause it to shatter.

Tort action by a nine-year-old boy and his father against the school district stemmed from injuries sustained by the boy who, while playing the position of catcher during an after-hours softball game in the school yard, was accidentally hit in the head by the batter. Plaintiffs alleged that the close placement of home plate to the backing fence involved an unreasonable risk of harm to the student catcher. The small markings had been placed on the school ground several years earlier for the game of pimpleball.

The appellate court ruled that summary judgment granted by the trial court for the school district was improper where the boy was a public invitee in that the school district had a policy of allowing access to the school yard by children in the neighborhood. Further, the school district should have realized that placement of home plate close to the backing fence involved an unreasonable risk of harm to young children who might lack a full appreciation of the potential danger. Bersani v. School District of Philadelphia, 456 A.2d 151 (Pa.Super. 1982).

In negligence action against the physical education teacher, the school district, and manufacturer of the vaulting horse, plaintiff alleged that insufficient matting around the horse resulted in permanent injury to plaintiff's right leg when one of her fingers got stuck in a hole on top of the horse that had been left by removal of the handles. The appellate court held that the trial court erred in granting a directed verdict to all defendants. The court upheld summary judgment on the part of the manufacturer as insufficient evidence of negligence was shown. It was determined that the question of negligence on the part of the teacher and school district is one of fact for the jury. Expert testimony was not essential to enable a lay jury to determine whether a teacher of ordinary prudence would have used the vaulting horse despite two holes in its surface, and credibility of the student's testimony and the likelihood that the accident happened as the plaintiff described were questions for the jury to resolve. The case was, therefore, reversed and remanded for trial. Tiemann v. Independent School District #740, 331 N.W.2d 250 (Minn. 1983).

The school district was held liable for injuries sustained by an elementary school student when a concrete-filled tetherball stand, that was being pushed around the

playground during noon recess by other students, had rolled over plaintiff's hand. Plaintiff recovered $5,000 for her injuries where the school employees had been negligent in allowing students access to the stand for any purpose other than volleyball or tetherball in that previous problems had arisen with students playing with the stands despite warnings not to do so by the principal. Though the stands were not held to be inherently dangerous, prior misuse of them by students, together with the principal's knowledge of such continued misuse and possibility of injury, required that measures be taken to prevent access to the stands (Gibbons, supra). It was also determined that the school yard was inadequately supervised at the time of the accident. Santee v. Orleans Parish School Board, 430 So.2d 254 (La.App.4 Cir. 1983).

A nine-year-old boy, accompanied by his parents to a dance revue at the school, went for a drink of water with his cousin, saw the gymnasium open with boys playing on the gymnastic rings, began playing on the rings with the other boys, and was injured when he fell to the floor. Action was brought against the school board and dance school leasing the auditorium at the school.

The trial court found the school board and the dance school liable jointly and in solido. The appellate court

affirmed the finding against the school board, but reversed the decision as to the dance school. This court found that the school board had breached its duty to follow its own policy to lock the gymnasium and secure the rings. The dance school, however, had leased and was only authorized to use the auditorium, not the gymnasium where the injuries occurred. The court judge stated that, "Clearly a leasee cannot be held liable on the basis of his lease for injuries occurring outside of the leased premises." Dunne v. Orleans Parish School Board, 444 So.2d 1317 (La.App.4 Cir. 1984).

Sixteen-year-old plaintiff was awarded $5 million in a negligence suit against the school district, high school, and manufacturer of the mini-trampoline where she became permanently paralyzed after landing on her neck and severing her spine. Plaintiff, a beginner gymnast, had first performed two somersaults off the mini-tramp. On the third somersault, at the point when her feet were straight up and down above her, she felt a sharp pain in her knee, was unable to properly complete the somersault, and collapsed onto a nearby mat. Two coaches were present in the gym at the time of the accident. Warning labels were on the mini-tramp bed side facing the ground and on the frame under the protective padding.

The court determined that there was sufficient evidence from which a jury could conclude that the manufacturer's warnings were ineffective, including the fact that the warnings did not specify risk of severe spinal cord injury which would result in permanent paralysis if somersaulting were performed without a spotter or safety harness, and that assembly instructions failed to specify that warning labels should be placed in such a manner that it would be clearly visible to a gymnast. The court further stated that:

> In a strict liability action, a manufacturer may remain a contributing cause of an injury if the intervening acts or omissions of others were foreseeable. There was sufficient evidence to support jury's finding that it was objectively foreseeable that minitrampoline users such as student would not always be under direct supervision of a coach and neither a gymnast nor a coach would have sufficient knowledge of dangers of the minitrampoline because the warnings were inadequate.

Plaintiff recovered $3.4 million from the manufacturer, AMF, and $1.6 million from the school district. Pell v. Victor J. Andrew High School, 462 N.E.2d 858 (Ill.App.1 Dist. 1984).

Judgment for Defendant

In action by a spectator at a high school baseball game against the school district to recover for injuries sustained when the spectator was struck in the eye by a foul ball as she stood behind the fence along the third base

line, the trial court erred in entering judgment on a jury verdict in plaintiff's favor. The appellate court judge held that, in exercise of reasonable care, the proprietor of a ball park need only to provide screening for the area of the field behind home plate where the danger of being struck by the ball is the greatest, with screening to be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game. Where the school district equipped its field with a backstop which was 24 feet high and 50 feet wide, and where plaintiff presented no evidence that this backstop was inadequate, the defendant fulfilled its duty to the plaintiff and cannot be held in negligence when she selected a position that was outside the area screened. Akins v. Glens Falls City School District, 441 N.Y.S.2d 644 (Ct.App. 1981).

A personal injury suit was brought against two districts by a basketball referee for injuries he sustained when he slipped and fell during a game in an area within the gym where moisture had accumulated on the floor surface from a ceiling leak. Plaintiff claimed that the condition of the gym floor surface was the proximate cause of his injury and that defendants had knowledge of the wet condition of the floor, but had failed to notify or appraise the plaintiff of such fact.

It was explained that the rulings of the trial court on motions for a directed verdict or motions to dismiss at the end of the evidence should not be confused with the decision of the court after a review of the evidence. In the former, the court directs or dismisses as a matter of law, but in the latter, the findings are equivalent to a verdict of the jury and, unless clearly wrong, will not be overturned by the appellate court. In this case, a review of the evidence raised factual questions and, when considered in light most favorable to the appellee school districts, supported the trial court's decision against the plaintiff. Studley v. School District No. 38 of Hall County, 316 N.W.2d 603 (Neb. 1982).

