AN ANALYSIS AND COMPARISON OF COURT HOLDINGS DEALING WITH TORT LIABILITY FOR INJURIES SUSTAINED IN PUBLIC SCHOOL AND HIGHER EDUCATION PROGRAMS OF PHYSICAL EDUCATION, ATHLETICS AND INTRAMURAL SPORTS FROM 1977-1987

by

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(ABSTRACT)

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Physical education programs, athletic programs and intramural sports programs are a vital part of the American educational system. However, since the mid-sixties, there has been an increase in sports injury litigation against the teachers and coaches who direct and supervise these programs.

The purpose of this study was twofold. First, the study was to report the legal liability of elementary, secondary and higher education physical educators, athletic coaches and intramural sports directors from 1977-1987. In addition this study compared the holdings of the court cases from 1977-1987 to the holdings of the court cases found in five unpublished manuscripts.

From 1977 to 1987 there were 92 elementary and secondary lawsuits and 19 college lawsuits involving these professionals, including their supervisors. There were 41 cases involving liability against the boards of education and boards of trustees. The groups were found not liable in 23 of the cases. The primary reason for not being liable was their protection from suit because of the

doctrine of governmental immunity. However, in states where the doctrine of governmental immunity did not exist boards of education and boards of trustees were found liable for improper supervision, lack of proper medical assistance and creating a dangerous situation or hazard.

Sixteen cases were reported against school employees. In 10 of the cases the court rulings were held against these employees. The reasons included: improper supervision, failure to follow state athletic association rules and improper instruction. Cases held in favor of the school employees resulted when: employees were acting within the scope of their employment, the employees were providing adequate supervision and instruction and the students purposely disregarded safety rules.

The results of this study, when compared to five previous studies, indicated that even though the number of cases reported were similar the present study showed an increase in the number of decisions favoring the plaintiff at the elementary and secondary level. Also, the present study revealed an increase of 250% in the number of lawsuits reported at the college level and a 23% increase in the number of cases favoring the plaintiff.

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CHAPTER I

INTRODUCTION

In 1975-76 over 22 million men and women participated in physical education programs (11.7 million), varsity athletic programs (5.4 million) and intramural programs (5.1 million) at the secondary and college level (Calvert, 1979). Although recent statistics are not available for physical education programs and intramural programs, varsity athletic programs had over 5.5 million participants during the 1987-88 school year (National Federation of State High School Associations, 1988; National Collegiate Athletic Association, 1988).

Physical education programs, athletic programs and intramural programs have become important in the American educational system and to the American public (Arnold, 1983). It has been written that physical education classes, athletic sporting events and intramural activities do not reflect the programs offered in the past (Bucher, 1986a).

Physical education programs during the colonial period were nearly non-existent. Physical exercise was acquired through farm work as colonists considered play as the work of the devil. Eventually, these religious type beliefs were abandoned and physical education programs began to prosper. Formal gymnastic programs appeared in the American schools followed by planned programs, composed mainly of calisthenics performed to music (Bucher, 1986a).

Physical education programs include the team sports of basketball, field hockey, flag football, softball,

speedball and volleyball. In addition, outdoor winter sports including ice hockey, skiing and snowshoeing are offered. Lifetime sports such as archery, badminton, bowling, golf, handball, racquetball, tennis and wrestling are taught in schools as well as the water activities of canoeing, lifesaving, scuba diving, swimming and sailing. Also, opportunities in gymnastics and rhythms and dancing are offered to the student (Bucher, 1986b).

Athletic programs followed the same growth patterns as the physical education programs. Historically, competitive sports events consisted primarily of rowing, wrestling, shooting matches, football and foot races (Bucher, 1986b).

Between the state high school athletic associations and the National Collegiate Athletic Association (NCAA) competitive sports are offered in football, soccer, volleyball, track and field, basketball, gymnastics, archery, tennis, golf, wrestling, baseball, softball, riflery, ice hockey, swimming and diving, crew, field hockey and cross country (Lindemann, 1983; Zemper, 1984).

Intramural programs were hit or miss in the beginning because the physical education and athletic staffs, who had control of the intramural programs, were so involved with their own programs that the athletic needs of the majority of the students were almost entirely neglected. Eventually, the intramural movement expanded, through the help of full-time intramural directors in leadership roles, resulting in the development of the National Intramural Association (NIA) (Mueller, 1971).

The National Intramural Recreational Sports Association (NIRSA), an outgrowth of the NIA, is the organization which provides guidance for intramural programs at all educational levels. Activities range from the out of the ordinary backpacking, cricket and synchronized swimming to the traditional sports including softball, volleyball and basketball. In addition, intramural programs offer many co-recreational activities.

The importance of sport in todays schools is reflected by the federal district court opinion in Moran v. School District No. 7, Yellowstone County, 350 F. Supp. 1180 (D. Mont. 1972) stating that "extracurricular activities are an integral part of the total educational process" (Nygaard & Boone, 1981, p. 9). Given this increase in the number of activities offered in physical education, athletics and intramurals and the increase in activity participation, it is not surprising that there is an increase in the number of sports related lawsuits (Baley & Matthews, 1984). Since the mid-sixties, there has been an increase in sports injury litigation against physical education teachers, athletic coaches and intramural directors.

In these cases, the courts have been awarding astronomical settlements. For example, in Larson v. Independent School District No. 314, 289 N.W. 2d 112 (Minn. 1980), a student was awarded over $1 million dollars for an injury that occurred in a gymnastics class (Appenzeller, 1982). Also, in Peterson v. Multnomah County School District No. 1, 668 P. 2d 385 (Or. App. 1983), a student was awarded $980,000.00 dollars after becoming a

quadriplegic as a result of a football injury (Appenzeller & Ross, 1984). In both cases, the suit named the instructor and the coach as defendant.

Purpose of the Study

The purpose of this study was twofold. First, the study was to report the legal liability of elementary, secondary and higher education physical educators, athletic coaches and intramural sports directors from 1977-1987. In this part of the study, the writer considered the legal liability of these school employees with regard to injuries sustained in physical education programs, athletic programs and intramural sports programs. Second, the writer compared the holdings of the court cases from 1977-1987 to the holdings of the court cases found in five unpublished manuscripts.

Background and Significance of the Problem

There are, without a doubt, more injuries involving athletic, intramural and physical education activities than in all other educational areas combined (Connors, 1981). In 1975-76, these three areas accounted for over one million injuries during the year (Calvert, 1979). Of course, not all of the injuries ended up in litigation.

Students have been injured in physical education classes because of inadequate supervision (Miller v. Cloidt and the Board of Education of the Borough of Chatham, Docket # L7241-62, Super. Ct. of N.J. (Appenzeller, 1982), inadequate instruction (La Valley v. Stanford, 70 N.Y.S. 2d 460 (N.Y. , 1947), and foreseeability (Bauer v. Board of Education of the City of New York, 140 N.Y.S. 2d 167 (N.Y.,

1955). In addition, students have filed suits against their coaches because of improper treatment of injury (Mogabgab v. Orleans Parish School Board, 239 S. 2d 456 (La., 1970).

There is the need for physical education teachers, athletic coaches and intramural directors to realize that an accident can occur in their program. With the frequent number of court cases in their professions, it is imperative that the school employee, teacher, coach or intramural director, familiarize themselves with the statutes and the fundamental rules of tort liability (Appenzeller, 1966).

Alexander and Alexander (1970) stated that teachers are held to a higher standard of care than the reasonably prudent person because of their superior knowledge, training and experience. Teachers and other teaching professionals are based on what a reasonably prudent teacher would do in a given situation. In Ohman v. Board of Education of City of New York, 90 N.E. 2d 474 (N. Y., 1949), the court stated: "The standard of care required of an officer or employee of a public school is that which a person of ordinary prudence charged with his duties, would exercise under the same circumstances" (Alexander & Alexander, 1970, p. 17).

An example of the lack of reasonable care is evident in Keesee v. Board of Education of City of New York, 235 N.Y.S. 2d 300 (N. Y., 1962). The physical education teacher was found to be negligent for the injury to one of her pupils while participating in a game of line soccer.

The court concluded that the teacher had not prepared the students to play the game with the necessary skill level and by allowing the students to participate in such a dangerous sport, while being a novice, showed a disregard by the teacher for the safety of the pupils.

Standard of care is closely related to supervision. For example, the standard of care expected for classroom teachers, with the exceptions of chemistry and shop teachers, is general supervisory responsibilities. However, the physical education teacher instructing on the trampoline is required to exercise specific supervision because it requires one to supervise closely the conduct of the activity. The added risk offered by the trampoline requires that it be closely supervised.

> There is no sure criteria for determining what is negligent action and what is not since each case stands individually on its own merit. There is, however, one condition that is likely to cause a teacher to be judged negligent should an accident take place (Appenzeller, 1978, p. 21).

This condition is foreseeability.

Foreseeability is the element often used in negligence suits in education. Specifically, a teacher or coach is negligent when the act should have been foreseen as harmful to the individual.

A case involving foreseeability is Guerriei v. Tyson (Appenzeller, 1966), 24 A. 2d 469 (Pa., 1942). In the case, the judge returned a verdict of negligence against the defendant teachers. The plaintiff, a ten-year-old boy had an infected finger. However, the injury did not stop him from participating in recess. Upon noticing the

inflamed finger, a teacher suggested that the boy report to the school office after school. When the boy arrived at the office, his hand was placed into a pan of hot water by the two defendants, where it was held for ten minutes. This act resulted in the boys' stay in the hospital for twenty-eight days. Bolmeier (1958) stated about Guerriei v. Tyson (1942) that "any prudent person would have foreseen that the scalding water aggravated the infection and permanently disfigured the child's hand" (p. 32).

Procedure

The writer has drawn on the findings of several unpublished manuscripts in obtaining the court decisions prior to 1977 in the area of tort liability in physical education, athletics and intramural sports. The authors of the unpublished manuscripts are: Cleet Cleetwood (1959), Herbert Appenzelller (1966), Edward Dwyer (1966), Duane Stremlau (1976), and Vicki Hopkins (1978).

Court cases after 1977 were located through the National Organization on Legal Problems of Education Publications. In addition, the following sources were used to locate additional court cases related to the topics. These include:

Decennial Digest

American Law Reports

West's General Digest

West's Federal Practice Digest 3d

American Digest

Shepard's Citations

Sports and the Courts

Secondary sources such as text books were used to help locate court decisions involving tort liability in physical education, athletics and intramural sports.

Definition of Terms

Black's Law Dictionary was used to define terms relative to the study.

Accident - A sudden event happening without expectation (p. 14).

Act of God - An act of violence of nature without the interference of man (p. 31).

Appellant - One who appeals a court decision to the next court of jurisdiction (p. 89).

Appellate Court - "A court having jurisdiction of appeal and review" (p. 90).

Assignment of Errors - "A specification of the errors upon which the appellant will rely in seeking to have the judgment of the lower court reversed, vacated, modified, or a new trial ordered" (p. 487).

Assumption of Risk - A person knows that there is danger involved in the activity and he is voluntarily exposing himself to the danger (p. 113).

Attractive Nuisance - A person creates a situation which may be a source of danger to an individual (p. 119).

Certiorari - "A writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. The writ is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities" (p. 207).

Civil Action - "All types of actions other than criminal proceedings" (p. 222).

Class Action - Suit in which a group, interested in the same matter, is represented by one or more of its members (p. 226).

Comparative Negligence - When both parties are negligent, recovery damages are awarded proportionately (p. 235).

Contributory Negligence - The negligence on the part of the plaintiff contributed with the negligence on the part of the defendant causing the injury to the plaintiff (p. 931).

Corporal Punishment - "Any kind of punishment of or inflicted on the body" (p. 306).

Defendant - "The party against whom relief or recovery is sought in an action or suit" (p. 377).

Demurrer - "A response in a court proceeding in which the defendant does not dispute the truth of the allegation but claims it is not sufficient grounds to justify legal action" (p. 389).

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 of a matter of law, there can be only one such verdict" (p. 413).

Discovery - "The ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts" (p. 418).

Duty - Obligation which one person owes another (p. 453).
Error - "A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law" (p. 487).
Foreseeability - The ability a person has to anticipate danger before an act takes place (p. 584).
In Loco Parentis - "In place of parents" (p. 708).
Inter alia - "Among other things" (p. 728).
Issue of fact - "A fact is maintained by one party and is disputed by the other in the pleadings" (p. 746).
Lie - "To subsist; to exist; to be sustainable" (p. 831).
Material fact (pleading and practice) - "one which is essential to the case, defense, application, etc., and without which it could not be supported. One which tends to establish any of issues raised" (p. 881).
Motion in limine - "A written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements. Purpose of such motion is to avoid injection into trial of matters which are irrelevant, inadmissable and prejudicial and granting of motion is not a ruling on evidence and, where properly drawn, granting of motion cannot be error" (p. 914).
Negligence - Failure to act as a reasonable prudent person would act in a given situation (p. 930).
Plaintiff - "A person who brings an action" (p. 1035).
Pari materia - "of the same matter; on the same subject; as laws pari materia must be construed with reference to each other (p. 1004).

Pleadings - "The formal allegations by the parties of their respective claims and defenses" (p. 1037).
Political Subdivision - "A division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public" (p. 1043).
Precedent - A decision of a case is based on principles established in previous cases (p. 1059).
Prima facie case - "Such as will prevail until contradicted and overcome by other evidence" (p. 1071).
Respondent Superior - The master is liable in certain cases for the wrongful acts of his servant (p. 1179).
Standard of Care - That degree of care which a reasonably prudent person should exercise toward someone in a given situation (p. 1260).
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" (p. 1287).
Supervision - The responsibility owed for an area and for the activities that take place in that area.
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 for damages" (p. 1335).

Organization of the Remainder of the Study

The remainder of the study is organized into four chapters. In chapter II a presentation of the legal concepts of torts, the concept of negligence, including elements of negligence and defenses for negligence, and the liability of the teacher, coach and intramural sports director is included. A review of literature prior to 1977 of court cases relating to injuries to students in public schools and higher educational institutions is discussed in Chapter III. In chapter IV a presentation of the review of literature of court cases from 1977 through 1987 relating to injuries to students in public schools and higher educational institutions is included. Chapter V contains the summary, the conclusion of the study, and recommendations.

CHAPTER II

THE AMERICAN LEGAL SYSTEM

Introduction

Laws, in some form, govern all business and services. Although there is no general agreement about a true definition, law may best be described as a form of social control, a character determined by the structure of society, a relationship between human beings or a rule of conduct. Regardless of the definition, the system of laws which we live under must be applied equally to each citizen (Tresolini, 1966; Kaiser, 1986).

To gain an understanding of the laws which govern public educational institutions it is necessary to acquire some knowledge of the American legal system. The main areas of concern are the sources of law and the structure of courts.

Law, for the most part, is based on three sources: constitutions, statutes and court law. State and federal constitutions are the primary law, giving structure and resources to the legal system, under which people choose to govern themselves. Within this structure the branches of government possess certain roles which predetermine the nature of the law. The legislative branch enacts, the judicial branch interprets and the executive branch implements and administers the law (Alexander & Soloman, 1972).

> A constitution is a body of precepts which provides a framework of law within which orderly governmental processes may operate. The constitutions of this country are characterized by their provisions for securing fundamental

> personal, property and political rights (Alexander, 1980, p.2.).

However, to be effective, a constitution must be flexible to allow for for systematic changes. Through the ratification of amendments, these precepts are modified to incorporate any necessary changes.

> The second source of law is a statute. A statute, is an act of the legislative department of government expressing its will and constituting a law of the state (Alexander, 1980, p.2). The word statute comes from the Latin term statutum, which means, "it is decided" (Alexander, 1980, p. 2).

Common law, also known as court or case law, is the third source of law. Common law is based upon judicial decisions originating in the courts. Decisions based on common law are usually supported by judicial precedent; a judicial decision serving as a rule for future determinations in similar cases.

The American court system is established at two levels, state and federal. Generally, the state courts may be classified into four categories: 1) general jurisdiction, 2) special jurisdiction, 3) small claims, and 4) appeals. Courts of general jurisdiction, district or circuit courts, cover all cases except those reserved for special courts. Courts of special jurisdiction are probate courts, domestic relation courts and juvenile courts. These courts litigate cases involving special subject matter areas. Small claims courts, such as justice of the peace courts, specialize in lawsuits in which small amounts of money are involved and the Appellate courts handle those

cases which are appealed from the courts of general jurisdiction.

The federal court system is also classified into four categories: 1) Federal District Courts, 2) Circuit Court of Appeals, 3) Special Federal Courts, and 4) the Supreme Court. In order to have a case heard in a federal court one of three criteria must be met. This includes: 1) having a case between people from different states, 2) having a case which raises a federal statute issue, or 3) having a case which raises a constitutional issue.