Governmental Immunity

Where a 10-year-old girl suffered a fracture of her left leg when the swing she was on broke, it was ruled that the furnishing of swings for the use of school children on the school playground during school hours is a governmental function since generally all authorized functions of the school district are of governmental character. The court stated that the State Supreme Court had recently pointed that any waiver of governmental immunity is a matter to be addressed by the legislature (Barr v. Bernhard, 562 S.W.2d 844 (1978)). That court further pointed out that a school

district is an agency of the state and while exercising governmental functions it is not answerable for its negligence in a suit sounding in tort except for the limited waiver of immunity regarding the use of motor vehicles (Garza v. Edinburgh Consolidated Independent School District, 576 S.W.2d 916 (1979)). This court went on to state that the application of governmental immunity to school districts has a rational and reasonable basis as required by the Constitutions of the United States and Texas, since the public school system benefits the entire state and payments of private claims would divert money from schools and would thereby impair the quality and availability of public education. Duson v. Midland County Independent School District, 627 S.W.2d 428 (Tex.App. 1981).

In action against the county school district, the board of education, school administrators, the physical education teacher, and individual members of the board of education for the wrongful death of an elementary school student who was fatally injured when a metal soccer goal fell and struck her as she knelt to tie her shoe, the doctrine of sovereign immunity shielded all defendants from liability. It was reasoned that all defendants acted within the scope of their authority with regard to the installation of the soccer goal, even though it was paid for by community groups and

was intended for joint use by the school and several community agencies. Further, it was determined that the individual defendants were entitled to sovereign immunity in that they acted in their public capacities in discretionary roles and that they acted without wilfulness, malice, or corruption. In a final statement, the judges of the court said:

> In summary, it appears that the doctrine of sovereign immunity effectively shields all the defendants in this case from liability for the tragic death of plaintiff's daughter. Whatever our personal feelings concerning the justness of that doctrine, we are bound by our oaths to apply the law. Sovereign immunity is the law applicable to this case.

Truelove v. Wilson, 285 S.E.2d 556 (Ga.App. 1981).

In Lee v. School District of City of Highland Park, 324 N.W.2d 632 (Mich.App. 1982), a four-year-old preschool girl suffered a broken left hip when a ping-pong table leaning against the wall in the school playroom fell on her. Action was brought against the school district under the public building exception to the governmental immunity doctrine claiming that the school playroom was in a dangerous or defective condition. The court restated that the operation of a public school is a governmental function within the governmental immunity doctrine (Deaner, supra). It was also

determined that the building exception to the doctrine was inapplicable in that the source of the injury was not a dangerous or defective condition of the building, but that the danger to the student arose from the absence of or negligent supervision of the children by their teacher.

The doctrine of attractive nuisance was not applicable to negate the school district's immunity from liability in an action to recover damages for injuries sustained and expenses incurred when a child fell from a swing in a public school playground. Plaintiffs who did not allege willful or wanton misconduct did not state a cause of action against the school district, as the district enjoyed immunity based on the condition that the property was used as a playground. Jackson v. Board of Education of City of Chicago, 441 N.E.2d 120 (Ill.App. 1982).

The school board was statutorily immune from liability when a mildly retarded youngster suffered serious and permanent brain damage after falling eight feet from the bleachers to the floor in a school gymnasium leased to the city. The trial court order dismissing the action of the minor against the city, however, was reversed where it was determined that the complaint, which alleged that notice of the minor's personal injury claim had been given to the

city, but which did not reflect how, when or by whom, the notice was allegedly given, was sufficient to state a cause of action against the city. Plemmons by Teeter v. City of Gastonia, 302 S.E.2d 905 (N.C.App. 1983).

Negligence action was brought against the school district and baseball coach under the real property exception to the Political Subdivision Tort Claims Act for injuries sustained during junior varsity baseball team practice. Plaintiff suffered permanent loss of vision in his right eye when he was hit in the eye, while rounding the bases, by a line drive batted by the coach. Summary judgment was granted to the school district where it was determined that the accident was not caused by negligence on the part of the school district or its employees in the care, custody and control of its real estate. Rather, the cause was the action of the baseball coach in hitting a line drive while a player was rounding the bases. No determination had been made as to whether the coach's actions constituted negligence. Even if such actions were negligent, however, it would not impose liability on the school district. Lewis by Keller v. Hatboro-Horsham School District, 465 A.2d 1090 (Pa.Cmwlth. 1983).

Summary judgment was granted to the county board of education on the authority of Sims v. Etowah County Board of Education, 337 So.2d 1310 (1976) and Brown v. Calhoun County Board of Education, 432 So.2d 1230 (1982) where plaintiff was injured while playing basketball in the gymnasium when her hand struck and shattered glass windows in a door located in close proximity to the edge of the basketball court. The court stated that county boards of education are not agencies of the counties, but are local agencies of the state, charged by the legislature with the task of supervising public education within the counties. They execute a state function, not a county function, and, therefore, partake of the state's immunity from suit to the extent that the legislature authorizes. Hutt v. Etowah County Board of Education, 454 So.2d 973 (Ala. 1984).

Adequacy and Safety of Protective Equipment

Recovery by Plaintiff

The school district was found negligent in failing to provide helmets and faceguards and, thus, was held liable for injuries sustained by a high school girl in a "powderpuff" football game. Plaintiff was playing quarterback on the junior girls' team where upon throwing a pass to a teammate was struck in the face by an opposing

player, and was knocked down with the back of her head striking the ground with considerable force. Plaintiff suffered a small linear fracture of the nasal bone, permanent brain damage, and abnormal brain wave patterns manifesting in a change of her behavior.

Plaintiff was awarded $60,000 on the basis of ordinary negligence in failing to provide adequate and appropriate equipment for the game. The district was also found guilty of willful and wanton misconduct in failing to adequately supervise the game, where teachers coached the girls, where minimal instruction on football rules was given to the girls prior to the game, and where no equipment was furnished for use in the game. It was held that the school district had an affirmative duty to furnish equipment to prevent serious injuries to students who engage in school activities whether they are extracurricular or formally authorized as part of the school program. Lynch v. Board of Education of Collinsville Community Unit District No. 10, 412 N.E.2d 447 (Ill. 1980).

The Supreme Court of Pennsylvania reversed and remanded for trial the lower court's findings where a 16-year-old boy received an injury resulting in blindness in one eye due to a detached retina while engaged in a game of "jungle" football. In action against the school district, two

football coaches, and another student, the trial court granted the defendant's motion for compulsory nonsuit as a matter of law based on the student's supposed assumption of risk, and the appellate court affirmed this decision.

In reversing, the Supreme Court reasoned that a former football coach with specialized knowledge should have been allowed to testify as an expert in support of the theory that the coaches of the football team were not conducting summer football practice sessions in conformity with the safety standards maintained in other Pennsylvania high schools. Also, the game of "jungle" football, in which tackling and body blocking occurred, in which no equipment was used, and in which the players attempted to impress the coaches, who were themselves engaged in the game, presented a jury question as to the dangerousness of the game. A jury question was also presented as to the negligence of the coaches in not providing equipment and in not monitoring play. Whether the student was compelled to accept the risk of playing "jungle" football in order to exercise or protect his right or privilege to make the team was a question for the jury on the issue of whether acceptance of risk was other than voluntary so as to preclude the defense of assumption of risk. Rutter v. Northeastern Beaver County School District, 437 A.2d 1198 (Pa. 1981).