Each state has at least one federal District Court and usually more than two. Courts of appeals represent the intermediate appellate level of the federal court system. Their primary function is:

> to review appeals from district courts within the circuit, and decisions by a court of appeals are binding on the lower federal courts in the circuit. A decision by one court of appeals may stand as a persuasive decision for other courts of appeals but it does not stand as binding authority (LaMorte, 1982, p.15).

The nation is divided into thirteen federal judicial circuits (Appendix A). The Supreme Court of the United States, the highest court in the nation, renders the final decisions on all cases presented at this level.

There are two types of cases which can be tried in the courts. These cases are either criminal or civil in nature.

A criminal case involves the violation of a criminal statute in which the state prosecutes with the intent to fine and/or jail the accused party. To prove someone

guilty in a criminal case, the evidence presented must show that guilt is without a reasonable doubt.

Civil cases, of which there are two types, involve one individual bringing suit against another individual for any wrongs done to the injured party. One civil case may be In Law, in which the injured party asks for compensation from damages received. The compensation is usually in the form of money. In an In Equity civil case, the plaintiff attempts to force another individual to either perform or refrain from doing something which may be detrimental to one's interest (Alexander, 1980).

However, with two exceptions, the court cases in this study were decided at the state level. This was due to the fact that the tort cases did not involve a federal issue and were of a civil nature.

Tort Law

A tort is a civil wrong, other than a breach of contract, for which a court will provide a remedy in the form of damages. Torts are wrongs of a person against another person in which the injured party brings an action in law to recover compensation for damage suffered.

The word tort is derived from the Latin word 'tortus' meaning twisted. A tort may be committed by either an action or an omission to act. Most people are aware that to deliberately harm someone is deserving of damages, but also the omission or failure to act may create liability (Alexander & Alexander, 1984).

Torts may be classified into three categories: 1) intentional, 2) strict liability, and 3) negligence. An

intentional tort occurs when an individual acts and continues to act in a manner until someone is hurt. Corporal punishment or assault and battery are examples of intentional torts.

Strict liability refers to the concept that an individual has created a situation and even though precautionary measures were taken to ensure the safety of everyone, someone still is hurt. These situations are very rare in the education field.

Negligence occurs when an individual does not act as a reasonable prudent person and as a result of their neglectfulness someone is hurt. Negligence is the most common tort in the educational setting, especially among physical educators and coaches.

Negligence

Teachers and coaches, professionally trained and certified, are expected to perform their duties at a level which meets or exceeds legally established standards. The doctrine of in loco parentis, established by states to protect students while they are away from parental care, has placed the responsibility for safety on the teacher and coach while the students are in school.

Therefore, educational personnel need to be aware that good intentions alone will not release them from their legal responsibility. The key to preventing negligence is providing a reasonable standard of care.

Elements of Negligence

In order for a person to be held liable for negligence, four elements must exist. These are: 1) the

existence of a legal duty to protect others against unreasonable risks, 2) the standard of care provided did not meet necessary standards to ensure a safe environment, 3) the result of the breach of duty was the proximate or legal cause of the injury, and 4) the breach of duty resulted in injury, loss or damages (Appenzeller, 1978; Alexander & Alexander, 1984).

Defenses

There are several defenses which can be presented in a negligence suit that will release the defendant of any wrongdoings. The first defense should be to prove that the defendant has no legal duty related to the damage. Without legal duty, liability normally does not exist (Jensen, 1983).

Even if there were a breach of duty the individual may not be liable because there was not a clear and direct linkage between the action of the defendant and the damage incurred by the plaintiff (Jensen, 1983). If there is no relationship between the injury and the defendant, then the defendant is not the proximate cause of the injury. Therefore, the defendant is not liable.

A third defense is contributory negligence. This defense means that the injured person did not act as a prudent person and thus deliberate action or lack of action partially caused the accident. However, the age of the injured party has a direct bearing on this defense. Usually, the younger the injured party is, the harder it is to prove contributory negligence. According to Sebolt (1978, p. 6),

> a student under seven years of age is incapable of contributory negligence; seven to fourteen years of age, the student is presumed to be incapable unless it can be shown otherwise; over fourteen years of age, the possibility of contributory negligence exists. Prosser (1965, p. 15), reported some courts had

endeavored to lay down fixed rules as to a minimum age below which the child was incapable of being negligent, and a maximum age above which he was to be treated like an adult. Usually these rules have been derived from the old rules of the criminal law, by which a child under the age of seven was considered incapable of crime, and one over fourteen was considered to be as capable as an adult. The prevailing view was that in tort cases no such arbitrary limits can be fixed. Undoubtedly there was a minimum age, probably somewhere in the vicinity of four years, below which negligence could never be found; but with the great variation in the capacities of children and the situations which may arise, it could not be fixed definitely for all cases.

Assumption of risk is a fourth defense used in a negligence suit. This defense is based on the fact that the injured party knew that there was an inherent danger involved by participating in the activity and voluntarily agreed to take the chance of not being hurt (Alexander & Alexander, 1984). Once again, age is a determining factor as to the liability of the injured party. To help strengthen ones defense, one must not only make the students aware of the risks involved in each activity, but ensure they have an understanding and/or appreciation for the risks involved (Sebolt, 1978).

There are some states that allow the defense of comparative negligence to be used. Under comparative negligence, the injured party's recovery is reduced according to their percentage of negligence (Jensen, 1983). Even though the defendant is liable, this defense does put some of the blame on the plaintiff.

An Act of God or Act of Nature is a sixth defense that may be presented. An individual cannot be held liable if the proximate cause of injury is due to the forces of nature which cannot be foreseen or controlled by humans (Nygaard & Boone, 1981; Jensen, 1983).

A final defense, decreasing in use today, is the doctrine of governmental immunity. This doctrine, based upon the theory that 'the king can do no wrong', implies that state agencies such as school districts and school boards, state employees such as superintendents, principals, teachers and coaches, while acting in their official capacity, are immune from tort liability. This defense varies from state to state, and in a number states, the doctrine of governmental immunity is being changed or abolished by the legislature or courts, which would allow the plaintiff to sue a governmental agency and its employees.

Summary

Law is established to govern all businesses and services and must be applied equally to each citizen. Law is based on constitutions or statutes known as written laws and common law or unwritten law based upon judicial decisions.

Law is also distinguished between criminal and civil. Criminal law involves the state bringing criminal proceedings against a party to protect the rights of those in the state. Civil law involves a person bringing an action against another person to recover from damages suffered.

A tort is a civil wrong, without contract. Tort liability results when an individual is harmed by another individual by either an action or an omission to act. Torts are categorized as intentional, strict liability and negligence. Negligence is the most common tort in the educational setting, especially among physical educators and coaches.

Negligence results from carelessness. Teachers and coaches are expected to provide a safe environment for their students. The doctrine of in loco parentis holds school personnel responsible for the well-being of each student while on school grounds. When school personnel do not meet the expected standard of care of a reasonably prudent professional, they may be found negligent. The four elements necessary to prove negligence are the existence of a legal duty owed, a breach of duty, proximate or legal cause, and injury, loss or damages.

There are several defenses which can be used to release the defendant of any negligence. The best defense is to prove that any one of the four elements necessary for negligence does not exist. Other defenses include contributory negligence, assumption of risk, comparative negligence and an Act of God. Although the doctrine of

governmental immunity can be used as a defense, all fifty states have either modified or abolished the doctrine completely.

CHAPTER III

ANALYSIS OF ELEMENTARY, SECONDARY AND HIGHER EDUCATION COURT CASES FROM PREVIOUS DISSERTATIONS

Introduction

The disciplines of physical education, athletics and intramural sports have been involved in law suits for many years. The five previous studies revealed that issues involving inadequate supervision, inadequate instruction and the use of inadequate or defective equipment were litigated as far back as 1929. In these cases, students were injured in the gymnasium, on outside athletic fields and on the playground.

The injuries occurred both under the supervision of teachers and in absence of teacher supervision. Occasionally, the injury was due to the intervention of a third party.

Overall, from 1929-1976, the five studies reported over 110 cases involving litigation in physical education and athletics. However, for the present study 98 cases, involving elementary and secondary schools and universities were used.

The cases in this chapter have been categorized using the seven Regional Reporter Series' (Appendix B). In addition, cases from the states of New York and California have been classified using the New York Supplement and the California Reporter, which are state reporter series. Also, there were 3 cases which were categorized through the Federal Reporter Series. Finally, the cases within each region were discussed in chronological order by state.

Atlantic Reporter

The first 5 cases reported are from the Atlantic Reporter. The states reporting litigation were Connecticut, New Jersey and Maryland.

Connecticut

Court Case #1. An action was brought against the school district for injuries to a student who was injured in a fall from a balance beam. The court held in favor of the plaintiff because there were no mats around the apparatus. Bush v. City of Norwalk 189 A. 608 (Conn. 1937).

New Jersey

Court Case #1. An action was brought against the school teachers alleging negligence in failing to obtain medical assistance for a school pupil injured during football practice. The plaintiff injured his shoulder while making a tackle. The only medical attention he received was from the coach who put the shoulder back in place. After the student reinjured his shoulder he was advised by the coaches not to play anymore and to see his family doctor. The court ruled in favor of the defendants because the injury was not a medical emergency and the lack of immediate treatment did not cause a more serious injury to occur. Duda v. Gaines 79 A.2d 695 (N.J., 1951).

Court Case #2. An action was brought against the physical education instructor for injuries a student received while jumping over a "horse". Evidence presented indicated that the student was told that the jump was dangerous and that if he did not think he could make the

jump, then he should not attempt the jump. The court ruled in favor of the defendant holding that the plaintiff knew of the potential danger and assumed the risk of the activity. In addition, it was proved that there were mats around the apparatus. Sayers v. Ranger 83 A.2d 775 (N.J., 1951).

Court Case #3. An action was brought against the school board when a student was injured in a fall on loose stones in the school parking lot while running to physical education class. The court held that the school board was not negligent because the teacher was found not negligent. In citing N.J.S.A. 18A:20-35, the court ruled:

> No school district shall be liable for injury to the person from the use of public grounds, buildings or structures, any law to the contrary not withstanding.

Dobbins v. Board of Education of Henry Hudson Regional High School 335 A.2d 58 (N.J., 1974).

Maryland

Court Case #1. An action was brought against a teacher for injuries sustained to a student while doing calisthenics in a classroom. Evidence presented indicated that, while the teacher left the classroom, the plaintiff was injured when another student kicked her in the mouth while performing an exercise to a record. In addition, it was determined that the student who caused the injury moved alongside the plaintiff after the teacher had left the room. The court ruled in favor of the teacher holding that her lack of supervision was not the proximate cause of the injury and that the injury was caused by an intervening and

unforeseeable force. Segerman v. Jones 259 A.2d 794 (Md., 1970).

North Eastern Reporter

There were 11 cases reported from the North Eastern Reporter. The states involved were New York, Illinois and Indiana.

New York

Court Case #1. A student was injured while playing a game of field dodge ball when he slipped and fell and hit his head on exposed and unguarded brick in the wall. The board of education was found to be liable for not protecting the dangerous wall projections with mats or padding. Bradley v. Board of Education of City of Oneonta 8 N.E.2d 610 (N.Y., 1937).

Court Case #2. A student was injured during recess period when he was hit in the eye by a goldenrod thrown by another student. Evidence presented indicated that the injury occurred in a ravine where the supervising teacher could not see the students. The court held in favor of the defendants reasoning that the condition was not inherently dangerous and that the injury occurred by an intervening and unforeseeable force. Hoose v. Drumm 22 N.E.2d 233 (N.Y., 1939).

Court Case #3. An action was brought against the state for injuries sustained to a student who was injured during a physical education class. The student incurred a misplaced vertebra while attempting a head stand. The court held in favor of the plaintiff because there was evidence of lack of proper instruction on the part of the

instructor and that the stunt was "inherently dangerous" to young children. Gardner v. State 22 N.E.2d 344 (N.Y., 1939).

Court Case #4. An action was brought against the board of education for injuries received by a student while watching a "stick ball" game after school on the playground. Evidence presented indicated that the injury occurred when the bat slipped out of the batter's hand and struck the plaintiff. Additional evidence showed that there was no supervision on the playground and that the plaintiff was not a student at the school where the injury occurred. The court held that the board of education was under no duty to provide supervision for the public users. It further stated that even if the board of education had a duty to supervise the playground after school, the board of education would not be liable for injuries caused by conduct of a participant in a game where the risks were plainly visible. Lutzker v. Board of Education 41 N.E.2d 97 (N.Y., 1942).

Court Case #5. An action was brought against the board of education as a result of a student being injured in a fall from a chinning bar. The court held that the jury erred in dismissing the case where there was a question as to whether or not a mat should have been provided under the apparatus. Fein v. Board of Education of City of New York 111 N.E.2d 732 (N.Y., 1953).

Court Case #6. An action was brought against the board of education by a student who was injured during a physical education class. Evidence presented indicated

that the plaintiff was kicked by another student, who was larger than the plaintiff, during a game in which random pairs of students were assigned to compete in kicking a single ball when their number was called. The court ruled in favor of the plaintiff and found the board of education, through the physical education teacher, liable due to lack of adequate supervision in failing to match students according to size. Brooks v. Board of Education of the City of New York 189 N.E.2d 497 (N.Y., 1963).

Illinois

Court Case #1. An action was brought against the board of education by a member of the high school basketball team after he was struck in the face by a fist of a member of the opposing team. The court ruled that the board of education was not liable while exercising their powers in good faith and when their powers are discretionary, except where the acts are performed wantonly or maliciously by an employee. Fustin v. Board of Education of Community Unit District No. 2 242 N.E.2d 308 (Ill., 1968).

Court Case #2. An action was brought against the board of education where a student suffered spinal injuries when she fell from steel rings hanging from the ceiling. The court ruled that in the absence of proof of willful and wanton misconduct on the part of the teachers, the school board could not be held liable. Kobylanski v. Chicago Board of Education 347 N.E.2d 705 (Ill., 1976)

Court Case #3. An action was brought against the school district by a student who was injured in a fall from

the parallel bars. The action stated that the school board, through the physical education teacher was liable due to willful and wanton misconduct and that the board of education could be sued because they had purchased liability insurance. In returning a verdict in favor of the defendants the supreme court held that the immunity conferred upon educators by Sections 24-24 and 34-84a of the Illinois School Code is the result of legislative determination that educators should stand in the place of a parent or guardian in matters relating to discipline, the conduct of schools and school children. Therefore, it is this status as parent or guardian which requires a plaintiff to prove willful or wanton misconduct in order to impose liability upon educators. In addition, the court held that the waiver provision of Section 9-103(b) was inapplicable to the present factual situations. Weinstein v. Evanston Township Community Consolidated School District #65 351 N.E.2d 236 (Ill., 1976).

Indiana

Court Case #1. An action was brought by the plaintiff for injuries he received when he was hit in the eye with a high jump crossbar thrown by another student. The injury occurred after school without any supervision present. In holding for the defendants the court ruled that the equipment was not "inherently dangerous" and there was no duty on part of the school or teachers to supervise during non-school hours. Bush v. Smith 289 N.E.2d 800 (Ind., 1972).

Court Case #2. A student brought action against the school district for injuries she received when she fell while running to the shower after class. Evidence introduced indicated that the plaintiffs legs became entangled with those of another student causing the plaintiff to fall to the floor. The court ruled in favor of the defendants reasoning that the plaintiff was not exposed to any unreasonable risk of injury. Driscol v. Delphi Community School Corporation 290 N.E.2d 769 (Ind., 1972).

Pacific Reporter

There were 29 cases reported from the Pacific Reporter. Washington, California, Montana, Oklahoma, Oregon, Colorado and Kansas were the states in which litigation occurred.

Washington

Court Case #1. A student brought action against the school district for injuries he received while playing football. Evidence indicated that the plaintiff was induced, persuaded and coerced by the coach to train and play while injured. While the plaintiff was playing injured he was seriously hurt. In rendering a judgment in favor of the plaintiff the court ruled that the school district was liable for the negligence of its officers and agents who were acting within the scope of their authority. Morris v. Union High School District A, King County 294 P. 998 (Wash., 1931).

Court Case #2. An action was brought against the playground teacher when a student was run over by the

teachers automobile during recess. The court ruled that the failure to exercise due care was the proximate cause of the injury and therefore, the teacher was liable. In the state of Washington the statute of governmental immunity allows that a school district may be sued for an injury to the rights of the plaintiff arising from some act or omission of such public corporation. Gattavara v. Lundin 7 P.2d 958 (Wash., 1932).

Court Case #3. An action was brought against the school district for injuries received by a student while playing "keep-away" during a physical education class. The claim contended that the injury was caused due to defective floor boards and that the school board was liable for maintaining a dangerous appliance. The court ruled in favor of the defendant school board ruling that the injury was caused by another student in the class when the plaintiff and he collided and not due to defective floor boards. Read v. School District No. 211 of Lewis County 110 P.2d 179 (Wash., 1941).