Civil tort action was brought against the football helmet manufacturer where a high school student suffered a fracture dislocation at the level of the fifth and sixth cervical vertebrae resulting in quadriplegia while attempting to make a tackle in a varsity high school football game. The suit was brought to court alleging five counts of negligence, including strict product liability, negligence, willful and wanton negligence, breach of warranty, and strict product liability seeking punitive damages based upon defendant's alleged knowledge of the unreasonably dangerous condition of the helmet.

Plaintiff dismissed the two negligence counts prior to trial and the trial court held for the defendant. This finding was reversed and remanded for a new trial because, in the opinion of the appellate court, the prejudicial effect of several errors afforded an unfair advantage to the defendant at trial. Galindo v. Riddell, Inc., 437 N.E.2d 376 (Ill.App. 1982).

Judgement for Defendant

The jury ruled in favor of the defendant school board and gymnastics team coach where a 16-year-old student suffered paralysis from a spinal injury incurred when he landed on his back during a dismount from the still rings. It was determined that, though a safety belt was concededly

not available to the student for use in the still rings exercise during which he was injured, the safety belt would not normally have been used at the time of the routine and dismount in question, and that the assertion that prior availability of such a safety belt would have allowed the student to better learn the dismount, was speculative. It was also concluded that though the student's expert had testified that the gym was unsafe due to an insufficiency of mats to adequately supply every piece of equipment in the gym, witnesses did not show that more matting would have prevented the injury, and that the amount of matting used by the coach at the time of the injury was the maximum allowed during competitions and was used by the coach at the time to simulate the conditions that would prevail during competition that had been scheduled three days after the accident. Therefore, there was no showing that the school board negligently failed to provide adequate safety equipment. Montag v. Board of Education, School District No. 40, Rock Island County, 446 N.E.2d 299 (Ill.App.3 Dist. 1983).

Governmental Immunity

(no cases reported)

Other Related Cases

Recovery by Plaintiff

Tort action was brought against the school district, the school coaching and athletic staff, and the Oregon School Activities Association (OSAA) by a 15-year-old boy who sustained a neck injury on the second day of preseason football practice, leaving him a quadriplegic. The facts of this case indicate that a contact scrimmage was conducted on the day of the incident, despite an advisory recommendation of the school district against such contact during the first week of practice. The injury occurred when plaintiff tackled another player using his helmet as the point of contact. There was evidence that plaintiff had used the same tackling technique on previous plays during the practice and had been praised by the members of the coaching staff for the force or efficacy of his tackles. Prior to practice, however, the coaches had admonished the players against using the head-contact tackling method.

The court ruled in favor of the plaintiff on the doctrine of comparative negligence, stating that the mere fact that a private organization may have lacked the authority to regulate a public school's conduct of football activities did not absolve it of liability for failure to make safety recommendations relating to preseason contact

scrimmages. The jury found plaintiff's actual damages to be $1,800,000. It found that OSAA's comparative fault was 60 percent and that plaintiff was 40 percent at fault. The court reduced the $1,800,000 figure by 40 percent and then deducted the $100,000 settlement with the school district and its employees to arrive at the total of $980,000 in damages that plaintiff was entitled to recover from OSAA. Peterson v. Multnomah County School District No. 1, 668 P.2d 385 (Or.App. 1983).

In Coonradt v. Averill Park Central School District, 427 N.Y.S.2d 531 (App.Div. 1981), plaintiffs were granted leave to serve late notices of claim for injuries suffered during the course of two high school football games. Where a 17-year-old boy seriously injured his neck and cervical spine, his mother believed that the school district would pay for her son's medical bills. When these payments were not forthcoming five months later, she contacted an attorney and the subject Notices of Claim were served shortly thereafter. The appellate court reasoned that under the circumstances wherein the defendant had actual knowledge of the essential facts constituting the claim and plaintiff's widowed mother was understandably preoccupied following her son's injuries with maintaining a full-time job to support her six children while at the same time arranging for

special fusion surgery for her son, the trial court did not abuse its discretion in permitting tardy service to both the claim of the infant plaintiff and derivative claim of the mother.

Where a 16-year-old girl had fractured her elbow several years earlier after a fall due to a loose bar at the top of a slide, it was ruled that the claimant should have been permitted to serve a late notice of claim against the school district for injuries arising from a school yard accident when she was eleven years old. The accident had been reported to the school district the day it had occurred and the school district had paid for all or almost all of the medical expenses for surgery at that time. After the age of 16, plaintiff underwent additional surgery and claimed that the school district had initially agreed to pay the expense of the additional surgery, but then subsequently declined to do so.

The court granted the application for leave to serve a late notice of claim where the school district had actual notice of the accident on the day it occurred, and claimant's delay was attributable to both her mother's reliance upon the school district's prior willingness to assume the responsibility for medical expenses and by the fact that the full extent of the injury was not

ascertainable until the claimant attained greater physical maturity. Tetro v. Plainview-Old Bethpage Central School District, 472 N.Y.S.2d 146 (A.D.2 Dept. 1984).

In a similar case, 12-year-old plaintiff sustained an injury to his right eye when kicked by a classmate while playing football in a physical education class. The supervising teacher took the student to the school nurse, who rendered first aid and made a report of the accident. Plaintiff received some medical treatment for a period of time with the expenses borne by the school district or its insurance carrier. Over four years later, the student experienced difficulty with the eye, and an optic tumor, allegedly causally related to the injury, was surgically removed. Plaintiff's guardian was advised at that time that the school district or its carrier would no longer provide for medical expenses.

The trial court's holding for plaintiff was modified to state that the application of the guardian to file a late notice of his individual claim against the school district, which exceeded the time limited for the commencement of an action by a student against the school district, should have been dismissed. But that discretion was not abused in permitting late filing of a notice of claim against the school district, where the student was concededly an infant

when the application for late filing was made, where a detailed report containing substantially the same information as a notice of claim was given to the school district within 24 hours of the accident, and that there was no indication that the school district, through proper exercise of discovery, could not obtain complete information concerning the injuries. Welsh v. Berne-Knox-Westerlo Central School District, 479 N.Y.S.2d 567 (A.D.3 Dept. 1984).

Judgment for Defendant

The school board was alleged to be vicariously liable for the negligent supervision of its students under the doctrine of respondeat superior where plaintiff was injuried in a car accident upon returning home from a required doctor's physical examination. Prior to the opening of school, football players were instructed to obtain a physical examination as a requirement for team participation. The boys were told about a doctor in a nearby town who would administer the exam without charge that afternoon and that the exam could be taken on another day or administered by a different doctor, but such exam might involve a fee. The students were also informed that they would have to obtain their own transportation to the doctor's office. Plaintiff and two other students went to

the doctor's office for the free exam in a car driven by one of the other students. On the way back, the car swerved into the left lane, collided with a pick-up truck, and was rear-ended by the car behind. The collision inflicted injuries upon the occupants of all the vehicles.

Summary judgment was granted by the court to the school board. The court reasoned that:

> The school board has no more of a duty to transport students to a doctor's office to obtain physical examinations that it has to transport students to a store to obtain pen and paper with which to prepare work assignments. The ultimate responsibility rests, we believe, with the parents and students themselves. This case, therefore, does not raise any real issue of negligent supervision by agents of the school board.

Rawls v. Dugas, 398 So.2d 630 (La.App. 1980).

An action which held the school board vicariously liable under the doctrine of respondeat superior for the negligent conduct of an employee in wrestling with a student was reversed by the appellate court. A 17-year-old boy on the basketball team suffered a broken ankle and pulled tendons and ligaments in the ankle joint when he challenged the male coach of the girls' team to an informal wrestling match after practice. The coach accepted the invitation after being teased and goaded by the boys' coach and other members of the boys' team. During the match, plaintiff's foot became lodged between two wrestling mats, whereupon he fell and injured his ankle.

The higher court concluded that the coach did not act unreasonably in accepting the invitation of the high school student, who weighed 160 pounds and was one of the strongest athletes in the school, therefore, the school could not be held vicariously liable. It was determined that the student both knew and appreciated the risk of being injured while wrestling, despite his disclaimer, barring recovery for his injuries. Kluka v. Livingston Parish School Board, 433 So.2d 302 (La.App.1 Cir. 1983).

In Guillory v. Ortego, 449 So.2d (La.App.3 Cir. 1984), a physical education teacher was cleared by the court of the use of excessive force during a disciplinary action. The facts of this case indicate that a 16-year-old plaintiff was late for his physical education class. When the teacher inquired as to the reason for his tardiness, plaintiff failed to respond. Where the question was repeated, plaintiff replied that he had forgotten his athletic shoes and was waiting to use those of his cousin. The teacher proceeded to explain the importance of being on time and when asked if he understood, plaintiff's response was, "yeah." He was then told to respond correctly as the teacher required all students to address any member of the faculty with Sir or Mam. After plaintiff refused to comply and walked away, the teacher grabbed him by the shoulders,

turned him around and told him to say, "Yes, sir." The teacher testified that after plaintiff had properly responded he was irritated with the student and thus admits to releasing him in a forceful manner. Plaintiff was examined by a doctor on two occasions, who testified that plaintiff sustained a muscular spasm on the right side of the back above the flank and that an injury of this nature could be caused simply by stepping off a curb.

The court held that it is well settled from foregoing statutes and jurisprudence that corporal punishment, reasonable in degree, is permitted in Louisiana. It was determined that the punishment imposed on the student by the teacher was not excessive or unreasonable and that the teacher's account of the incident was most probably true. The court further reasoned that:

> Discipline is a necessary ingredient to public education. If the frail remanents of authority in our society are not totally eroded, the disciplinarians in our public school system should be encouraged not detered, from enforcing stern but reasonable discipline.

Governmental Immunity

Tort action was brought against the school district and plaintiff's doctor when he sustained a subluxation of two vertebrae, resulting in quadriplegia, while wrestling with a fellow student in physical education class. The trial court

granted summary judgment for the defendant doctor and school district. The holding for the doctor was reversed when the appellate court determined that the failure of the doctor to find a defect or disease in plaintiff is completely consistent with the theory that he was negligent in failing to find one. Where plaintiff stated in his deposition that he had not known of such a defect, it did not necessarily mean that no such defect existed, or that the doctor was not negligent in failing to find it. The school district was held immune from tort liability on grounds of governmental immunity since the operation of a public school in the State of Michigan is a uniquely governmental function. Deaner v. Utica Community School District, 297 N.W.2d 625 (Mich.App. 1980).

A dismissed complaint was affirmed in part and reversed in part and remanded for trial where it was alleged that a physical education teacher maliciously assaulted and battered a student during regular school hours. The higher court ruled that the complaint against the school board failed to state cause of action, since the state is immune from suit when a state employee does not act within the scope of his employment or acts in bad faith or with malicious purpose (District Board of Lake County, supra). However, the doctrine of sovereign immunity did not bar

cause of action against the school board for the negligent hiring or retention of the teacher, since the hiring of a teacher is an operational function for which a school board may be subject to liability. In order to state cause of action for the tort of negligent hiring or retention of the teacher, plaintiff must allege facts showing that the school board was put on notice of harmful propensities of the employee. Willis v. Dade County School Board, 411 So.2d 245 (Fla.App. 1982).

Summary

An analysis of lawsuits decided during the period of 1980 to 1984 in public school physical education, athletics, and playgrounds in the United States revealed several grounds of alleged negligence. Most cases came to court on more than one ground of negligence, but, for the purpose of chapter organization, were classified and discussed according to the primary area of alleged negligence.

The primary areas of alleged negligence found in the lawsuits of this study were standard of care, adequacy of instruction, adequacy of supervision, adequacy and safety of facilities and equipment, and adequacy and safety of protective equipment. Other related areas were grouped together and discussed in the final classification. Each

classification area was discussed according to the outcome of the case, be it recovery by the plaintiff or judgment for the defendant. As a large number of cases involving the doctrine of governmental immunity came to court during this time period, each classification area also included a discussion of such cases.

A total of 66 applicable cases were analyzed and discussed in this study. Under the primary area of alleged negligence involving the standard of care, three cases were ruled in favor of the plaintiff, five suits were held for the defendant, and seven cases upheld the doctrine of governmental immunity. Of the eight lawsuits involving the adequacy of instruction, the plaintiff recovered damages in four and the defendants enjoyed governmental immunity in four. Eight cases upheld the governmental immunity doctrine in cases based on the adequacy of supervision, with one case held for the plaintiff and four found for the defendant. Eight plaintiffs won suits which involved the adequacy and safety of facilities and equipment, with two such cases held for the defendant, and seven cases ruled on grounds of immunity. Under the area of the adequacy and safety of protective equipment, the court ruled in favor of the plaintiff in three cases and for the defendant in one suit. Lawsuits in other related areas went to the plaintiff four

times, to the defendant three times, and upheld the sovereign immunity doctrine twice. Out of all of the cases discussed in this study, a total of 23 were ruled in favor of the plaintiff, 15 suits were held for the defendant, and the doctrine of governmental immunity was upheld in 28 of the cases.

Chapter IV

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Introduction

The purpose of this study was to locate, examine, classify, and analyze lawsuits based on student injuries due to alleged negligence in public school physical education, athletics, and other related areas in the United States. In order to obtain the most recent information regarding sport-injury litigation, this study focused on those lawsuits which have been decided in the past five years. A total of 66 applicable cases were analyzed and discussed. Each case provided pertinent information with which to answer the research question of the study. Those findings and conclusions deemed most important to the field of physical education and athletics will be discussed in this final chapter.