Court Case #4. An action was filed against the school district for injuries the plaintiff received when she fell from a playground swing. The suit maintained that the swing presented a dangerous situation to the students, especially younger students.

State law 4706 of 1917 provided no action shall be brought or maintained against any school district for any noncontractual acts or omissions relating to any playground or athletic apparatus. Therefore, the court ruled that the statute exempted the school district from liability for any

and all accidents which occurred upon any athletic apparatus or appliance which was used in connection with any playground owned or maintained by the school district. Yarnell v. Marshall School District No. 343 135 P.2d 317 (Wash., 1943).

Court Case #5. A spectator at a baseball game brought suit against the school district after he was hit with a baseball while the two competing teams were warming-up. The suit contended that the injury occurred because of lack of supervision.

The defendant school district claimed that they were immune from liability based on the theory that the baseball could be considered an "athletic apparatus or appliance" under State law 4706, therefore, providing immunity. However, the court ruled that the baseball, to be considered an "athletic apparatus or appliance", must be permanently installed to come within the scope of the statute. Barnecut v. Seattle School District No. 1 389 P.2d 904 (Wash., 1964).

California

Court Case #1. An action was brought against the school district by the plaintiff for injuries he received while playing tag on the playground. Evidence presented indicated that the plaintiff was with a group of 5th-8th grade boys, whose classes were combined for physical education class. While playing tag, the plaintiff was knocked down by a larger boy.

The court stated that in order for the school district to be liable the plaintiff had to prove that the conditions

of the school grounds, equipment or property were defective or dangerous, or that the teacher was negligent due to lack of care commensurate with the activity. The court deemed that the accident was unavoidable, therefore, ridding the school district and the teacher of any liability. Ellis v. Burns Valley School District of Lake County 18 P.2d 81 (Cal., 1933).

Court Case #2. An action was brought against the school district for the death of a student who was hit in the head by a basketball during "free play" activities. The court held that the school district was not liable where: 1) the deceased student had the condition which caused a cerebral aneurysm for some time, 2) the game was properly supervised at the time of the injury, and 3) the accident was deemed unavoidable. Kerby v. Elk Grove Union High School District 36 P.2d 431 (Cal., 1934).

Court Case #3. A student brought action against the board of education when she fell on a concrete sprinkler box which projected above the immediate surface ground. Evidence indicated that the board of education and the principal knew about the condition for years without making any improvements. The court ruled that the sprinkler box did fall into the category of dangerous and defective equipment and that the board of education was negligent. Bridge v. Board of Education of City of Los Angeles 38 P.2d 199 (Cal., 1934).

Court Case #4. An action was brought against the school district after a student put her arm through a glass window on the school playground and bled to death.

Evidence indicated that there was no supervision on the playground at the time of the injury. In ruling for the plaintiff, the court ruled that the school district, through the teachers at the school where the decedent was enrolled, did not follow the state rules and regulations concerning playground supervision and this lack of supervision was the proximate cause of the injury. Ogando v. Carquinez Grammar School District 75 P.2d 641 (Cal., 1938).

Court Case #5. A student brought action against the school district for injuries she received in a physical education class. The plaintiff was injured while performing a "roll over two" stunt. The plaintiff claimed that she was improperly instructed in how to perform the stunt and was forced to take gymnastics because all of the other activities offered were full. The court ruled in favor of the plaintiff holding that the school district was negligent in making the student participate in a class against her wishes. Bellman v. San Francisco High School District 81 P.2d 894 (Cal., 1938).

Court Case #6. A boy was injured while on the school playground when he was run into by another boy who was riding a bicycle. Evidence indicated that the supervising teacher knew that there were students riding bicycles around students who were playing games and made no effort to make the bicycle riders move. The court held that where the teacher was negligent in providing adequate supervision, recovery against the school board was allowed.

Buzzard v. East Lake School District 93 P.2d 233 (Cal., 1939).

Court Case #7. An action was brought against the school district for injuries a student received when she was run over by a sanitation truck while playing on the school playground. Evidence indicated that the board of education allowed the truck on the school grounds during school hours to pick up the refuse. The court found the school district negligent for failing to prescribe any special conditions and regulations to be followed while the sanitation truck was on the school grounds. Taylor v. Oakland High School District 110 P.2d 1044 (Cal., 1941).

Court Case #8. A student was killed in a car accident while riding home from tennis practice. The decedent was a passenger in another student's car. Evidence determined that the coach ordered the decedent to ride in the car which was involved in the accident and that the car was not in satisfactory condition prior to the accident and that the driver was known to be reckless.

The court held that the school district was liable for the negligence of its employees. The court concluded that any reasonable person could have foreseen that an accident might happen. Hanson v. Reedley Joint Union High School District 111 P.2d 415 (Cal., 1941).

Court Case #9. An action was brought against the school district for injuries a student received when he was hit by a car while crossing the street to reach the athletic fields. Evidence presented indicated that there were no crosswalks or signs posted warning that students

crossed the street. In addition, there was no teacher present at the street because the injured plaintiff was late for class and the supervising teacher was with the other students.

The court ruled in favor of the plaintiff deciding that the school district did not exercise ordinary care for the students protection. In addition, it was proved that the principal did not set up rules and regulations concerning the crossing of the street nor did he warn students of the inherent danger that existed. Satariano v. Sleight 129 P.2d 35 (Cal., 1942).

Court Case #10. An action was brought against the school district by a boy who was injured on the school playground. Testimony indicated that the plaintiff was injured during a fight with another student. The playground, where 150 students were playing at the time of the injury, was under the supervision of one person.

The court ruled that the playground was not properly supervised and the injury was directly related to the lack of supervision. Specifically, the court based its decision Pon Section 5.543 of the School Code and Section III, subdivision (d) of the rules and regulations of the State Board of Education which holds teachers liable for the conduct of their students. Charonnat v. San Francisco Unified School District 133 P.2d 643 (Cal., 1943).

Court Case #11. An action was brought against the school district for injuries a student received after school while playing on the school playground. The student was run over by a dump truck which was present to repair

the school playground. The court ruled that the school district was not laible for improper supervision because the school district had turned the supervisory responsibilities over to the recreation department while repair work was being completed. Smith v. Hager 191 P.2d 25 (Cal., 1948).

Court Case #12. A student sustained injuries while participating in a touch football game that was conducted during recess. The game was played between the 7th and 8th grades and the plaintiff was injured when he was struck in the abdomen by the knee of an opponent while executing a block on the opponent.

The court ruled that the school district was not liable where the students were: 1) selected according to skill, 2) properly instructed, experienced and proficient and 3) playing under their own choice. The game was not deemed inherently dangerous and that the injury was unforeseen. Pirkle v. Oakdale Union Grammar School District 253 P.2d 1 (Cal., 1953).

Court Case #13. An action was brought against the school district for injuries a student received during an unsupervised physical education class. Evidence presented showed that the class was comprised of members of the tennis team, the managers and those students who were interested in trying out for the team. The class was taught by the tennis coach who gave the students a "free" day because he had to draw up tennis brackets for a tennis tournament later in the day. During the teacher's absence,

some of the boys started to play handball, whereupon the plaintiff was hit in the eye with the ball.

The court ruled in favor of the defendant, citing Pirkle v. Oakdale Union Grammar School District 253 P.2d 1 (Cal., 1953), stating that handball was not an inherently dangerous activity. Furthermore, the court decided that the injury could have occurred even with the teacher present. Wright v. City of San Bernardino High School District 263 P.2d 25 (Cal., 1953).

Court Case #14. An action was brought against the school district by the father of a student who died as a result of playing "blackout" on the school playground. The court held that the evidence presented supported the claim that there was a lack of proper supervision at the time of the injury. Tymkowicz v. San Jose Unified School District 312 P.2d 388 (Cal., 1957).

Court Case #15. A kindergarten pupil was injured on the school playground when the gate she was climbing was closed by another pupil resulting in the loss of one of the plaintiff's fingers. In rendering a verdict in favor of the defendant school district the court ruled that the gate was not improperly designed nor was the gate in a dangerous or defective condition. Also, there was no evidence that there was improper supervision. Luna v. Needles Elementary School District 316 P.2d 773 (Cal., 1957).

Court Case #16. An action was brought against the school district for the death of a student who fell from a horizontal bar on the playground. The student had a history of a heart defect and cerebral palsy which resulted

in seizures from time to time. The court ruled that the student was aware of his condition and he should have realized the danger involved. In addition, there was no evidence that the supervising teacher was negligent in her duties. Rodrigues v. San Jose Unified School District 322 P.2d 70 (Cal., 1958).

Court Case #17. An action was brought against the school district by the plaintiff who was rendered a quadriplegic during a football scrimmage. Evidence presented indicated that the plaintiff was tackled on the play and immediately claimed to be injured. The coach checked the plaintiff to see if there was movement in the boys arms and legs. Upon movement by the plaintiff, the coach and some other team members picked the plaintiff up and carried him to the sidelines. It was then noticed that the plaintiff had no body movement below the neck. The court found that the school district through the football coach was negligent in failing to obtain proper medical assistance and for failing to exercise reasonable care. These shortcomings were deemed to be the proximate cause of the injury. Welch v. Densmuir Joint Union High School District 326 P.2d 633 (Cal., 1958).

Court Case #18. A student was killed while engaged in a game called "slap boxing" with another student while on the playground. During the time of the injury, the supervising teacher was eating lunch. State law requires that school districts have the duty to supervise the conduct of the children while they are on school grounds and to enforce those rules and regulations necessary for

the students protection. Therefore, the school distirct is liable for injuries proximately caused by such negligence. Dailey v. Los Angeles Unified School District 470 P.2d 360 (Cal., 1970).

Montana

Court Case #1. A student was injured when he was struck in the head by a shot put which was tossed by another student. Evidence introduced revealed that the student was instructed by the principal to stand in a specific spot so that he would be able to mark the toss. In upholding the doctrine of governmental immunity the court replied that physical training was part of the "educational duty" entrusted to public schools and that this constituted a "governmental function" through which liability could not be granted. Bartell v. School District No. 28, Lake County 137 P.2d 422 (Mont., 1943).

Oklahoma

Court Case #1. This action was brought as a result of the plaintiff being attacked by two other boys in the school gym during the noon hour. The court held that a school board, in discharge of its duties in performing a mandatory governmental function is not liable for the negligent or tortious acts of its employees. Dahl v. Hughes 347 P.2d 208 (Okl., 1959).

Oregon

Court Case #1. A freshman football player brought an action against the school district claiming that he was injured due to the negligence of his coaches by allowing him to play against a more experienced team. In addition,

the plaintiff claimed that the school district was not protected under the doctrine of governmental immunity because the school district had purchased liability insurance.

The court ruled in favor of the defendant school district holding that there was ample evidence presented to show that the plaintiff was properly trained and had received enough experience through football practice. In addition, the court ruled that the plaintiff assumed the risks of the activity. Vendrell v. School District No. 26C Malheur County 376 P.2d 406 (Ore., 1962).

Court Case #2. A student was injured in physical education class while performing an exercise upon which this action was filed. The evidence introduced showed that the plaintiff had been excused from physical education activities in the past because of a back injury. During the present school year, the plaintiff's doctor had requested a list of the exercises which his patient was going to perform. However, the doctor never received the list.

The physical education instructor was found negligent for failing to exercise reasonable care for the protection of the students under his supervision. Furthermore, it was the foreseeability of harm which in turn gave rise to a duty to take reasonable care to avoid the harm. Summers v. Milwaukee Union High School District No. 5 481 P.2d 369 (Ore., 1971).

Colorado

Court Case #1. An action was brought against the school district for injuries the plaintiff received while playing basketball. The court ruled that the school district was immune from liability granted to them by the doctrine of governmental immunity. Tesone v. School District No. RE-2, in County of Boulder 384 P.2d 82 (Col., 1963).

Kansas

Court Case #1. This action was filed as a result of injuries sustained by the plaintiff who was kicked in the head while sitting on the school playground. The court ruled that a board of education's operation of a public school system, including school playgrounds, constituted the performance of a governmental function and was not held liable. Koehn v. Board of Education of City of Newton 392 P.2d 942 (Kan., 1964).

South Eastern Reporter

The South Eastern reporter had 3 cases which were previously reported in studies. The states of Georgia and North Carolina were represented in the following litigation.

Georgia

Court Case #1. An action was brought against the plaintiff's football coach for injuries received while playing football. The plaintiff claimed that the coach forced him to play even though the coach knew he was injured. The court ruled in favor of the football coach holding that the student should have known better than to

go back into a football game if he was injured. In addition, the court indicated that the student was capable of realizing the danger involved in the activity and that he should have exercised caution to avoid the danger. Finally, the court agreed that the student should be treated as an adult in this situation. Hale v. Davies 70 S.E.2d 923 (Ga., 1952).

North Carolina

Court Case #1. A student was injured during basketball practice when he collided with a glass door panel while running wind sprints. Evidence indicated that the glass panels were three feet from the playing court.

The court ruled in favor of the defendant claiming that the student knew that the glass panels were there, especially since he had been a member of the basketball team for three years. In addition, there was the determination that the student made no effort to stop and therefore, was considered contributorily negligent. Clary v. Alexander County Board of Education 199 S.E.2d 738 (N.C., 1974).

Court Case #2. An action was brought against the football coach by the decedents parents after their son was killed in a football game. The action claimed that the coach was negligent for allowing their son to play because he was ineligible due to his age (the decedent was 20 years old at the time of his death). The court held that the coach was not negligent because the death was not attributed to age of the student but due to the dangers

involved in playing of football. Barrett v. Phillips 223 S.E.2d 918 (N.C., 1976).

South Western Reporter

There were 3 cases reported from the South Western Reporter. The states involved in the litigation included Missouri and Texas.

Missouri

Court Case #1. The plaintiff brought action against the State Department of Education claiming that he was injured while participating in a wrestling class due to improper instruction and the failure to exercise reasonable care by the teacher. In addition, the claimant stated that the school district failed to comply with state laws where the State Department of Education did not recommend wrestling in the curriculum. However, the court held that the doctrine of governmental immunity protected the school district and those individuals who were performing governmental and discretionary functions. Smith v. Consolidated School District No. 2 408 S.W.2d 50 (Mo., 1966)

Court Case #2. A student was injured in a wrestling class held in a school of the defendant school district. The court found the school district not liable as they were protected under the doctrine of governmental immunity. O'Dell v. School District of Independence 521 S.W.2d 403 (Mo., 1975).

Texas

Court Case #1. An action was filed against the state claiming that the parents decedent child, who was blind,

drowned as a result of negligence on the part of the lifeguards at the school pool. The school district was not liable because they were protected under the doctrine of governmental immunity. Torres v. State 476 S.W.2d 846 (Tx., 1972).

North Western Reporter

The North Western Reporter had 9 cases decided. Minnesota, South Dakota, Michigan, Wisconsin and Iowa were the states in which cases were reported.

Minnesota

Court Case #1. This action was filed as a result of a football players loss of sight in one eye after he was tackled and his face landed in unslacked lime used to line the field. State law provided that school districts were governmental agencies with limited powers created solely to exercise public functions for educational purposes. Therefore, the statute does not authorize a suit against a school district for personal injury caused by the negligence of its officers or agents in performing its governmental function. Makovich v. Independent School District of Virginia, No. 22 225 N.W. 292 (Minn., 1929).

Court Case #2. This suit was brought about when a child was injured on a defective slide which was left in the kindergarten classroom. Although the court ruled that the school district was immune because of the doctrine of governmental immunity, the presiding judge indicated that the doctrine needed to be abolished. Spanel v. Mounds View School District No. 621 118 N.W.2d 795 (Minn., 1962).

Court Case #3. An action was brought against a school teacher for injuries a child received while jumping rope. The plaintiff was injured when another student landed on the jump rope, with the implied force pulling the rope from the teachers hand and striking the plaintiff in the mouth. The court ruled that the teacher was not liable because the act in which the plaintiff was injured was unforeseeable. Wire v. Williams 133 N.W.2d 840 (Minn., 1965).

South Dakota

Court Case #1. This action was filed by the decedents parents as a result of their son's death while attending a letter award ceremony. As part of the initiation, the decedent was to lie down in a pool of water and then receive an electrical shock. The initiation process was supervised by the head coach who was in favor of the initiation task. The decedent received too much electricity and was electrocuted. The court held that the coach did not exercise the degree of care commensurate with the activity involved. Ironically, the court held the coach to the same standard of care the electric company was held to since the case involved an electrocution. DeGooyer v. Harkness 13 N.W.2d 815 (S.D., 1944).

Michigan

Court Case #1. An action was brought against the school district when a student was hurt on a "mini trampoline" during a physical education class. The suit alleged that the injury was a result of a dangerous or defective condition of a public building so as to constitute an exception to the doctrine of governmental

immunity. In addition, the claim stated that the school district's purchase of liability insurance waived their right to protection under the governmental immunity doctrine. However, the court held that the school district was protected under the doctrine of governmental immunity because they were conducting a governmental function. Cody v. Southfield-Lathrup School District 181 N.W.2d 81 (Mich., 1970).

Court Case #2. This action was brought against the school district, the principal and the football coach when one student was seriously injured and another student died as a result of heat prostration during football practice. The court ruled that the school district and the principal were clothed by the doctrine of governmental immunity because they were performing governmental functions. However, the court ruled, where the injuries for which redress was sought were attributable to the individual tort or negligence of a particular employee, the person himself was liable. Cecil and Lovitt v. Concord School District 228 N.W.2d 479 (Mich., 1975).

Court Case #3. An action was brought against the school district when the plaintiff suffered a severe eye injury while playing tennis in the gymnasium. The plaintiff was playing on one of the two courts set-up by the teacher. However, due to the small area in the gymnasium, the courts were set-up side by side with no safety net between the courts. The court held that the school district was immune from liability because the claim did not come within the public building exception to the

statute of governmental immunity. Zawadzki v. Taylor and Lincoln Consolidated School System 246 N.W.2d 161 (Mich., 1976).

Wisconsin

Court Case #1. A student was injured in a fall from the still rings while participating in a physical education class. Where evidence submitted indicated that the plaintiff had received the proper instruction on how to do the exercise and where the activity was reasonably supervised, there was no liability. Lueck v. City of Janesville 204 N.W.2d 6 (Wis., 1973).

Iowa

Court Case #1. A student brought action against the school district when he was kneed in the face, while trying to pick up a ball on the playground. The court held that the teacher was not liable for improper supervision; that the injury was unforeseeable. Fosselman v. Waterloo Community School District 229 N.W.2d 280 (Iowa, 1975).

Southern Reporter

The Southern Reporter had 4 cases reported in prior studies. All of the cases were from the state of Louisiana.

Louisiana

Court Case #1. An action was initiated when a girl was hit by a softball bat which was thrown by another girl. The claim stated that the plaintiff was injured due to improper supervision on the part of the supervising teacher.

The court ruled in favor of the defendant implying that softball was not an inherently dangerous activity. In addition, the court stated that no amount of supervision could have prevented the injury. Benedetto v. Travelers Insurance Company 172 So.2d 354 (La., 1965).

Court Case #2. A high school football player died of heat stroke and exhaustion following a football practice workout. Evidence presented indicated that the decedent student did not receive medical treatment for some two hours after the heat stroke symptoms appeared. The court ruled that the football coach was negligent in the wrongful treatment of the sickness and that the lack of treatment was the proximate cause of the death. Mogabgab v. Orleans Parish School Board 239 So.2d 456 (La., 1970).

Court Case #3. A student was injured when he ran into a javelin which was sticking out of the ground. The student was participating in his physical education class against the instructions of his teacher because he was not dressed properly. Additional evidence showed that the plaintiff had taken off his glasses prior to his running and was running on a part of the track that was not allowed. The court decided that the injury was attributed to the negligence of the plaintiff and thereby dismissed the claim. Siau v. Rapides Parish School Board 264 So.2d 372 (La., 1972).

Court Case #4. A student was injured prior to the start of his physical education class when he attempted a dive roll over some chairs. At the time of the injury, the teacher was collecting valuables from other students in the

class. Evidence indicated that the students were instructed not to do anything until the roll was called and anything to the contrary was against school rules. The court ruled in favor of the defendant stating that the plaintiff did not follow school rules and that the instructor had properly instructed the plaintiff in the correct manner in which to do the exercise. Finally, the court held the fact that each student was, not personlly supervised every moment of each school day did not constitute fault on part of the school board its employees. Banks v. Terrebonne Parish School Board 339 So.2d 1295 (La., 1976).

New York Supplement Reporter and California Reporter

The New York Supplement Reporter and the California Reporter listed cases from the states of New York and California. Twenty-six cases have been included from these Reporters.

New York

Court Case #1. An action was brought against the board of education when a student was injured when he was performing an exercise on a mat and the mat moved. The court ruled in favor of the defendant holding that the teacher showed reasonable care by supplying a mat for the exercise. The court emphasized that any physical exercise possesses the chance of injury. Camberi v. Board of Education of City of Albany 284 N.Y.S. 892 (N.Y., 1936).

Court Case #2. A student was injured on a school playground after school was over for the day. The plaintiff entered the playground through an unlocked gate.

The court held that the school board had no duty to supervise the playground after school, thereby, removing all liability. Kantor v. Board of Education of City of New York 296 N.Y.S. 516 (N.Y., 1937)

Court Case #3. An action was initiated against the state for injuries a girl received after she was tossed into the air on a blanket and on returning to the blanket her foot went through the blanket and she landed on the ground. The evidence presented proved that the girl was tossed into the air against her will. The court ruled that the employees of the state were negligent for conducting a dangerous activity with inadequate and unsafe equipment. Rook v. State 4 N.Y.S.2d 116 (N.Y., 1938).

Court Case #4. A student was injured while performing an exercise on the 'German horse' when he forgot to let go of the handles and he fell resulting in a broken arm. The evidence indicated that the teacher: 1) was directly supervising the activity, 2) had instructed the students on the proper way to perform the exercise, and 3) was fully qualified to be a physical education instructor. In addition, the student had executed the same jump earlier in the class without any problems. Therefore, the evidence presented warranted a verdict in favor of the defendant. Kolar v. Union Free School District No. 9, Town of Lenox 8 N.Y.S.2d 985 (N.Y., 1939).

Court Case #5. A student was struck by an automobile on a city street when he was playing football with his physical education class. The playground on the school grounds was used as a parking lot for the teachers cars.

The court held that the board of education was negligent for not insuring the safety of the students under their jurisdiction by creating a dangerous situation. Lee v. Board of Education of City of New York 31 N.Y.S. 2d 113 (N.Y., 1941).

Court Case #6. An action was brought against the City when a student was hit in the eye with a stone that was hit by another student with a bat. At the time of the injury the supervising principal was inside answering the telephone.

The court ruled that there were no dangerous or defective conditions present on the playground and the lack of supervision was not the proximate cause of the injury. Therefore, there was no liability involved. Wilber v. City of Binghampton 66 N.Y.S.2d 250 (N.Y., 1946).

Court Case #7. An action was brought against the physical education teacher who sat in the bleachers while two of his students boxed against each other during a required activity class. The teacher was found negligent where he: 1) gave no training to the students and 2) did not exercise reasonable care to prevent any injuries. The court reasoned that the teacher needed to warn the students that they were participating in a hazardous exercise. LaValley v. Stanford 70 N.Y.S.2d 460 (N.Y., 1947).

Court Case #8. An action was brought against the board of education when a high school basketball player collided with a door jamb in a brick wall. The door jamb was two feet from the backboard and basket. The court held in favor of the board of education because evidence

presented revealed that the student had played on the court several times before and had hit the brick wall or had gone through the door before without injury. Therefore, he knew of the danger that existed and he assumed the risk of injury. Maltz v. Board of Education of New York City 114 N.Y.S.2d 856 (N.Y., 1952).

Court Case #9. A student was injured, while climbing a wire fence on the school playground, when another student raised the wire on the top of the fence causing the plaintiff to fall. The court ruled that the proximate cause of the accident was the unforeseen intervention of a classmate and not any negligence on the part of the school district. Also, the court reported that the fence was in good condition. Pollard v. Board of Education, Barker Central School District 117 N.Y.S.2d 185 (N.Y., 1952).

Court Case #10. A student was injured while playing basketball and filed suit against the board of education. The playing area was comprised of 8 basketball courts, which had overlapping boundary lines. The injury occurred when the plaintiff collided with another student, who was playing on an adjacent court. The board of education was found negligent because the situation created a condition of danger which the Board should have reasonably anticipated. Bauer v. Board of Education of Ciy of New York 140 N.Y.S.2d 167 (N.Y., 1955).

Court Case #11. A student, who was injured in a physical education wrestling class, filed suit against the state claiming the supervising teacher was negligent in his instruction and supervision. Evidence presented indicated

the plaintiff chose his wrestling partner based on the fact that the partner was his friend. The teacher agreed to allow the two boys to wrestle each other because they were comparable in both height and weight. The court favored the defendant because the teacher was a competent instructor, had properly instructed the students in the techniques and had supervised the activity closely. Reynolds v. State 141 N.Y.S.2d 615 (N.Y., 1955).

Court Case #12. An elementary student was injured when she jumped from the top row of bleachers while on the school playground. The plaintiff had received permission from the teacher to play on the playground even though the playground was not supervised. The school district, through the teacher was found liable of inadequate supervision. Decker v. Dundee Central School District 176 N.Y.S.2d 307 (N.Y., 1958).

Court Case #13. A child was injured when she was hit in the eye by a hard ball while playing the game bombardment. The child was one of a group of 15-24 Spanish speaking children. The teacher in charge of the class did not speak Spanish and was not able to warn the students when the balls were being thrown too high. The court ruled that the accident was reasonably foreseeable and that proper supervision and the furnishing of proper equipment may have prevented the injury. Rivera v. Board of Education of City of New York 201 N.Y.S.2d 372 (N.Y., 1960).

Court Case #14. A student was injured while playing a game of catch-a-fly with other boys in the class. The game

was played with one boy hitting a baseball to the other players. During the game, the player who was hitting the baseballs hit a short fly ball. Instantaneously, the batter went after the ball to try and hit it again while the plaintiff ran after the ball to try and catch the ball. The plaintiff was struck in the face with the bat when the batter tried to rehit the ball as the ball fell to the ground. The court ruled that the accident was unforeseeable removing all liability. Nestor v. City of New York 211 N.Y.S.2d 975 (N.Y., 1961).

Court Case #15. A student was killed while playing a basketball game when he bumped heads with another player. The court held that the bumping of heads was a hazard of the game and even though the supervising teacher was not present the board of education was not liable of improper supervision. Kaufman v. City of New York 214 N.Y.S.2d 767 (N.Y., 1961).

Court Case #16. A student filed suit against the school district claiming he was injured on the school playground due to lack of proper supervision and for allowing a young child to use a dangerous piece of equipment. The child fell from a horizontal bar. The court ruled that general supervision was all that was necessary and that specific supervision of all the playground equipment would be unreasonable. Also, the court decided that the apparatus was in good condition. Therefore, the school district was not found liable. Cordaro v. Union Free School District Number 22, Farmingdale 220 N.Y.S.2d 656 (N.Y., 1961).

Court Case #17. A student spectator was injured after school, on the school playground, when a "stick ball" bat slipped out of the batters hand and struck the plaintiff. The board of education was not liable where the plaintiff assumed the risks of the game. Bennett v. Board of Education of the City of New York 226 N.Y.S.2d 593 (N.Y., 1962).

Court Case #18. An action was brought against the board of education for negligent supervision when a baseball catcher fell over a bench. The bench was moved by the spectators to a spot 12 feet from the third base line. The board of education, through the playground supervisors, was found liable for creating a dangerous situation. Domino v. Mercurio 234 N.Y.S.2d 1011 (N.Y., 1962).

Court Case #19. An action was brought against the board of education when a girl was injured in a game of line soccer. Evidence presented proved the teacher did not follow the syllabus provided to her and the injury occurred as a direct consequence of such negligence. Keesee v. Board of Education of City of New York 235 N.Y.S.2d 300 (N.Y., 1962).

Court Case #20. A student was injured when he fell off of a fence during a recess period. At the time the injury occurred there was no teacher present to supervise the student activity. However, the student was told not to play on the fence. The board of education was not liable because the fence was in good condition and maintained. Schuyler v. Board of Education 239 N.Y.S.2d 769 (N.Y., 1963).

Court Case #21. A student was injured while doing exercises when she collapsed from pain due to a knee injury. The court held the injury was a pure accident and not due to improper supervision. Ostrowski v. Board of Education of Corsackie-Athens Central School District 294 N.Y.S.2d 871 (N.Y., 1968).

Court Case #22. A student filed action against the Board of Education when she injured herself while doing a gymnastic exercise. The plaintiff claimed that the teacher made her do the exercises even though the teacher knew she had weak wrists. However, there was no evidence presented that the student told the teacher that she had weak wrists. Therefore, the board of education, through the teacher, was not liable. Cherney v. Board of Education 297 N.Y.S.2d 668 (N.Y., 1969).

Court Case #23. An action was brought against the board of education when a student was kicked during a physical education class. The court held that where there was no evidence presented that the defendants unreasonably delayed the administration of medical treatment no liability existed. Peck v. Board of Education of City of Mount Vernon 317 N.Y.S.2d 919 (N.Y., 1970).

Court Case #24. The board of education was found negligent for injuries a student received when he fell from the still rings. Evidence presented indicated that the teacher never demonstrated any stunts and had two inexperienced students acting as spotters for the plaintiff. In addition, the teacher did not have the apparatus in his view which did not follow the guidelines

in the State Physical Education Syllabus. Armlin v. Board of Education of Middleburgh Central School District 320 N.Y.S.2d 402 (N.Y., 1971).

Court Case #25. An action was brought against the board of education when the plaintiff was injured in a physical education class. The teacher told the student to take off his shoes and socks if he wanted to participate in the class. While the plaintiff was barefooted, he fell and incurred the injury. The court held that the proximate cause of the injury was due to the barefooted condition. Therefore, the board of education was negligent. Brod v. Central School District No. 1 386 N.Y.S.2d 125 (N.Y., 1976).

California

Court Case #1. A student was injured when he was pushed into a basketball goalpost while going to the school playground. Even though the teacher was not present at the time of the injury the court ruled that there was not any negligence because the injury was due to the interference of a third party. Woodsmall v. Mt. Diablo Unified School District 10 Cal. Rptr. 447 (Cal., 1961).

Higher Education

Finally, there were 8 cases reported in the area of higher education. The states involved included Washington, Georgia, Kentucky, New York, Colorado, and Vermont.

Washington

Court Case #1. A university student was injured on a trampoline after class when he lost his balance while attempting to perform a stunt. The teacher was assisting

another student at the time of the injury. The court ruled in favor of the defendant citing the defense of last clear chance. Specifically, the court held that the student had the last clear chance to avoid the injury by getting off of the trampoline, whereas the instructor, even if he had seen the students peril, did not have time to prevent the injury. Chapman v. State 492 P.2d 607 (Wash., 1972).

Georgia

Court Case #1. An action was brought against the college when a student drowned during a freshmen swimming class. The teacher employed two members of the swim team to help teach the class. At the time of the death the teacher was not present in the pool area. Evidence indicated that even though the aides were members of the swim team they were not Water Safety Instructor certified. Therefore, the college, through the negligence of the teacher was liable of inadequate supervision. Morehouse College v. Russell 136 S.E.2d 179 (Ga., 1964).

Kentucky

Court Case #1. A student was injured when she fell on the floor of the gymnasium because of a sticky substance which was on the floor. Evidence failed to establish that the condition had existed for a long period of time and that the college staff had actual knowledge of the hazardous condition. Therefore, there was no charge of negligence against the college. Cumberland College v. Gaines 432 S.W.2d 650 (Kent., 1968).

New York

Court Case #1. A student, who was umpiring a game behind a loose net backstop, suffered injury to his eye when a foul ball hit the students' glasses which shattered and cut the cornea to his right eye. The injury occurred during a physical education class.

The state reported that the loose net backstop was used to prevent baseballs from ricocheting onto the field. Also, it was determined that the plaintiff had umpired games in the past. In addition, some of the plaintiffs' classmates stated that the student had his face too close to the net and that the plaintiff knew that a baseball, which hit the loose net, would be "absorbed" by the net.

The court ruled in favor of the defendant holding that there was adequate supervision by the teacher present and that the plaintiff was injured due to his own negligence of standing too close to the net. Also, the court stated that a portable backstop in a non-competitive practice game was suitable. Hanna v. State 258 N.Y.S.2d 694 (N.Y., 1965).

Court Case #2. A student was hurt playing pushball during an orientation program annually held between freshmen and sophomores. The game was under the supervision of the upperclassmen and was refereed by four students. The plaintiff was injured when she was "clipped" from behind. The court ruled in favor of the state university for the following reasons: 1) the student volunteered to play in the activity, and 2) where the game had been played traditionally for the past 40 years without a serious injury, the supervision was adequate because

there was no evidence that pushball was an inherently dangerous activity. Rubtchinsky v. State University of New York at Albany 260 N.Y.S.2d 256 (N.Y. 1965).