The legal liability of schools and school personnel will be discussed in the first two sections of the chapter. As a large number of lawsuits which came to court during this time period were ruled on the grounds of governmental immunity, the details of this doctrine in those states will also be outlined. This section will be followed by a listing of the trends and patterns of the court decisions

discussed in this study. Implications of this information for the field of physical education and athletics and recommendations for further study will conclude this study.

Legal Liability of School Districts and Boards of Education

Although the rulings of the courts on some issues vary from state to state, such as the status of doctrine of governmental immunity, the majority of court decisions may be applicable to school districts and their respective boards of education in most states. The following list enumerates the legal liability of schools and school personnel as indicated by the court rulings in those lawsuits analyzed in this study:

1) School district employees have an obligation to exercise reasonable care in the conduct of all activities. A school district's board may be held negligent for failure to exercise reasonable care under the circumstances, except in those states in which the doctrine of governmental immunity still exists.

2) A duty of care is imposed on a school board to provide for the safety and welfare of its students. A school has the duty to children to exercise such care for them as parents of ordinary prudence would observe in

comparable circumstances. The degree of care owed increases with the immaturity of the child.

3) School district employees have the duty to act in such a manner as to minimize the possibility of injuries to students and must exercise ordinary care to keep its premises and facilities in reasonably safe condition.

4) A school district may be liable for improper maintenance and improper construction of facilities. A school may be held negligent for an aspect of a facility that it knows, or should know, creates a hazard.

5) A school district may be found negligent for failure to provide proper supervision, instruction, and equipment.

6) A school district has an affirmative duty to furnish equipment to prevent serious injuries to students who engage in school activities whether they are extracurricular or formally authorized as part of the school program.

7) A school district can be held to be comparatively negligent in some states.

8) A school board may be held liable for the negligence of its employees under the doctrine of respondeat superior in some states, although this doctrine no longer applies in most instances.

9) A school district may be legally responsible for medical expenses until after a student reaches physical maturity, even after an extended period of time.

10) A school district is not liable for injuries where the only connection is that it owns the facility and there is no evidence of a duty to supervise or assume supervision.

11) A school district is not guilty of willful or wanton misconduct where it maintains an established curriculum regarding the activity, where the teacher adequately supervises the activity, and where there is no showing of a substantial defect in the facilities or equipment.

12) A school is not responsible for the transportation of students to the doctor's office to obtain the physical examination required for participation in physical education and athletics.

Legal Liability of Physical Education Teachers and Athletic Coaches

The legal liability of school personnel is also dependent on specific state statutes and court decisions. With the exception of those states in which the doctrine of governmental immunity still exists, the liability of physical education teachers and athletic coaches as

determined by recent court decisions is applicable in most states. The following is a listing of specific liabilities as determined by these decisions:

1) Teachers and coaches may be found negligent in jeopardizing the safety of a student by submitting him to an unreasonable risk of harm.

2) Teachers and coaches may be liable for negligence for failure to adequately instruct the students in the activity.

3) Teachers and coaches may be held negligent for failure to adequately supervise and maintain control of the students under their care.

4) Supervision must be reasonable, with the amount of necessary supervision increasing in direct proportion to an increase in the risk of injury to students.

5) The duty to warn contemplates the opportunity to know of the danger and to have time to communicate it to others.

6) In some states in which the doctrine of governmental immunity still exists, teachers and coaches are immune from suit where alleged negligent in the performance of their duties within the scope of their employment.

7) In other states with an existing immunity doctrine, a school employee may be made party defendant in an action

for personal injuries allegedly occasioned by the employee's negligence while acting in the scope of his employment.

Status of Governmental Immunity

Although the doctrine of governmental immunity has been abrogated by most states, a large number of lawsuits came to court in the last five years in states where the doctrine still exists. Twenty-eight suits in 12 states out of the 66 cases analyzed and discussed in this study were ruled on the basis of governmental immunity (Appendix D). Just as all laws vary from state to state, so do the provisions of this doctrine. The following is an outline of some of the varying state stipulations of governmental immunity:

1) The day-to-day operation of a public school is a governmental function and, therefore, is entitled to immunity in the State of Michigan. A public school, in the administration and supervision of its athletic program, is engaged in a governmental function.

2) Even though his supervisory powers are incident to his public function, a school principal in the State of Michigan has a duty to reasonably exercise these powers in such a way as to minimize injury to students in his charge. Where the principal negligently performs this duty, governmental immunity does not operate to insulate him from

all liability. The school principal is not protected by governmental immunity where he has a duty to reasonably exercise supervisory power over the actions of school personnel and use and condition of the facilities.

3) Total immunity exists for professional school employees in the State of Texas except in circumstances where disciplining a student, the employee uses excessive force or his negligence results in bodily injury to the student.

4) The application of governmental immunity to school districts has a rational and reasonable basis as required by the Constitutions of the United States and Texas, since the public school system benefits the entire state and payments of private claims would divert money from schools and would thereby impair the quality and availability of public education.

5) In the State of Florida, individual suit against a state employee, but not against the state, is possible whenever the employee is not acting within the scope of his employment or, while within his employment, is acting in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

6) The doctrine of sovereign immunity in the State of Florida does not bar cause of action against the school board for the negligent hiring or retention of a teacher, since the hiring of a teacher is an operational function for which a school board may be subject to liability.

7) In the absence of proof of willful and wanton misconduct, educators are immune from tort liability for personal injuries sustained by students during school activities in the State of Illinois.

8) Immunity in Illinois is not rendered inapplicable where the school district and coach allegedly violate state association rules.

9) The purchase of liability insurance does not waive sovereign immunity in the State of South Dakota.

10) The doctrine of immunity in Missouri permits tort claims only for those whose injuries arise from public employee's operation of a motor vehicle or conditions of a public entity's property.

11) In another Missouri case, the doctrine afforded to the school district does not, however, extend to physical education instructors where the students alleges that the teachers acted individually and not as a representative of the school.

12) Governmental immunity in Pennsylvania falls within the Political Tort Claims Act, with eight exceptions to the general rule.

Trends and Patterns of Court Decisions

The most obvious fact of the recent court decisions researched in this study is that the law varies from state to state. The findings of this study did, however, indicate several trends in common law practice. These trends and patterns are as follows:

1) The doctrine of governmental immunity exists in the states of Alabama, Florida, Georgia, Illinois, Michigan, Missouri, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, and Texas.

2) The defenses of negligence and assumption of risk have diminished in recent years.

3) The defense of comparative negligence is a growing legal doctrine, statutorily provided by more and more states.

4) In lawsuits based on the standard of care, the majority of cases were ruled in favor of the defendants, either on the evidence or on the grounds of immunity.

5) The distribution of outcome was even in number between the plaintiff and defendant in cases involving the adequacy of instruction.

6) The court ruled in favor of the defendants in most of the cases involving the adequacy of supervision.

7) Where the alleged negligence involved the adequacy and safety of facilities and equipment, the court most often ruled in favor of the plaintiff.