Federal Court

Court Case #1. A student, who was released from the hospital with the German measles, was permanently paralyzed in a football game a few days later. Negligence was not proved where there was a lack of evidence presented that the plaintiff was in a weakened state. Cramer v. Hoffman 390 F.2d 19 (2nd Circuit Court, 1968).

Court Case #2. A student was injured in a self-defense class when the instructor flipped her and she landed between the mats. The court ruled for the plaintiff stating that she was subjected to an extraordinary hazard which she could not anticipate (being thrown to the floor). Wells v. Colorado College 478 F.2d 158 (10th Circuit Court, 1973).

Court Case #3. An action was brought against the college for injuries a student received while ice skating on the college ice rink. The plaintiff claimed that the college did not maintain a safe facility when he fell over a "lump" in the ice which caused the injury. The court held in favor of the defendant because there was no proof that the condition had existed for a period long enough to allow the college to discover and eliminate the hazard. Mortiboys v. St. Michaels College 478 F.2d 196 (2nd Circuit Court, 1977).

Summary

From 1929-1976 there were 90 elementary and secondary lawsuits involving physical education instructors, athletic coaches and their supervisors, including local school boards or boards of education. These cases were categorized using the seven Regional Reporter Series, the New York Supplement, the California Reporter and the Federal Reporter Series. Overall, 34 cases were decided in favor of the plaintiffs while the defendants were found not liable in 56 cases.

Atlantic Reporter

In the Atlantic Reporter there were five cases reported. Overall, one case was decided for the plaintiff while four cases were decided for the defendants.

Connecticut (1)

The case was ruled in favor of the plaintiff. The defendant school district was found negligent for failing to provide adequate matting around a gymnastic apparatus.

New Jersey (3)

The defendants were found not liable in all three cases. In the first case the coaches were not found negligent for the improper treatment of a injury when the injury was not a medical emergency and the lack of immediate treatment did not cause a more serious injury to occur.

A defendant school teacher was found not liable for an injury a student received during a gymnastics routine. It was proved the plaintiff knew of the potential danger,

assumed the risk of the activity and proper matting was provided around the apparatus.

Finally, a school board was found not liable for injuries a student received when falling on loose stones. State law prohibited school districts of being negligent when a person was injured on public grounds.

Maryland (1)

The proximate cause of the injury was an intervening third person and unforeseeable force. Therefore, the supervising teacher was not negligent.

The North Eastern Reporter reported 11 cases involving physical education and athletics. Seven of the cases were decided in favor of the defendants while the plaintiffs recovered damages in four lawsuits.

New York (6)

Four of the six cases reported on from the state were decided in favor of the plaintiffs. In one case the board of education was found liable for an injury that occurred when a student hit his head on an exposed and unguarded brick.

The defendant state was found liable due to inadequate instructor by a teacher when a young child was injured while performing an 'inherently dangerous' stunt. Also, the court ruled that a school board could be held liable where there was a question raised concerning the use of a mat under a piece of exercising equipment. Finally, the board of education, through the physical education teacher, was found liable due to inadequate supervision for failing to properly match students according to size.

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The defendants were not liable for injuries received by a student where the condition was not inherently dangerous and the injury occurred by an intervening and unforeseeable force. Also, the court held that a board of education does not need to supervise after school activities on a playground.

North Eastern Reporter

The North Eastern Reporter published five cases decided between 1929 and 1976. The defendants were not liable in four of the five decisions.

Illinois (3)

In order to prove negligence in the state a defendant must be liable of willful and wanton misconduct. Two of the three cases were found in favor of the defendants, no proof of willful and wanton misconduct, while the plaintiff won one case.

Indiana (2)

Both cases were ruled in favor of the defendants. The court held in one case that neither a school nor a teacher has to supervise non-school hour activities, especially not 'inherently dangerous' activities. The second case was held for the defendant where it was proved the plaintiff was not exposed to any unreasonable risk of injury.

Pacific Reporter

The Pacific Reporter published 29 cases decided between 1929 and 1976. The plaintiffs were awarded favorable decisions in 15 cases compared to 14 decisions in favor of the defendants.

Washington (5)

Three cases were held in favor of the plaintiff while the defendants were found not liable in two cases. First, a school district was found liable for the negligence of its officers and agents who were acting within the scope of their employment when a student was induced, persuaded and forced to play in a football game. Second, where the proximate cause of injury was due to the failure to exercise proper care, the court held the defendant liable.

Two cases involved the states doctrine of governmental immunity. State laws provide immunity to a school district if a student is injured on an 'athletic aparatus or appliance.' Therefore, when a student was injured on a playground swing the court found the school district not liable. However, where a person was struck by a baseball while watching a game, the court ruled that the baseball fell outside of the scope of the statute because it was not a permanent fixture and therefore, the school district could be held negligent of improper supervision.

The final case involved an injury to a student when he collided with another student during a physical education class. Since the injury was not foreseeable and there was not a defective condition in accordance to the state immunity doctrine the defendant was not liable.

California (18)

Eleven of the cases were found in favor of the plaintiff. In five of those cases the defendants were found negligent for not following state rules concerning playground supervision, where the lack of supervision was

the proximate cause of the injury or death. Also, where a school board knew of a dangerous and defective piece of equipment for years and did not fix the situation, they were liable when a student was injured on the equipment.

A school board was found negligent of improper supervision where it failed to establish regulations concerning vehicles riding on the school playground during school hours and a student was run over by a garbage truck. On the other hand, the school board was not liable when a student was struck by a dump truck while playing on the school playground after school hours.

A school board was found negligent where a student was injured in a class she was forced to take. Also, where a student was forced to ride in another student's car after practice and was killed, the school board, through the coach was found liable of negligence.

The last two cases ruled in favor of the plaintiff involved the lack of exercising ordinary care where a student was injured who was crossing an unsupervised street on the way to a physical education class. Finally, where a coach moved an injured player which resulted in paralysis, the school district was found negligent for its employees failure to exercise ordinary care.

Seven cases were decided in favor of the defendants. Four of the cases were deemed unavoidable accidents or the equipment on which the injury occurred was not defective nor dangerous. Also, there was no liability where a student knew of the dangers involved with the activity and knew of his limiting physical condiion. Finally, a teacher

showed proper instruction and supervision where the students were selected according to skill and had previous experience in the activity.

Montana (1)

The case was held in favor of the defendant. This decision was based on the doctrine of governmental immunity and the fact that the student was injured while taking part in physical activity considered an 'educational duty.'

Oklahoma (1)

The defendant school board was found not liable. The court held that the school board, while performing a mandatory governmental fucntion, was not liable for the negligent or tortious acts of its employees.

Oregon (2)

One case was ruled in favor of the plaintiff and one case was held for the defendant. The plaintiff was awarded the judgment where it was proved that the teacher did not exercise reasonable care for the student. However, where it was proved that the plaintiff was properly trained and had received enough experience there was no liability against the school district.

Colorado (1)

The school district was immune from liability granted to them by the doctrine of governmental immunity. Therefore, the plaintiff could not recover damages.

Kansas (1)

A board of education, while performing a governmental function, receives immunity. Therefore, there is no liablity.

South Eastern Reporter

There were three cases reported on from the South Eastern Reporter. All three cases were found in favor of the defendants.

Georgia (1)

The decision was ruled in favor of the defendant coach even though he forced an injured student to play in a football game. The court ruled that the student was old enough to realize the dangers involved and that he could have exercised caution to avoid the danger.

North Carolina (2)

A student, who was familiar with the playing court, was found contributorily negligent when he injured himself during basketball practice. Also, the court held that a football coach was not liable where the death of a player was attributed to the dangers involved in playing the game and not due to the student's age.

South Western Reporter

The South Western Reporter published three cases that were decided during 1929 and 1976. All three cases deemed the defendants not liable.

Missouri (2)

The state provided immunity to school districts and those individuals who were performing governmental and discretionary functions. Therefore, there was no liaility.

Texas (1)

The state has the doctrine of governmental immunity which protects school districts from liability. Therefore,

the lifeguards at the school pool were relieved of any negligence.

North Western Reporter

There were 9 cases reported on in the North Western Reporter. Six of the cases were ruled in favor of the defendants, while the plaintiffs won three of the cases.

Minnesota (3)

Two of the cases involved the doctrine of governmental immunity. However, it is necessary to note that in the second case the presiding judge indicated that the doctrine needed to be abolished. In the other case, the injury was ruled unforeseeable which relieved the supervising teacher of any negligence.

South Dakota (1)

The coach was found to be liable for failing to exercise a degree of care commensurate with the activity. Therefore, the plaintiff was awarded damages.

Michigan (3)

In all three cases the school districts were found not liable because they were protected from liability under the doctrine of governmental immunity. However, in one case, a coach was found to be liable where it was proved that the injury was a direct cause of his negligence.

Wisconsin (1)

The decision of the court was ruled in favor of the defendant. This was based on the facts that the plaintiff was properly instructed on how to do the exercise and the activity was properly supervised.

Iowa (1)

The injury was deemed to be unforeseeable. Therefore, no liability was found.

Southern Reporter

The Southern Reporter published 4 cases involving physical education and athletic programs from 1929-1976. Of the four lawsuits, the defendants were found not liable in three of the cases.

Louisiana (4)

A football coach was found negligent for failing to obtain proper medical treatment for one of his player. The lack of treatment was the proximate cause of the student's death.

The defendants were found not liable where a student failed to follow school rules and where a student was injured due to his own negligence. Also, where a court ruled that softball was not an inherently dangerous activity and that no amount of supervision could have prevented the injury, the defendant teacher was not found negligent.

New York Supplement and California Reporter

The New York Supplement published 25 cases during 1929-1976. Ten of the cases were decided in favor of the plaintiffs while 15 cases were decided in favor of the defendants. Finally, there was one case listed in the California Reporter which favored the defendant.

New York (25)

Four of the cases decided in favor of the plaintiffs were due to the defendants creating the dangerous

situation. Also, the defendants were found liable in three cases for conducting dangerous activities without proper supervision, proper instruction and unsafe equipment.

Two boards of education were found negligent when the supervising teacher failed to follow the prescribed course syllabus and an injury occurred. Also, a board of education was found negligent when a student was injured on a playground and there was no supervision present.

The defendants were found not liable in three cases where the playground equipment was not dangerous or defective, even though one of the cases involved no supervision. The board of education was relieved of all supervisory duties in two lawsuits where students were injured on playgrounds after school hours.

The unforeseen intervention of another student was the reason the courts held in favor of the defendants in two court cases. In addition, two cases were held for the defendants where it was proved that the teacher was properly supervising the activity and had instructed the student to do the exercise correctly.

Two cases which involved the deaths of injured students were held in favor of the defendants because the court viewed the activities as contact sports and the deaths were the result of the risks involved with participating in a dangerous activity. Also, where the supervising teacher showed reasonable care by providing a mat, even though the mat moved when the student landed on it, the court ruled that the defendant school district was

not liable holding that in all physical activity there is a chance of injury.

Two of the final three cases ruled for the defendants were based on the facts that the injury was the result of a pure accident and that the injured student knew of his physical limitations. Finally, where the court ruled that there was not a delay in medical treatment a student received there was no liabiliy.

California (1)

The case was held in favor of the defendant even though there was no supervision on the playground at the time of the injury. The court held that the injury was the result of the interference of a third party.

Higher Education

The previous five studies reported 8 cases which involved litigation at the college level. Two of the cases were held for the plaintiffs while six cases were held for the defendants.

Washington (1)

The court ruled in favor of the defendants citing the last clear chance doctrine. The court held that the student had the last clear chance to avoid the injury and that the instructor did not have time to prevet the injury.

Georgia (1)

The college was found liable through the negligence of the instructor because of improper supervision. The teacher put two non-certified student instructors in charge of supervising a beginners swimming class.

Kentucky (1)

The court found the defendants not liable of negligence where there was no evidence presented that a dangerous condition had existed for a long period of time and that there was no knowledge on the part of the college of the dangerous condition. The same decision was rendered on another college case which was heard in federal court.

New York (2)

Both cases were ruled in favor of the defendant college. In the first case, the court held that there was adequate supervision present during a physical education class and that a portable backstop was suitable for a non-competitive practice game. Also, where an activity was not inherently dangerous by proof of not serious injury during the past 40 years, the activity was supervised properly even though it was by students.

2nd Circuit (1)

The college was not negligent when a student was injured in a football game. There was no evidence presented that the student was in a weakened state at the time of the injury due to a previous illness.

10th Circuit (1)

The college was found liable for injuries a student received when she landed between two mats after being 'thrown' during a self-defense class. The court held that the student was subjected to an extraordinary hazard which she could not anticipate.

CHAPTER IV

ANALYSIS OF ELEMENTARY, SECONDARY AND HIGHER EDUCATION COURT CASES FROM 1977-1987

Introduction

Physical activity involves risk. Anytime someone takes a risk the possibility of an injury occurring increases. Physical education teachers, interscholastic athletic coaches and intramural sport's directors conduct activities which expose students to many risks inherent in a sport. However, that does not mean that they should prohibit risk or fun. It does imply that the risk allowed should be part of the activity taught, and that fun should not rule the activity but should be contained within the rules of the activity (Nygaard & Boone, 1981).

Professionals who teach, coach or direct a physical activities program have five duties which they should carry out to insure the safety of the participants. The first duty is to provide a safe environment through constant facility inspection. Second, is the responsibility of proper planning which includes the developing of sound lesson plans, the providing of good equipment and the providing of equal competition. Supervision, whether general or specific, is the third duty owed to students. The level of supervision is dependent upon the age of the student and the danger involved in the activity. The fourth duty is to provide adequate medical treatment in the event of an accident or emergency. Specific emergency procedures should be a part of any activity program. Finally, accurate record keeping is a necessity. It is

important to know what records are necessary, how long they must be kept and what information they should contain. When school personnel involved in a physical activities program fail to perform one of these duties or perform the duty in a negligent manner a lawsuit against them is a possibility (Nygaard & Boone, 1981).

During the period of 1977 to 1987 there were 92 elementary and secondary education lawsuits and 19 college lawsuits involving physical education teachers, athletic coaches, intramural sports directors and their superiors, including local school districts and boards of trustees. The cases in this chapter have been categorized using the seven Regional Reporter Series' (Appendix B). In addition, cases from the states of New York and California have been classified using the New York Supplement and the California Reporter, which are state reporter series. Also, there is one case which is categorized through the Federal Reporter Series. Finally, the cases within each region are discussed in chronological order.

Atlantic Reporter

The first 16 cases reported are from the Atlantic Reporter. The states included are Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.

New Jersey

Court Case #1. Action was brought against the physical education teacher and the Vernon Township Board of Education for injuries to a student who was struck in the eye by a hockey puck during a high school physical

education class. The claim stated that the injuries resulted from the defendant's negligence in requiring the plaintiff to participate in the hockey game, with an excess number of players on each team, in a playing area that was too small, without providing him with, or requiring him to use proper protective equipment during the game. The trial court judge granted the defendants summary judgment, contending that: 1) they were immune from liability under the applicable provisions of the New Jersey Tort Claims Act and 2) in the circumstances, neither defendant owed any legal duty to the plaintiff.

On appeal, the lower court decision was reversed and was remanded back for trial because the case clearly presented questions of fact for the determination of a jury. Specifically, the facts concerning the elements of risk present in the game, the failure to wear proper protective equipment and the playing of the game on a small court. Also, the court in citing Titus v. Lindberg, 228 A.2d 65 (1967), stated that the defendant's suggestion that he had no duty to properly supervise the floor hockey game was without merit. In addition, the defendants were not immune from suit under applicable provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq. Finally, the defendant's claim that the negligence against him was not the proximate cause of the student's injury was clearly a matter to be determined at trial. Sutphen v. Benthian 397 A.2d 709 (N.J. Super. 1979).

Pennsylvania

Court Case #1. The plaintiff brought action against the school district alleging that he was seriously injured while engaging in a school activity on the district's property as a direct result of the negligence of the district and its employees. In addition, the district did not employ trained personnel and did not supervise them properly. Finally, the district failed to make known it's procedures on how to handle an injured student, as well as enforce the rules, and failed to provide the plaintiff with prompt medical attention following the injury. The Commonwealth Court held that the school district was immune from suit under the Political Subdivision Tort Claims Act. Wimbish v. School District of Penn Hills, 430 A.2d 710 (Pa. Cmwlth. 1981).

Court Case #2. The plaintiff was injured while participating in a game of 'jungle' football, during summer football practice, as a player trying out for the high school football team. The plaintiff brought action against the school district, two football coaches, and another student stating that they were negligent in performing their duties. The court held the defendant coaches were negligent based on the following reasons:

1) This practice, under the supervision of the football coaches, proceeded even though there was rough body contact involved and no protective equipment was used.

2) During the game, the coaches joined in playing the game, which took them away from their supervisory duties.