8) Finding for the plaintiff was also the trend in court decisions on cases based on the adequacy and safety of protective equipment.

9) Lawsuits seeking responsibility for medical expenses were also most often ruled for the plaintiff.

Implications for the Field

As a result of the analysis of the court cases in this study, several issues appear to be important factors surrounding sports-injury lawsuits. The following list itemizes those practices which can, first, prevent the occurrence of lawsuits in physical education, athletics, and other related areas and, second, can be used in defense if one becomes involved in a negligence suit:

1) Professionals in the field should become familiar with the laws of the state in which they are employed, especially regarding the doctrines of governmental immunity and respondeat superior.

2) School districts and individual departments should develop and utilize a professionally sound curriculum in their subject area.

3) Teachers and coaches should always ensure adequate instruction of all activities.

4) Schools and school personnel should employ an established supervisory plan for all activities.

5) It is the responsibility of school districts to provide for proper maintenance and repair of all facilities and equipment. It is important to establish a program of preventive maintenance and inspection of facilities.

6) All glass in and around physical activity areas should be of safety glass.

7) Teachers and coaches are responsible for furnishing students at all times with necessary and appropriate protective and safety equipment.

8) School administrators, teachers, and coaches must be cognizant at all times of the security of all facilities and equipment.

9) All injuries should be reported to the proper authority on the day of the accident. Detailed accident reports should be filed and maintained for an extended period of time.

Recommendations for Further Study

In order to substantiate the full nature of injuries in physical education, athletics, and other related areas and to determine the actual extent of the legal liability of schools and school personnel regarding sports-injury negligence lawsuits, the following suggestions for further study are recommended:

1) A study of various school districts to determine the nature and extent of accidents and injuries in physical education, athletics, and other related areas. School accident reports could provide this type of data.

2) A study to determine the history and disposition of liability claims resulting from injuries in public school physical education, athletics, and other related areas which are settled out of court. This information could be obtained from the records of various school liability insurers.

3) A study of lower court records in various jurisdictions to determine the extent of liability of schools and school personnel in cases that never reach the appellate court.

4) A study, in the future, of the final court decisions of those cases in this study which were remanded for trial.

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APPENDIX A

West's Key Numbers of Cited Cases

II. Public Schools

Key 9 - 179

A. Establishment, School Lands and Funds, and Regulation in General

10. Constitutional and statutory provisions

C. Government, Officers, and District Meetings

48.6 Powers, duties, and liabilities in general

62. Liabilities of members

63.3 Powers, duties, and liabilities in general

D. District Property, Contracts, and Liabilities

89. Torts in general

89.1 Governmental and proprietary functions in general

89.2 Negligence in general

89.3 Particular torts in general

89.4 Athletics and physical education

89.5 Condition of premises

89.7 Injuries to persons other than pupils

89.11 Supervision of other pupils

89.12 Play and recess

F. Claims Against District, and Actions

112. Presentation and allowance of claims

114. Capacity to sue or be sued

115. Rights of action and defenses

116. Time to sue and limitations

120. Pleading

121. Evidence

122. Trial

G. Teachers

147. Duties and liabilities

H. Pupils, and Conduct and Discipline of Schools

164. Curriculum and courses of study

169. Control of pupils and discipline in general

APPENDIX B

National Reporter System

Regional Reporter Series

The seven volumes of this series reports in full every approved decision of the courts of last resort for the states represented.

1. Atlantic Reporter (cited as A.2d)

Connecticut	New Hampshire
Delaware	New Jersey
District of Columbia	Pennsylvania
Maine	Rhode Island
Maryland	Vermont

2. North Eastern Reporter (cited as N.E.2d)

Illinois	New York
Indiana	Ohio
Massachusettes	

3. North Western Reporter (cited as N.W. 2d)

Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin
Nebraska	

4. Pacific Reporter (cited as P.2d)

Alaska	Nevada

Arizona	New Mexico
California	Oklahoma
Colorado	Oregon
Hawaii	Utah
Idaho	Washington
Kansas	Wyoming
Montana	

5. South Eastern Reporter (cited as S.E.2d)

Georgia	Virginia
North Carolina	West Virginia
South Carolina	

6. South Western Reporter (cited as S.W.2d)

Arkansas	Tennessee
Kentucky	Texas
Missouri	

7. Southern Reporter (cited as So.2d)

Alabama	Louisana
Florida	Mississippi

APPENDIX C

Case Summary Form

Citation _____

_____

Activity _____

Nature of Student Injury _____

Defendant(s) _____

Relief Sought _____

Primary Area of Negligence _____

Other Issues _____

_____

_____

Facts _____

_____

_____

_____

Finding of Trial Court _____

Finding of Appellate Court _____

Reasoning _____

_____

_____

_____

Significance _____

_____

Other Comments on Back

APPENDIX D

Cases Ruled on the Doctrine of Governmental Immunity

1. Alabama

   Hutt v. Etowah County Board of Education (1984)

2. Florida

   Willis v. Dade County School Board (1982)

3. Georgia

   Truelove v. Wilson (1981)

4. Illinois

   Jackson v. Board of Education of City of Chicago (1982)

   Kain v. Rockridge Community Unit School District No. 300 (1983)

   Pomrehn v. Crete-Monee High School District (1981)

   Weiss v. Collinsville Community Unit School District No. 10 (1983)

5. Michigan

   Boulet by Boulet v. Brunswick Corporation (1983)

Churilla v. School District for City of East Detroit (1981)

Cook v. Bennett (1980)

Deaner v. Utica Community School District (1980)

Everhart v. Board of Education of Roseville Community Schools (1981)

Grames v. King (1983)

Lee v. School District of City of Highland Park (1982)

Lewis v. Beecher School System (1982)

Pope by Pope v. McIntyre (1983)

Vargo v. Svitchan (1981)

6. Missouri

Spearman v. University City Public School District (1981)

Winston v. Reorganized School District R-2, Lawrence County, Miller (1982)

7. North Carolina

Plemons by Teeter v. City of Gastonia (1983)

8. Oklahoma

Herweg, Etc. v. Board of Education of Lawton Public Schools (1983)

9. Pennsylvania

   Lewis by Keller v. Hatboro-Horsham School District (1983)

   Wimbish v. School District of Penn Hills (1981)

10. South Carolina

    Tucker v. Kershaw County School District and Board of Trustees (1981)

11. South Dakota

    Merrill v. Birhanzel (1981)

12. Texas

    Diggs v. Bales (1984)

    Duson v. Midland County Independent School District (1981)

    McManus v. Anahuac Independent School District (1984)

LIST OF CASES

59... Everhart v. Board of Education of Roseville Community Schools, 108 Mich.App. 218, 310 N.W.2d 338 (Mich.App. 1981)

28... Foster v. Houston General Insurance Company, 407 So.2d 759 (La.App. 1981)