3) The defense of assumption of risk was used by the defendants because they insisted that the plaintiff had entered voluntarily trying out for the football team and that he knew the risks involved playing football, especially since he was on the team the past two years. However, it was determined that the football coaches announced prior to summer vacation that there would be preseason football conditioning practices, which included 'jungle' football and those students who did not participate in the preseason football conditioning drills would be omitted from the team. Therefore, the acceptance of risk was not voluntary. In addition, it was stated by an expert that the practice sessions had not been conducted in conformity with the safety standards established by the state high schools and the regional interscholastic football association. Rutter v. Northeastern Beaver County School District, 437 A.2d 1198 (Pa. 1981).

Court Case #3. The plaintiff, a nine-year old boy brought action against the school district to recover from damages sustained in a softball game. The game was not an organized school activity. The plaintiff was playing the position of catcher when he was hit in the head by the batter's bat. As a result, he received a fractured skull, had reoccurring seizures and other injuries from the blow.

The plaintiff contended that the distance between home plate and the backstop was not big enough to allow a safe environment. It should be noted that the baseball field was layed out for pimpleball, a form of baseball in which a balloon type ball is used, while the batter's hand acts as

the bat. Therefore, less room was needed between home plate and the fence.

In rendering the judgment for the plaintiff, the court first decided that the plaintiff was a public invitee and not a licensee. This was based on evidence presented in a statement by the School District stating,

> ....[t] gates to the schoolyard were left open pursuant to a long standing policy of the School District to allow access to the school yard by children in the neighborhood.

The court decided that the School District should have realized that the crowded conditions around home plate, caused by a too-close backstop, involved an unreasonable risk of harm to young children who might lack a full appreciation of the potential danger. This statement was backed by the facts that the School District created the situation and knew that the field was being used for softball and hardball games by children, because the windows were broken in the school.

Finally, it was decided that the danger involved was not such an obvious one that the court can hold as a matter of law that the plaintiff should have been able to appreciate it and so avoid the accident. The plaintiff would have had to appreciate both the crowded condition around home plate would have resulted in the batter swinging the bat closer to the catcher's head and that this would increase his chances of being struck (Cooper v. City of Reading, 140 A.2d 792, 1958), and Bethay v. Philadelphia Housing Authority, 413 A.2d 710, 1979).

A judgment was rendered in favor of the plaintiff. The case was remanded back for trial. Bersani v. School District of Philadelphia, 456 A.2d 151 (Pa. Super. 1983).

Court Case #4. The plaintiff brought action against the School District and the baseball coach to recover damages for an eye injury received during baseball practice. The injury occurred as the plaintiff was rounding the bases, as instructed by the coach, and he was hit in the eye by a ball batted by the coach.

The appellants claim that the appellees are negligent under the Political Subdivision Tort Claims Act which imposes liability where the accident occurred because of failure to exercise proper care in the custody and control of real estate. The Act provides:

> Actions or activities which may impose liability---The following acts or activities by a political subdivision or any of its employees may result in imposition of liability on a political subdivision.

Summary judgment was granted to the School District and the baseball coach. The Court held that since the cause of the student's eye injury was not negligence in care, custody and control of the School District's baseball field, but was the action of the baseball coach hitting a line drive while the player was rounding the bases, the real property exception to the Political Subdivision Tort Claims Act did not apply. Only if the accident had resulted from improper or negligent maintenance of the field would liability be imposed.

No determination was made as to whether or not the action on the part of the baseball coach constituted

negligence. However, liability on the baseball coach would not have imposed liability on the School District. Lewis by Keller v. Hatboro-Horsham School District, 465 A.2d 1090 (Pa. Cmwlth. 1983).

Court Case #5. An action was brought against the school district and others to recover damages arising out of an injury sustained by the plaintiff's son while wrestling at school. The primary issue at hand was whether or not the school district was immune from liability because of governmental immunity.

On appeal, the appellants claimed that the Political Subdivision Tort Claims Act, which protected the state from immunity, exceeded the legislature's powers under the State Constitution and violated the equal protection clause under the United States Constitution. In affirming the decision in favor of the defendants, the Commonwealth Court of Pennsylvania based its decision on Carrol v. County of York, 437 A.2d 394 (1981), which held:

> It is within the province of the legislature to determine that certain bars to suit are, in its judgment, needed for the operation of local government...Act is a valid exercise of legislative authority granted by our Constitution.

Also, the decision in Robson v. Penn Hills School District, 437 A.2d 1273 (1981), upheld the constitutionality of the Act under the equal protection clause of the United States Constitution. The court concluded that the classifications involved in the Act had a fair and substantial relationship to the purpose of the Act when the rational relationship

test was applied. Cerrone by Cerrone v. Milton School District 479 A.2d 675 (Pa. 1984).

Court Case #6. The plaintiff brought action against the School District and the physical education teacher for injuries suffered in class while using a spring board and vaulting horse. The plaintiff was attempting a 'straddle jump' when the injury occurred. The lower court entered a summary judgment in favor of the defendants.

On appeal, the plaintiff raised three assignments of error. First, she contended that governmental immunity was not available to the District as her injuries were caused by District's care, custody and control of real property, which is an exception to governmental immunity. Second, she argued that the conduct of the physical education teacher took him outside the official immunity offered by statute. Finally, the plaintiff raised a constitutional challenge under both the Pennsylvania and Federal Constitutions to the grant of governmental and official immunity in tort actions.

The Commonwealth Court upheld the lower court's decision granting the School District immunity. Even though the injury occurred within the school grounds, there was no allegation that the condition of the building or grounds caused her injuries. The plaintiff's use of the spring board and vaulting horse, which caused her injuries, were items of moveable equipment, not fixtures, as they were not permanently placed at the school nor essential for its operation. Accordingly, that equipment was not considered a part of real property. Therefore, the care,

custody or control of real property exception to governmental immunity does not apply.

The Commonwealth Court also upheld the lower court's decision granting the teacher immunity. This decision was granted because the employee was acting within the scope of his duties. The activity was well within the scope of his official duties as a physical education teacher in the District and the gymnastics class was an activity normally associated with an indoor physical education program. Finally, the Commonwealth Court agreed that the immunities did not offend the Fourteenth Amendment to the Federal Constitution because, the statutory provisions that granted governmental immunity to the District and official immunity to the teacher were deemed constitutional. Therefore, the plaintiff's complaint was dismissed. Brown v. Quaker Valley School District 486 A.2d 526 (Pa. Cmwlth. 1984).

Court Case #7. The plaintiff suffered severe bodily injury when he slid into second base during a baseball game played against the district's high school baseball team on a field owned by the district. It was stated that the plaintiff was participating in this sporting event at the invitation of the district, was 'using' the base for its intended purpose, and was unaware of the dangers which might result to him because of the manner in which the base was attached to the playing field. The plaintiff also contended that the injuries suffered resulted from the negligence of the district. In particular that

> (a) [The district] failed to exercise reasonable care in installing or supervising the installation of the base and plate or in

> inspecting subsequent to installation of the base and plate; (b) [The district] failed to exercise reasonable care to provide a safe place for the conducting of a baseball game; (c) [The district] failed to exercise reasonable care in failing to provide adequate warning about or the safeguards to the risks and dangers in the use of the base and plate; [and] (d) [The district] failed to exercise reasonable care in such other manner as may be discovered during the course of discovery.

The defendants denied all of the allegations of negligence and raised the defense of governmental immunity. However, the plaintiffs contended that the district's immunity had been waived because the injury resulted from the district's negligence in the care, custody and control of its real property.

Following the closing of pleadings, but before discovery had begun, the district filed for summary judgment, which was granted by the trial judge. The plaintiffs then appealed the decision to the Commonwealth Court of Pennsylvania. The appeals court reversed and remanded the lower court's decision. The court held that:

> (1) the school district's motion was more properly one for judgment on the pleadings,
> (2) the issue as to whether second base was realty, within exception to district's governmental immunity, precluded judgment on pleadings, and
> (3) the material facts remained at issue concerning the matter in which the second base bag was attached to the playing field.

Beardell v. Western Wayne School District 496 A.2d 1373 (Pa. Cmwlth. 1985).

Court Case #8. The plaintiff and his mother brought action against the school district, citing negligence, after the student fell and broke his elbow during physical education class. The plaintiff was performing a gymnastic

stunt over a vaulting horse, and landed on a hardwood floor. The trial court granted a verdict in favor of the defendants based on governmental immunity.

The plaintiffs appealed contending that the District does not have governmental immunity within the real property exception to governmental immunity, and therefore was negligent in not controlling the landing surface by insufficiently protecting the hardwood floors with mats. The appeals court agreed that the District was negligent concerning the care, custody and control of the landing surface around the vaulting horse. It was determined that a necessary element of a gymnasium's hardwood floor, which was regularly used as a gymnastic stunt area, was sufficient matting protection to ensure safe landing by the students. Since proper gym floor padding was an essential safety element of a gymnasium floor being utilized for a vaulting stunt, it was an aspect within the District's care, custody and control of its real property, subject to the real property exception.

However, material issues of fact as to the adequacy of the mat protection of the landing surface remained unresolved. Therefore, the case was remanded for further proceedings. Singer v. School District of Philadelphia 513 A.2d 1108 (Pa. Cmwlth. 1986).

Court Case #9. The parent of a high school student and the student brought action against the school district for damages arising from injuries sustained in a high school physical education class. The student had fallen from a set of collegiate gymnastics rings which rendered

him a quadriplegic. The lower court granted the defendants motion for summary based on the defense of governmental immunity under Section 201 of the Political Subdivision Tort Claims Act. The Act provides that:

> No local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

Upon this decision the plaintiffs filed an appeal contending that facts proven in their complaint were within the real property exception to governmental immunity. Specifically, 1) the failure to maintain control of the gymnasium and 2) the misuse of the rings upon which the minor plaintiff was exercising, which the appellants contended constituted a fixture.

An expert called by the appellants testified that the rings: 1) were attached to ceiling clamps, 2) could be taken off if the bolts were removed, 3) could be removed without causing any structural damage, and 4) would be removed or relocated by the school district representative. In addition, the expert witness made the following allegations concerning the negligent failure to utilize appropriate care and control of the gymnasium:

1) a sophisticated gymnasium was made available to a group of novice physical education students, thereby increasing the risk of injury,

2) the gymnasium was not modified to render it safe to the novice students, and

3) the students were exposed to the dangers in the gymnasium without warning the students of the potential dangers.

The Commonwealth Court, keeping consistent with Beardell v. Western Wayne School District, 496 A.2d 1373 (1985), and Bersani v. School District of Philadelphia, 456 A.2d 151 (1982), reversed the lower court's decision and remanded the case back to trial. Specifically, the Court held that: 1) the decision to determine what was real estate or personal property was such a question that judgment on the pleadings could not be entered, 2) facts were at issue and the law was not so clear that trial would be a fruitless exercise, and 3) there was a question of fact that precluded summary judgment. McClosky by McClosky v. Abington School District 515 A.2d 642 (Pa. Cmwlth. 1986).

Court Case #10. A student brought action against the school district to recover damages for injuries sustained when he failed to clear the pole vaulting pole and landed with one foot on and one foot off the landing mat. The injury occurred during a high school track meet. The plaintiff alleged that the district was negligent because it failed to conform to applicable guidelines relative to the placement and number of mats and cushions in and about the pole vault pit, and that the district had failed to use, install and maintain the pole vault pit properly.

The lower court granted a summary judgment for the school district on the ground of governmental immunity. After the lower court rendered this decision the plaintiff

appealed declaring that his complaint came with the real property exception to governmental immunity. Specifically, 1) the pole vault unit which held the standards was affixed to the district's property, thus becoming realty, and 2) the district was negligent in that it insufficiently protected the pole vault pit properly.

The Commonwealth Court reversed and remanded the lower court's decision. The reasons included: 1) there was a factual dispute as to whether the pole vault unit was permanently affixed to the district's property, and 2) in keeping with the decision in Singer v. School District of Philadelphia, 513 A.2d 1108 (1986), regarding insufficient mat protection, it is an aspect within the District's care, custody and control of its real property subject to the real property exception. Thus, the material issues remain unresolved. Cestari v. School District of Cheltenham Township 520 A.2d 110 (Pa. Cmwlth. 1987).

Delaware

Court Case #1. The plaintiff, a sixth grade student, was injured on the school playground during a supervised recess period. The plaintiff and her parents claimed that the negligence of the two teachers in supervising the children at play was responsible for the injury. The action was brought against the teachers, their principal, and the Board of Education to recover damages for the plaintiff's injuries.

The plaintiff insisted that noncompliance with certain provisions of the Teacher's Handbook, made known by the School District Board of Education regarding the

supervisory responsibility of teachers, amounted to negligence per se. As stated in the handbook,

> 10. Playground: Playground rules should be enforced in such a way as to make the area pleasant and safe. Staff members on playground duty are to be aware of what is happening on the playground at all times. Students who create problems on the playground should be reported to the Principal for disciplinary action. Any injuries should be reported immediately to the nurse or, in her absence, to the office.
> The Following Comments Might Be Helpful:
> a. Teachers should plan varied activities for students on the playground when possible.
> b. Activities which are unsafe and annoying to others should be stopped and time should be taken to organize a worthwhile and safe activity.
> c. Students should know the proper use of any equipment made available to them on the playground.

The defendants were not found to be negligent because they had followed the guideline established by the handbook. As stated by the judge, the policy

> only requires vaguely that a playground area be made "pleasant and safe" and that "[s]taff members on playground duty***be aware of what is happening on the playground at all times.

The policy does not contain a specific statement of supervisory duty, the violation of which would constitute negligence as a matter of law. Joseph v. Monroe 419 A.2d 927 (Del. Supr. 1980).

Maryland

Court Case #1. The plaintiff brought action against the school board and three physical education teachers to recover damages for injuries during a physical education class. The suit alleged negligence in allowing the plaintiff to engage in a dangerous activity without proper supervision; in failing to properly train the plaintiff before permitting him to engage in the dangerous activity;

and in failing to provide proper equipment to protect the plaintiff while he engaged in the dangerous activity. The plaintiff also alleged that the School Board was negligent by not properly training the teachers.

On the day the injury occurred, the physical education class was moved indoors because of bad weather. As a result, sixty-three students were allowed to participate in a 'free exercise' day, which allowed the students to use any of the athletic equipment in the gym. The class took place in the school gymnasium. The plaintiff was practicing tumbling skills on a crash pad which is a cushion six to eight inches thick. After several successful running front flips, the plaintiff landed on his neck and shoulders, which left him as a quadriplegic.

The primary consideration of this case has to do with Maryland's state law which has the doctrine of contributory negligence but not the doctrine of comparative negligence. The plaintiff argued that the state should adopt the doctrine of comparative negligence, as thirty-eight states had at the time. The plaintiffs argued that the doctrine of contributory negligence was not only harsh and unjust, but it completely relieved the defendants of all liability. The plaintiffs proposed that the state should adopt one of the three plans submited by the jury for the doctrine of comparative negligence. These included:

> 1) a 'pure' comparative negligence instruction to the effect that if the plaintiff was negligent, and his negligence was a cause of his injury, the jury 'must diminish his damages in proportion to the amount of negligence attributable to him'; 2) a 'modified' form of comparative negligence that if the plaintiffs

> negligence 'was not as great as defendants' negligence, [he] may still recover damages but his damages must be diminished in proportion to the amount of negligence attributal to him"; and 3) another 'modified' form of comparative negligence that if the plaintiff was only slightly negligent, and the negligence of the defendants was gross in comparison, the plaintiff could still recover 'but his damages must be diminished in proportion to the amount of negligence attributable to him.'

The trial judge rejected the plaintiff's proposal of comparative negligence instructions and the jury returned a verdict in favor of the defendants. Harrison v. Montgomery County Board of Education, 456 A.2d 894 (Md. 1983).

Court Case #2. The parents of a handicapped eighth-grade student brought action against the Board of Education and the physical education teacher to recover for injuries sustained by their child in a regular eighth-grade physical education class. The child was injured while attempting to maneuver on an apparatus called a 'Swedish Box.' The parents contended that the Board of Education and the physical education teacher were negligent in placing their child in a regular physical education class with no special safeguards to protect the child from injury. The defendants filed a motion in limine to prohibit the plaintiffs from introducing evidence concerning the child's placement. The lower court judge granted the motion and returned a directed verdict in favor of the defendants, upon which the parents appealed.

The parents presented two questions to be reviewed by the appeals court:

> 1) Did the circuit court err in granting the defendants in limine, and ruling inadmissible all evidence relating to the evaluation and placement

of a mentally retarded child by the Harford County Board of Education, where the Board's negligent placement caused the child to suffer serious physical injuries?
2) Is the application of Maryland Annotated Code, Education Article, 8-415, so as to prohibit litigation of a claim for money damages for physical injuries negligently caused by the actions of a teacher and a local school board an unconstitutional denial of due process rights guaranteed under the United States and Maryland Constitutions?