81... Galindo v. Riddell, Inc., 107 Ill.App.3d 139, 62 Ill.Dec. 849, 437 N.E.2d 376, (Ill.App. 1982)
63... Gibbons v. Orleans Parish School Board, 391 So.2d 976 (La.App. 1980)
62... Grames v. King, 123 Mich.App. 573, 332 N.W.2d 615 (Mich.App. 1983)
89... Guillory v. Ortego, 449 So.2d 182 (La.App.3 Cir. 1984)

52... Hampton v. Orleans Parish School Board, 422 So.2d 202 (La.App. 1982)
35... Harrison v. Montgomery County Board of Education, 456 A.2d 894 (Md. 1983)
41... Herweg, Etc. v. Board of Education of Lawton Public Schools, 673 P.2d 154 (Okl. 1983)
78... Hutt v. Etowah County Board of Education, 454 So.2d 973 (Ala. 1984)

76... Jackson v. Board of Education of City of Chicago, 109 Ill.App.3d 716, 65 Ill.Dec. 328, 441 N.E.2d 120 (Ill.App. 1982)

41... Kain v. Rockridge Community Unit School District No. 300, 117 Ill.App.3d 681, 72 Ill.Dec. 813, 453 N.E.2d 118 (Ill.App.3 Dist. 1983)
88... Kluka v. Livingston Parish School Board, 433 So.2d 302, 440 So.2d 728 (La.App.1 Cir. 1983)

31... Leahy v. School Board of Hernando County, 450 So.2d 883 (Fla.App.5 Dist. 1984)
75... Lee v. School District of City of Highland Park, 118 Mich.App. 305, 324 N.W.2d 632, (Mich.App. 1982)
38... Lewis v. Beecher School System, 118 Mich. App. 105, 324 N.W.2d 779 (Mich.App. 1982)
77... Lewis by Keller v. Hatboro-Horsham School District, 77 Pa.Cmwlth. 287, 465 A.2d 1090 (Pa.Cmwlth. 1983)
78... Lynch v. Board of Education of Collinsville Community Unit District No. 10, 82 Ill.2d 415, 45 Ill.Dec. 96, 412 N.E.2d 447 (Ill. 1980)

42... McManus v. Anahuac Independent School District, 667 S.W.2d 275 (Tex.App.1 Dist. 1984)
37... Merrill v. Birhanzel, 310 N.W.2d 522 (S.D. 1981)

81... Montag v. Board of Education, School District No. 40, Rock Island County, 112 Ill.App.3d 1039, 68 Ill.Dec. 565, 446 N.E.2d 299 (Ill.App.3 Dist. 1983)
51... Morris v. City of Jersey City, 432 A.2d 553 (N.J.Super A.D. 1981)

32... Norman v. Turkey Run Community School Corporation, 411 N.E.2d 614 (Ind. 1980)

32... Oswald v. Township High School District No. 214, 84 Ill.App.3d 723, 40 Ill.Dec. 456, 406 N.E.2d 157 (Ill.App. 1980)

70... Pell v. Victor J. Andrew High School, 123 Ill.App.3d 423, 78 Ill.Dec. 739, 462 N.E.2d 858 (Ill.App.1 Dist. 1984)
83... Peterson v. Multomah County School District No. 1, 64 Or.App. 81, 668 P.2d 385, 670 P.2d 1036 (Or.App. 1983)
76... Plemmons by Teeter v. City of Gastonia, 62 N.C.App. 470, 302 S.E.2d 905, 307 S.E.2d 164, 307 S.E.2d 166 (N.C.App. 1983)
60... Pomrehn v. Crete-Monee High School District, 101 Ill.App.3d 331, 56 Ill.Dec. 841, 427 N.E.2d 1387 (Ill.App. 1981)
40... Pope by Pope v. McIntyre, 124 Mich.App. 144, 333 N.W.2d 612 (Mich.App. 1983)

50... Ragnone v. Portland School District No. 1J, 633 P.2d 1287 (Or. 1981
87... Rawls v. Dugas, 398 So.2d 630 (La.App. 1980)
79... Rutter v. Northeastern Beaver County School District, 437 A.2d 1198 (Pa. 1981)

68... Santee v. Orleans Parish School Board, 430 So.2d 254 (La.App.4 Cir. 1983)
54... Smith v. Vernon Parish School Board, 442 So.2d 1319, 445 So.2d 451 (La.App.3 Cir. 1983)
47... Spearman v. University City Public School District, 617 S.W.2d 68 (Mo.banc 1981)
72... Studley v. School District No. 38 of Hall County, 210 Neb. 669, 316 N.W.2d 603 (Neb. 1982)

85... Tetro v. Plainview-Old Bethpage Central School District, 99 A.D.2d 814, 472 N.Y.S.2d 146 (A.D.2 Dept. 19840
68... Tiemann v. Independent School District #740, 331 N.W.2d 250 (Minn. 1983)

74... Truelove v. Wilson, 159 Ga.App. 906, 285 S.E.2d 556 (Ga.App. 1981)
58... Tucker v. Kershaw County School District and Board of Trustees, 279 S.E.2d 378 (S.C. 1981)

56... Vargo v. Svitchan, 100 Mich.App. 809, 301 N.W.2d 1 (Mich.App. 1981)

49... Weiss v. Collinsville Community Unit School District No. 10, 119 Ill.App.3d 68, 74 Ill.Dec. 893, 456 N.E.2d 614 (Ill.App.5 Dist. 1983)
87... Welsh v. Berne-Knox-Westerlo Central School District, 103 A.D.2d 950, 479 N.Y.S.2d 567 (A.D.3 Dept. 1984)
65... Wilkinson v. Hartford Accident and Indemnity Company, 411 So.2d 22 (La. 1982)
91... Willis v. Dade County School Board, 411 So.2d 245 (Fla.App. 1982)
59... Wimbish v. School District of Penn Hills, 430 A.2d 710 (Pa. Cmwlth. 1981)
39... Winston v. Reorganized School District R-2, Lawrence County, Miller, 636 S.W.2d 324 (Mo.banc 1982)
64... Woodring v. Board of Education of Manhasset Union Free School District, 79 A.D.2d 1022, 439 N.Y.Supp.2d 1027, 435 N.Y.S.2d 52 (App.Div. 1981)

GLOSSARY

The following definitions were obtained from Black's Law Dictionary.

Action. Term in its usual legal sense means a suit brought in a court; a formal complaint within the jurisdiction of a court of law.

Alleged. Stated; recited; claimed; asserted; charged.

Appellant. The party who takes an appeal from one court or jurisdiction to another. Used broadly or nontechnically, the term includes one who sues out a writ of error.

Appellate court. A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, certiorari, error or report. A reviewing court, and, except in special cases where original jurisdiction is conferred, not a "trial court" or court of first instance.

Appellee. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Sometimes also called the "respondant." It should be noted that a party's status as appellant or appellee does not necessarily bear any relation to his status as plaintiff or defendant in the lower court.

Assumption of risk. The doctrine of assumption of risk, also known as volenti non fit injuria, means legally that a plaintiff may not recover for an injury to which he assents, i.e., that a person may not recover for an injury received when he voluntarily exposes himself to a known or appreciated danger. The requirements for the defense of volenti non fit injuria are that: (1) the plaintiff has knowledge of facts constituting a dangerous condition, (2) he knows the condition is dangerous, (3) he appreciates the nature or extent of the danger, and (4) he voluntarily exposes himself to the danger. An exception may be applicable even though the above factors have entered into a plaintiff's conduct if his actions come within the rescue or humanitarian doctrine.

Breach of duty. In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner

the duties of an office or fiduciary employment. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence or arising through more oversight or forgetfulness, is a breach of duty.

Claim. To demand as one's own or one's right; to assert; to urge; to insist. Cause of action. Means by or through which claimant obtains possession or enjoyment of privilege or thing. Demand for money or property, e.g. insurance claim.

Claimant. One who claims or asserts a right, demand or claim.

Common law. As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

Comparative negligence. Under comparative negligence statutes or doctrines, negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to amount of negligence attributable to the person for whose injury, damage or death recovery is sought. Many states have replaced contributory negligence acts or doctrines with comparative negligence. Where negligence by both parties is concurrent and contributes to injury, recovery is not barred under such doctrine, but plaintiff's damages are diminished proportionately, provided his fault is less than defendant's, and that, by exercise of ordinary care, he could not have avoided consequences of defendant's negligence after it was or should have been apparent.

Complaint. The original or initial pleading by which an action is commenced under codes or Rules of Civil Procedure.

Compulsory nonsuit. An involuntary nonsuit.

Contributory negligence. The act or omission amounting to want of ordinary care on part of complaining party, which concurring with defendant's negligence, is proximate cause of injury. Conduct by a plaintiff which is below the

standard to which he is legally required to conform for his own protection and which is a contributing cause which cooperates with the negligence of the defendant in causing the plaintiff's harm.

Damages. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another.

Defendant. The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

Demurrer. An allegation of a defendant, which, admitting the matters of fact alleged by complaint or bill (equity action) to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the complaint or bill, or on account of the omission of some matter which ought to be contained therein, or for want of some circumstances which ought to be attendant thereon, the defendant ought not to be compelled to answer. The formal mode of disputing the sufficiency in law of the pleading of the other side.

Directed verdict. In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it, because, as a matter of law, there can be only one such verdict.

Evidence. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

Ex delicto. From a delict, tort, fault, crime, or malfeasance. In both the civil and the common law, obligations and causes of action are divided into two classes--those arising ex contractu (out of a contract), and those ex delicto. The latter are such as grow out of or are founded upon a wrong or tort, e.g., trespass, trover, replevin.

Foreseeability. The ability to see or know in advance; hence, the reasonable anticipation that harm or injury is a likely result of acts or omissions.

Governmental/sovereign immunity. The federal, state and local governments are not amenable to actions in tort except in cases in which they have consented to be sued.

In loco parentis. In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

In solido. In the civil law, for the whole; as a whole. An obligation in solido is one where each of the several obligors is liable for the whole; that is, it is joint and several.

Judgment. The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determinators. The final decision of the court resolving the dispute and determining the rights and obligations of the parties. The law's last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding.

Jurisprudence. The philosophy of law, or the science which treats of the principles of positive law and legal relations.

Jury. A certain number of men and women selected according to law, and sworn (jurati) to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.

Lawsuit. A vernacular term for a suit, action, or cause instituted or depending between two private persons in the courts of law. A suit at law or in equity; an action or proceeding in a civil court; a process in law instituted by one party to compel another to do him justice.

Leave. Permission or authorization to do something.

Legal duty. That which the law requires to be done or forborne to a determinate person or the public at large, correlative to a vested and coextensive right in such person or the public, and the breach of which constitutes negligence.

Legal liability. A liability which courts recognize and enforce as between parties litigant.

Liability/liable. Bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution. Obligated; accountable for or chargeable with. Condition of being bound to respond because a wrong has occurred. Condition out of which a legal liability might arise.

Litigation. A lawsuit. Legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking a remedy. A judicial contest, a judicial controversy, a suit at law.

Negligence. Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances.

Nexus. Connection, link. A connected group or series. (Webster's Ninth New Collegiate Dictionary (1983). Springfield, MA: Merriam-Webester, Inc., Publishers.)

Ordinary negligence. The failure to use that degree of care which the ordinary or reasonably prudent person would have used under the circumstances and for which the negligent person is liable. Term is used in contradistinction to gross negligence which is more serious and a more flagrant lack of care.

Plaintiff. A person who brings an action; the party who complains or uses in a civil action and is so named on the record. A person who seeks remedial relief for an injury to rights; it designates a complainant.

Proximate cause. That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred.

Prudence/prudent. Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct. That degree of care required by the exigencies or circumstances under which it is to be exercised.

Reasonable care. That degree of care which a person of ordinary prudence would exercise in the same or similar circumstances. Due care under all circumstances. Failure to exercise such care is ordinary negligence.

Recovery. In its most extensive sense, the restoration or vindication of a right existing in a person, by the formal judgment or decree of a competent court, at his instance and suit, or the obtaining, by such judgment, of some right or property which has been taken or withheld from him.

Remand. To send back. The sending by the appellate court of the cause back to the same court out of which it came, for purpose of having some further action taken on it there.

Respondeat superior. Let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent.

Standard of Care. In law of negligence, that degree of care which a reasonably prudent person should exercise under some or similar circumstances. If a person's conduct falls below such standard, he may be liable in damages for injuries or damages resulting from his conduct.

Statute/statutory. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state.

Strict liability. A concept applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety. This concept applies to all members involved in the manufacturing and selling of any facet of the product.

Summary judgment. Rule of Civil Procedure 56 permits any party to a civil action to move for a summary judgment on a claim, counterclaim, or cross-claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law. The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions

of the record in the case or it may be supported by affidavits and a variety of outside material.

Tort. A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties.

Trial court. The court of original jurisdiction; the first court to consider litigation. Used in contrast to appellate court.

Verdict. The formal decision or finding made by a jury, impaneled and sworn for the trial of a cause, and reported to the court (and accepted by it), upon the matters or questions duly submitted to them upon the trial. The definitive answer given by the jury to the court concerning the matters of fact committed to the jury for their deliberation and determination.

Vicariously liable. Indirect legal responsibility; for example, the liability of an employer for the acts of an employee, or, a principal for torts and contracts of an agent.

Willful or wanton misconduct. Failure to exercise ordinary care to prevent injury to a person who is actually known to be or reasonably expected to be within the range of a dangerous act being done. Conduct which is either intentional or committed under circumstances exhibiting a reckless disregard for the safety of others, such as a failure, after knowledge of an impending danger, to exercise ordinary care to prevent it or a failure to discover the dangers through recklessness or carelessness when it could have been discovered by the exercise of ordinary care.

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