The Court of Appeals affirmed the lower court's decision in favor of the appellants. The reasons for the judgment included: 1) The Individual Education Program (IEP) developed for the child was based on the review of her past performances. The IEP developed contained both kinds of educational treatment, with the physical education subject being taught in a normal-eighth grade class. Once the IEP had been formulated and approved by the parents, without protest or revision, the propriety of that placement decision was not challengeable in a court of law. 2) The child's constitutional rights were not violated once the IEP was agreed to and implemented, because the child's remedies were the same as those of any other student in a physical education class. In order to seek legal recovery for injuries asserted to be the result of negligence, the parents allege facts indicating that the teacher or school board failed to exercise reasonable care to protect the student from injury. No such facts were ever pled or proved. Alban v. Board of Education of Harford County 494 A.2d 745 (Md. App. 1985).

Note: A petition for writ of certiorari to the State Supreme Court was denied in October, 1985.

District of Columbia

Court Case #1. An action was brought by the School District to overturn a jury's verdict which rewarded a plaintiff $120,000.00 for an injury sustained during a recess period on the playground. Also, the jury awarded the plaintiff's parents $30,000.00. The School District claimed that the jury's verdict did not contain sufficient evidence to support that any negligent act or failure to act was the proximate cause of the injury.

The school at which the injury occurred had two kindergarten classes. The plaintiff was one of forty-eight students enrolled in the two classes. In order to allow both teachers the one-half hour lunch break called for in their contract, one teacher would supervise all of the students during lunch, while the other teacher would supervise both classes on the playground. This plan was approved by the school principal.

On the day of the injury, both teachers, one was a substitute, were supervising the playground. During the recess period, the regular teacher went inside to the restroom leaving the substitute teacher alone. The substitute teacher positioned herself close to the play equipment and was 'revolving and turning all around' to constantly keep a watch of the children. While the one teacher was away, the plaintiff and his friend were playing a game called 'Marine Boy', a fictional game created by the children. The plaintiff testified that 'Marine Boy' lives underwater, and he has an underwater boomerang that he throws. The plaintiff had his head turned away from his

playing partner and when he turned toward his friend he was hit in the eye with a stick or an underwater boomerang.

The Court of Appeals overturned the lower court's decision returning a verdict in favor of the School District. The decision was based on the following reasons: 1) the teachers had followed the school's operative plan for supervision on a playground area, 2) the students were not on an unauthorized area of the playground when the injury occurred, 3) the injury was the consequence of an unforeseeable, intervening act of a third party which could be neither anticipated nor prevented. District of Columbia v. Cassidy 465 A.2d 395 (D.C. App. 1983).

Maine

Court Case #1. The plaintiff brought a tort action against the city and two of its employees to recover damages from an injury received during football tryouts. The plaintiff was appealing the lower court's decision which granted a summary judgment in favor of the defendants.

At the time of the injury, the plaintiff was a fourteen year old student participating in freshman football team try-outs. After running a sprint drill, he put his arm through the glass in a gymnasium door. The glass in the door shattered causing him severe injuries. The plaintiff's mother met with the school superintendent and high school principal approximately one month after the incident about the possibility of filing suit against the city. Although the plaintiff wanted his mother to file suit, she did not take any legal action and told him that

he could take necessary legal action when he reached maturity. In accordance with the school policy, a detailed report of the accident was prepared and then destroyed three years later. When the plaintiff reached his eighteenth birthday, he filed suit against the city, the football coaches, the architectural firm that designed the school gymnasium and the general contractor who built it.

The Court of Appeals vacated the summary judgment awarded by the lower court and remanded the case back to trial. This decision was based on the following statements.

Even though the Maine Tort Claims Act requires a claimant against a governmental entity to file a notice claim with the entity within 180 days after the cause of the action accrues, it is significant to note that neither section of the statute contains any provision for claimants who have not attained their maturity. One section does specifically recognize the possibility of a claim by a minor and provides that in those circumstances the notice of claim may be filed on his behalf

> by any relative, attorney or agency representing the claimant.

However, the mother of the plaintiff expressly refused to take any legal action on her son's behalf. In addition, there was no evidence in the record to indicate whether the plaintiff had access to an attorney, agent or other relative to serve notice for him, but his own parent's refusal to act at least raised a genuine issue of fact whether he was thereby deprived of any reasonable means of

pursuing his claim against these defendants. Langevin v. City of Biddeford 481 A.2d 495 (Me. 1984).

North Eastern Reporter

The North Eastern Reporter includes cases from the following states: Illinois, Indiana, Massachusetts, New York, Ohio. From 1977 to 1987 there were 14 cases reported.

Illinois

Court Case #1. The plaintiff brought action against the physical education teacher and the school board for injuries sustained in a high school physical education class. The plaintiff suffered a broken arm while attempting to 'vault a horse' during a gymnastic class. The lower court allowed the defendants' motion for summary judgment and the plaintiff appealed. In the appeal the plaintiff charged the defendants with willful and wanton misconduct in connection with the supervision of the physical education class.

The Appellate Court affirmed the lower court's decision. This decision was upheld on the following undisputed facts presented in the case:

1) the defendant had instructed the entire class, at the beginning of the tumbling segment, on the proper use of the vaulting horse,
2) the defendant personally instructed all of the students on their vaults,
3) the defendant reminded each student before each class to be careful when using the vaulting horse,
4) the plaintiff had successfully performed approximately 30 vaults prior to his injury, including four or five on the day of the injury, and
5) there were no previous records showing any accidents had occurred on the vaulting horse.

Even though there were disputed facts concerning whether or not spotters were present and whether or not the vaulting horse was positioned too high, which should be decided by jury, the undisputed facts did not show willful and wanton misconduct. The teacher was acting in loco parentis and did not subject the plaintiff to any greater liability than the parents would have. Montague v. School Board of the Thornton Fractional Township North High School District 373 N.E.2d 719 (Ill. 1978).

Court Case #2. A high school student brought action against the school district for personal injuries sustained while making a tackle in a football game. The plaintiff alleged that the school district carelessly and negligently:

> (a) permitted and allowed the plaintiff to wear an ill fitting and inadequate football helmet; (b) refused to furnish adequate and proper football equipment upon the plaintiffs request; and (c) furnished and provided the plaintiff with an ill fitting and inadequate football helmet when it knew or in the exercise of ordinary care should have known said helmet was liable and likely to cause the plaintiff injury (Count VI).

The Circuit Court granted the school district's motion to strike because the complaint alleged ordinary negligence on the part of the defendant school district in furnishing the plaintiff with an ill-fitting and inadequate football helmet. Citing Kobylanski v. Chicago Board of Education 347 N.E.2d 705, 1976, the trial court ruled that the plaintiff could not recover damages unless he alleged and proved willful and wanton conduct on the part of the school personnel.

The State Supreme Court reported:

> 1) any interpretation which would relax a school district's obligation to insure that equipment provided for students in connection with activities of this type is fit for the purpose would not be proper, and 2) to hold school districts to the duty of ordinary care in such matters would not be unduly burdensome, nor does it appear to be inconsistent with the intended purposes of Sections 24-24 and 34-84a of the School Code.

Therefore, the trial court's dismissal of Count VI of the plaintiff's complaint was reversed, and the cause was remanded to the lower court with directions to reinstate that count.

Note: The distinguishing characteristic of this case was that it did not allege negligence arising out of the teacher-student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student. Instead, the case alleged negligence in connection with what was considered to be the separate function of furnishing equipment. Gerrity v. Beatty 373 N.E.2d 1323 (Ill. 1978).

Court Case #3. A fifteen-year-old high school student was injured in her physical education class and brought action against the school district citing negligence as the reason for the injury. The plaintiff was attempting to perform a backward somersault. When the plaintiff reached the point in the movement where all of her body was suspended above the neck, she was unable to push her weight over with her arms and her neck snapped. The lower court entered a jury verdict in favor of the plaintiff and the school district appealed.

The Appellate Court affirmed the lower court's decision based on the following reasons:

1) the student did not receive any personal instruction or attention from the teacher with respect to the backward somersault prior to the injury,

2) the teacher had the student watch another student perform the desired task,

3) the teacher was aware that the student was obese, was untrained in the backward somersault maneuver and fearful of attempting it because of her size and that she had experienced physical problems as a small child after attempting the maneuver, and

4) the teacher admitted that she knew prior to the accident that if a performer did not have sufficient arm strength to take the weight of the body and push it backwards that the weight would drop onto the person's neck. In addition, the student offered expert testimony emphasizing the fact that the weight of a student was important when performing gymnastics.

The teacher's actions amounted to willful and wanton misconduct, as defined by Illinois state law. The plaintiff received, for damages, the sum of $77,000. Landers v. School District No. 203, O'Fallon 383 N.E.2d 645 (Ill. 1978).

Court Case #4. A high school varsity football player brought suit against the board of education and high school football coaches for injuries sustained during a football game. The plaintiff charged that he sustained the injuries as a result of the negligence of the defendants. The

plaintiff charged that: 1) the defendants failed to warn him that participation in varsity football games could and did result in serious injuries to members of the team trained and equipped in a manner similar to himself, 2) the coaches had not been educated and trained properly, 3) the training program and practice facilities provided to team members were inadequate, 4) the helmet, face mask, padding and clothing were 'improperly designed, obsolete, worn, defective or dangerous' and that the equipment had not been inspected and tested properly prior to the injury, and 5) he was required to play on synthetic turf which was constructed, installed and maintained improperly. The Circuit Court granted a motion by the defendants to dismiss the count of complaint alleging negligence and the plaintiff appealed.

The Appellate Court did not allow the complaint alleging that the plaintiff was required to play on a improperly constructed, installed and maintained synthetic field because it did not state a cause of action. Both the School Code and the Tort Immunity Act require allegation and proof of willful and wanton misconduct before the defendants can be held liable for injuries arising out of the exercise of their discretionary or supervisory authority. Even if there was negligence in the installation and maintenance of the playing surface, the Tort Immunity Act absolves defendants of any liability arising out of a defective condition in any public park unless they are guilty of willful and wanton misconduct which proximately causes such injuries. Without willful

and wanton misconduct the dismissal of this charge was proper.

The Court also dismissed the charge that the coaches were not trained and educated properly. The employment and training is a discretionary activity, therefore, the plaintiff would have to allege and prove that the Board was guilty of willful and wanton misconduct.

However, the Court held that the furnishing of equipment for athletic teams was a function separate and apart from the exercise of discretionary authority. The Gerrity rational supports this decision that the defendant football coaches have a duty to inspect the equipment which is provided to members of the team.

The plaintiff's complaint stated a cause of action against the individual defendants for the negligent furnishing of defective or obsolete equipment. The case was reversed and remanded back for trial.

The Supreme Court of Illinois reversed the Appellate court decision and affirmed the circuit court decision. The decision was based on the following reasons:

> 1) Gerrity was applied to a school district and not the teachers/coaches, 2) School districts have the authority to purchase and furnish equipment to students, while teachers and coaches have the distinct competence or authority to supervise the students and their use of that equipment, 3) in the interest of student teacher harmony, litigation between them should not be encouraged - absent willful or wanton conduct, 4) if the courts were to place the duty of ordinary care (while furnishing) on teachers, a teacher might become immobile in the performance of his obligations, 5) if teachers were "not free and unhampered in the discharge of their duties, they would live in fear that each judgment they made would bring a lawsuit", and 6) such action for negligence would drain the teachers' time,

> encourage second-guessing teachers' judgment by courts, and quite possibly discourage persons from the career of teaching.

Thomas v. Chicago Board of Education 395 N.E.2d 538 (Ill. 1979).

Court Case #5. The plaintiff, a member of the girls high school varsity softball team, brought action against the school district alleging the school district was guilty of willful and wanton misconduct by not having the practice area supervised upon the team members' arrivals. The high school team practiced one mile away from school at the elementary school. The freshmen and sophomores were transported to the field in a school district bus while the juniors and seniors supplied their own transportation. Practices began at 5:50 p.m. The coach of the team was also a teacher at the school. Her duties as teacher required her to be at school until 5:45 p.m., the school had a split shift attendance procedure. However, it was common for teachers to leave at 5:30 p.m. when the classes ended for the students. The softball coach would usually leave the school at 5:30 p.m. so she would be at the field by the time the students arrived. On the day of the accident, however, the principal requested that the coach wait until 5:45 p.m. before going to practice.

The plaintiff arrived at practice, on the day of the injury around 5:30 p.m. Shortly thereafter, she went with a friend, who lived one block away from the practice field, to her house to get a coat hanger for a friend who had locked her keys in her car. Upon returning to the field, the plaintiff decided to ride on the trunk of her friend's

car. When the driver of the car attempted to turn the car off of the roadway to park on a grassy area adjacent to the playing field, the plaintiff was thrown off of the back of the car and received substantial head injuries.

In affirming a verdict in favor of the school district, the Appellate Court held that there was no evidence of willful and wanton misconduct present. Evidence presented during the trial did not indicate that there were any special dangers presented during the time between the end of classes and the beginning of softball practice. No foreseeable, probable danger was shown to have existed from a lack of supervision between 5:30 p.m. and 5:45 p.m. Pomrehn v. Crete-Monee High School District 427 N.E.2d 1387 (Ill. App. 1981).

Court Case #6. An action was brought by the plaintiff and his mother against the school board for injuries suffered when the child fell from a swing in the school playground. The plaintiffs alleged that the child's injuries were caused by the defendant's negligence in, 1) failing to supervise the playground properly, 2) failing to maintain the swings adequately, and 3) failing to provide and maintain adequate mats for the protection of children falling from the swings. In addition, the plaintiffs' alleged negligence based on the theory of attractive nuisance. Finally, the plaintiffs alleged that the use of defective mats and swings were likely to cause injury to children using them because of the children's inability to appreciate the risk involved and that the defendant knew or

should have known that young children used the playground frequently.

The Appellate Court upheld the lower court's decision based on Section 3-106 of the Tort Immunity Act, which read:

> Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used as a park, playground or open area for recreational purposes unless such local entity or public employee is guilty of willful and wanton negligence proximately causing such injury.

Since the plaintiffs did not allege willful or wanton misconduct on the part of the defendant, the dismissal based on immunity was proper. The Appellate Court also dismissed the counts based on the attractive nuisance doctrine because it did not apply to the case. Jackson v. Board of Education of the City of Chicago 441 N.E.2d 120 (Ill. App. 1982).

Court Case #7. A 16-year-old student sued the board of education and gymnastics team coach for spinal injuries and resulting paralysis sustained while the student was practicing for competition in the still-rings events. The plaintiff alleged that the defendants negligently failed to: 1) exercise proper supervision and 2) ensure the proper use of the safety equipment in the gym. The plaintiff also alleged that the conduct of both defendants was willful and wanton. In addition, the Board was charged for negligently failing to supply the gymnasium with adequate safety equipment.

During the trial, the plaintiff argued that the supervising capacity of the gymnastics coach fell outside of Section 24-24 of the Illinois School Code and therefore, the coach could be held liable for improper supervision in a non-disciplinary function. However, the Appellate Court, following the interpretation of the High Court, ruled that the language of the statute extended the loco parentis relationship to circumstances other than just disciplinary conduct. The Court reasoned that the statute indicated

> ...this relationship applies to all activities in the school program...the classes are clearly 'activities connected with the school program'...extracurricular activities are within the legislature mandate that School Boards...shall provide for...the physical education...of the pupils...(Kobylanski, 347 N.E.2d 705 and Thomas, 395 N.E.2d 538).

The second issue raised by the plaintiff alleged the failure to provide adequate safety equipment. An expert for the plaintiff testified that the gymnasium as a whole was unsafe because there were not enough mats to adequately supply every piece of equipment. In addition, a safety belt was not available for use in practicing the dismount.

Testimony by the coach revealed that there was six inches of matting under the still rings, the amount allowed during competition. An expert witness for the defendants stated that three feet of non-resilient padding would have been needed to possibly prevent the injury. In addition, since the safety belt was not used during competition, the unavailability thereof, was not proof that prior use of the belt would have allowed the student to better learn the dismount. Therefore, the lower court's decision in favor

of the defendants stood. Montag v. Board of Education, School District No. 40, Rock Island County 446 N.E.2d 299 (Ill. App. 3 Dist. 1983).

Court Case #8. The plaintiff brought suit against the school district and his football coach, to recover damages for injuries sustained in a high school football game. The complaint alleged that the defendants were negligent for allowing the plaintiff to participate in the game even though he had not participated in the minimum amount of practice sessions required by Rule 5.062 of the Illinois High School Association and that his playing was in violation of his doctor's orders.

The Appellate Court affirmed the lower court's decision in favor of the defendants. In rendering this decision it was stated that under the Illinois School Code, teachers and school districts were granted immunity from negligence in the supervision of activities connected with school programs (Kobylanski, 347 N.E. 2d 705, 1976). Since the teacher was acting in loco parentis, as conferred by the statute, he should not be subjected to any greater liability than parents. Also, football programs and activities are connected with the school program and therefore there is immunity (Thomas, 395 N.E.2d 538, 1979).

The court also rejected the plaintiff's claim that the statute applied only to situations in which the teacher performed discretionary acts and that the rule was a prohibition leaving no discretion. In rejecting this issue the judge decreed:

> The statute does not speak of discretion. It speaks only of supervision, which does not entail only those situations involving discretion. Supervision also encompasses situations in which there is no discretion. Therefore, the statute is applicable here and the defendants are not liable for mere negligence.

Kain v. Rockridge Community Unit School District No. 300 453 N.E.2d 118 (Ill. App. 3 Dist. 1983).

Court Case #9. The plaintiff brought action against the school district to recover damages for personal injuries he suffered while playing softball in a physical education class. The plaintiff alleged that the physical education instructor and the school district were negligent for failing to: 1) instruct the students regarding running the bases and sliding techniques used in softball, 2) maintain the first base line, 3) provide a secure first base, and 4) provide a safe field and that these omissions proximately caused the plaintiff's injuries.

In overturning the Circuit Court's decision in favor of the plaintiff, the Appellate Court held that the actions of the instructor and the school district did not amount to willful and wanton misconduct and therefore, immune from tort liability. This decision was based on the following criteria:

> 1) the school district maintained an established curriculum regarding the teaching of softball in physical education classes which was taught progressively from junior high school through the sophomore year, 2) the teacher adequately supervised the softball game and the students in class, including the injured student, 3) the plaintiff had substantial experience playing baseball and softball, 4) there was no showing of substantial defect in field or equipment, and 5) the condition of the field was not shown to have in any way been the cause of the injury.

Weiss v. Collinsville Community Unit School District 456 N.E.2d 614 (Ill. App. 5 Dist. 1983).

Court Case #10. A student brought action against the Board of Education and the physical education teacher to recover damages for personal injuries suffered when the student fell from a ladder. The plaintiff alleged that: 1) the Board, through its agents and servants was negligent, 2) the Board's acts or omissions amounted to willful or wanton misconduct, and 3) the teacher was guilty of willful and wanton misconduct. The facts in the case revealed that the teacher instructed the plaintiff, who was a student and a manager of the basketball team, to post on the scoreboard the names of the players who were going to play in the basketball game. While on the ladder the plaintiff, who was afflicted with epilepsy, passed out and fell off of the ladder onto the gymnasium floor. Evidence showed the teacher knew of the student's condition and this information was present on his School Health Examination Record. In addition, the student requested to use a scaffold, which he had used before, but the teacher instructed him to use the ladder.

In upholding the lower court's decision in favor of the defendants, the charges of willful and wanton misconduct were easily dismissed. The plaintiff was unable to show that the acts committed by both the teacher and the Board were intentional or committed under circumstances exhibiting reckless disregard for safety. Evidence supported the teachers belief that the student manager's epileptic condition was controlled.

The Appellate Court also affirmed the lower court's decision finding the Board not guilty of negligence, although there was dissenting opinion by one of the Justices. The plaintiff attempted to allege a failure to furnish proper equipment within the rule of Gerrity v. Beatty (1978), 373 N.E.2d 1323. However, the sole agent of the Board in any way connected with these allegations was the teacher, the direct supervisor of the activity in question. The Board's failure to 'furnish' the scaffold cannot be a proximate cause of the injuries, for the scaffold was 'furnished' and available, though it was not implemented for the task. In this case, unlike Gerrity, the equipment was 'furnished'. The scaffold was on the premises and, assuming the failure to use it was a proximate cause of the plaintiff's injury, that failure was entirely the teacher's and arose out of a student-teacher relationship. Braun v. Board of Education of Red Bud Community Unit School District #132 502 N.E.2d 1076 (Ill. App. S Dist. 1986).

Indiana

Court Case #1. A sixth grade student sued the school district to recover for injuries sustained when her mouth hit a wall as she attempted a vertical jump during physical education class. The plaintiff claimed that the physical education teacher was negligent in her actions for improperly instructing the students to run toward the wall in executing the vertical jump, thereby subjecting them to unreasonable risk of harm.

According to the plaintiff's expert witness, a physical education teacher with 24 years of experience, the safe and proper way to perform this exercise was to first stand with the body parallel and the shoulders perpendicular to the wall. Next, with an arm upraised, one should crouch momentarily and then jump and reach the highest possible point on the wall. In her opinion, instructions which permitted the students to take a running start forward, subjected them to an unreasonable risk of harm.

The physical education teacher testified that: 1) she did not consult any textbook in preparation for the exercise, 2) she demonstrated the exercise to the students before allowing them to perform it, 3) she had not used a floor mat placed perpendicularly to the wall, and 4) she had not instructed the students to run toward the wall, even though some students were taking 2 or 3 'quick steps' toward the wall.

Testimony presented by three students in the class indicated that: 1) the plaintiff did not fall or stumble at any point before contacting the wall, 2) the plaintiff, as well as these students, did not perform the vertical jump before that day, and 3) the teacher neither demonstrated the exercise nor warned the class about any dangers associated with the exercise. In addition, the plaintiff introduced evidence which showed that the teacher explicitly instructed her pupils to run toward the wall to improve their performance.

The Appellate Court concluded that the teacher had a duty to conform her conduct to a certain standard, not only for the plaintiff, but also for the other students' benefit. Therefore, since the lower courts decision in favor of the school district was not based on the evidence presented, the trial court was in error. The case was reversed and remanded back to trial for a jury to determine whether the teacher's action caused the student's injury. Debartolo v. Metropolitan School District of Washington Township 440 N.E.2d 506 (Ind. App. 1982).

Court Case #2. A high school baseball team outfielder brought a negligent action against the school district for injuries sustained when he collided with an infielder during baseball practice. The plaintiff alleged the school district through the coach: 1) failed to warn him of the danger of the collision, 2) failed to adequately and reasonably supervise the practice, 3) failed to post sufficient personnel to watch for possible collisions, 4) conducted the practice in an unreasonably dangerous manner, and 5) allowed supervisory personnel to participate directly in the practice.

The facts of the case showed that practice was not held on the regular playing field, which was too wet for use. Prior to the injury the coach was hitting fly balls to the outfielders, who would take turns catching the ball and throwing the ball to the cut-off man, 30-40 yards away. The wind was blowing hard that day which made it difficult for the players to hear. While attempting to catch a fly ball, the plaintiff collided with the cut-off man which

resulted in the injury. The cut-off man was instructed by the coach to catch the ball but the plaintiff insisted that he did not hear the coach give those instructions.

The Supreme Court upheld the Court of Appeals decision finding the school district, through the coaching staff, negligent breaching their duty to exercise reasonable care in supervision. The decision was based on the following reasons:

1) the wind was blowing at a speed which made coaching commands difficult to hear,

2) knowing his written instructions that outfielders have preference over infielders on fly balls, the coach directed the infielder to catch the ball, and

3) the outfielder was responding to the fly ball in compliance with the written rules at the time of the injury. The judge did dismiss the issue that the plaintiff did not know the risks involved by participating in the sport.

On appeal the Supreme Court of Indiana discussed two issues: 1) did the school district, through the employees, exercise reasonable care and supervision for the safety of the students, and, 2) did the plaintiff incur the risk as a matter of law? The supreme court held that the coach, who conducted the activity in conditions which were unsafe, breached his duty in providing the students with an appropriate standard of care. However, the court ruled that the student, through his deposition, provided unequivocal evidence of actual knowledge and appreciation of the risks involved and held that the school district was

entitled to summary judgment on the issue of incurred risk. Therefore, the school district was not deemed liable. Beckett v. Clinton Prairie School Corporation 504 N.E.2d 552 (Ind. 1987).

Massachusetts

Court Case #1. The plaintiff and his father brought action against the town after the son fractured his ankle while performing a running long jump in a public school physical education class. The plaintiffs claimed that the injury was due to improper supervision by the physical education teacher and the unsafe condition of the long jump pit.

A jury in the Superior Court found in favor of both plaintiffs and awarded damages in the amount of $40,000.00 for the son. The town appealed that, in the absence of expert testimony, there was insufficient evidence to justify recovery by the plaintiffs.

Testimony during the trial revealed that the teacher instructed the students generally about how to perform the exercise. In addition, the long jump pit only contained two to three inches of sawdust instead of the normal 12 to 14 inches.

The judge agreed that expert testimony might have helped the jury decide whether or not the teacher was negligent in regard to inadequate instruction. All the jurors could do on the evidence they heard was to speculate as to what a reasonably adequate physical education teacher should have said or done in an attempt to avoid an injury. However, the judge ruled that expert testimony was not

needed to determine the unsafe condition present in the jumping pit. Common knowledge was enough to establish that there was an insufficient amount of sawdust in the pit.

The judge reversed the lower court's decision and ordered a new trial. He agreed that the two theories, inadequate supervision and unsafe conditions, should have been presented separately, therefore knowing how the jury ruled on each theory. McInnis v. Town of Tweksbury 473 N.E.2d 1160 (Mass. App. 1985).

Note: The Supreme Court of Massachusetts denied further appellate review on April 1, 1985.

Ohio

Court Case #1. The parents and their son brought action against the city board of education and the physical education teacher for negligent or intentional infliction of emotional distress. The action arose when the student failed to follow one of the teacher's class rules and was ordered to do 25 push-ups. After the student laughed and failed to carry out the punishment, the teacher once again ordered the student to do the punishment. This time, although denied the opportunity to get dressed first, the student did the punishment push-ups.

Ohio law required that in order to recover for intentional infliction of emotional distress, the plaintiff must have suffered severe emotional distress and not just embarrassment or hurt feelings. Also, the law stated that the emotional distress had to be both severe and debilitating.

The Court of Appeals ruled that the teacher's intent was to ensure discipline through quick and certain punishment and not to cause emotional distress. Also, testimony revealed that even though the plaintiff sought psychiatric help, he never went to the therapy session until after depositions were taken, some five months later. In addition, the plaintiff continued to participate in physical education classes and extracurricular activities, including football and wrestling. Finally, where facts showed that the plaintiff had gained weight instead of losing weight as indicated by his parents and where the record showed that the plaintiff did neither request nor receive a refill of an antidepression drug, the defendants were found not to be negligent. Jackson v. City of Wooster Board of Education 504 N.E.2d 1144 (Ohio, 1985).

Pacific Reporter

There are four cases reported on from the Pacific Reporter. Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming are the states included in this region.

Montana

Court Case #1. The plaintiff filed an action for damages against the defendant school and school district for personal injuries suffered during an intramural basketball game. The plaintiff claimed that during the game he was violently hit from behind, knocked to the floor and suffered extensive and permanent injuries to his right knee.

The sole issue in the case was whether the plaintiff's action was barred by the statute of limitations. The injury occurred on April 29, 1974. The plaintiff alleged that he filed a claim for damages with 'the proper officials of defendants' on March 3, 1977. No compensation was paid by the defendants at this time. On October 31, 1977, the plaintiff filed suit against the defendants in District Court, seeking damages for his alleged injuries. The defendants' amended answer alleged the action was barred by the three-year statute of limitations.

In affirming the lower court's decision, the Supreme Court of Montana held that the statute of limitations for actions against the state and its political subdivisions and statute of limitations for personal injury actions began to run from the date the basketball player's cause of action accrued and not on the date which the basketball player presented his claim to the school officials and school district. Therefore, the plaintiff was barred for recovery because the action began three and one-half years after the incident. Nelson V. Twin Bridges High School, Etc. 593 P.2d 722 (Mont. 1979).

Oregon

Court Case #1. A school cafeteria employee brought action against the school district for damages for an injury sustained while she was walking across the gymnasium floor. The plaintiff, a school employee who was on a medical leave of absence, was invited to attend a birthday party for one of her co-workers. While returning from the school office with her co-worker, the women cut across the

gymnasium floor which was adjacent to the kitchen. When they were half-way across the floor a student, participating in a scheduled physical education class, bumped into the plaintiff and knocked her down, resulting in a broken hip.

Evidence presented at the trial indicated that at the time of the incident the physical education teacher was not present. Also, the physical educator testified that it was not appropriate for an adult supervising the class to leave the gym floor during the progress of a game. In addition, the defendant's regulations provided that students were not to be left unsupervised.

In reversing the Court of Appeals decision, the Supreme Court remanded the case to the trial court to reinstate judgment for the plaintiff. The court held where the plaintiff was lawfully on the premises, whether as an invitee or licensee, the defendant owner had an obligation to exercise reasonable care in the conduct of their activities. From the evidence presented it was plausible for the jury to conclude that failure to supervise a physically active physical education class was conduct creating an unreasonable risk of injury to the plaintiff's presence, the availability of reasonable safeguarding, and the nature of the plaintiff's activities were not such as should preclude recovery. Ragnone v. Portland School District No. 1J 633 P.2d 1287 (Or. 1981).

Note: The plaintiff was found to be partially at fault for her injuries, and her damages were reduced accordingly.

Court Case #2. The plaintiff brought action against the school district and the school coaching staff for injuries received during football practice. The result of the injury, which occurred when the plaintiff tackled another player, rendered him a quadriplegic. Two years after he sued the school and the athletic staff the plaintiff brought action against the Oregon State Athletic Association (OSAA) claiming they were negligent in not following various training and safety guidelines.

The facts of the case indicated the injury which happened on the second day of practice, occurred when the plaintiff tackled another player, using his helmet as the point of contact. There was evidence that the plaintiff had used the same tackling technique on previous plays during practice and had been praised by members of the coaching staff for the force or efficacy of his tackles. Prior to the practice, however, the coaches had admonished the players against using the head-contact tackling method.

Evidence also showed that the OSAA was a member of the National Federation of State High School Associations, which along with the American Medical Association, had adopted safety recommendations concerning contact scrimmages in pre-season football practices. In specific, the recommendations concluded that:

> ...practice games or game condition scrimmages should therefore be prohibited until after a minimum of two weeks of practice.

The court awarded the plaintiff actual damages in the amount of $1,800,000.00 against the OSAA. The court rejected the OSAA's claim that the suit brought against

them exceeded the limit upon which they could be sued. In rendering that decision it was stated that the plaintiff needed the two years to find a theory upon which the OSAA could be sued. However, the court found the plaintiff guilty of comparative negligence and reduced the settlement to $980,000.00. In addition, prior to the trial, the district and the individual defendants settled with the plaintiff for $100,000.00, which was the liability limit under Oregon state law. Peterson v. Multnomah County School District No. 1 668 P.2d 385 (Or. App. 1983).

Court Case #3. The plaintiff brought action against the school district for injuries he received when he was attacked by three students while attending a basketball game. He alleged that the injuries he received were a result of inadequate supervision by the defendant and that the school district should have been able to foresee that students attending a basketball game would have created a situation where proper supervision was necessary, especially where rival high schools were involved.

The Court of Appeals reasoned that the school district had a duty to take precautions to protect the plaintiff from reasonably foreseeable acts of third parties. However, where the complaint contained no allegations that: 1) there had been prior assaults or misconduct by students at other athletic events, and 2) the basketball game in question would have been likely to inspire violence, the court held as a matter of law that the district should not have foreseen that violence would occur at this particular

game. Therefore, the defendant was not found liable. Cook v. School District UH3J 731 P.2d 443 (Or. App. 1987).

South Eastern Reporter

The South Eastern Reporter includes the following states: Georgia, North Carolina, South Carolina, Virginia, and West Virginia. Four cases are included from this region.

Virginia

Court Case #1. The plaintiff brought action against the athletic director, the baseball coach, the grounds supervisor and the school board for injuries he sustained when he fell on broken glass while engaged in running laps around the school's outdoor track facility. The plaintiff further alleged that his injury was caused by the defendants' acts of simple and gross negligence.

The Circuit Court granted the defendants plea of sovereign immunity on the grounds that the school board 'enjoyed soverign immunity' and that the other defendants 'were acting in a supervisory capacity' and were thereby entitled to immunity. On appeal, the Supreme Court of Virginia ruled that the athletic director, the baseball coach and the grounds supervisor were not entitled to assert the defense of governmental immunity because they were employees of a local governmental agency. As reported in Crabbe v. School Board, 164 S.E.2d 639 (1968), employees of local governmental agencies do not enjoy governmental immunity and are answerable for their own acts of simple negligence. Therefore, the lower court's decision in favor of the defendants was reversed and

remanded back to trial. Short v. Griffiths 255 S.E.2d 479 (Va. 1979).

Georgia

Court Case #1. An action was brought for wrongful death of a student who was fatally injured when a metal soccer goal fell and struck her as she knelt to tie her shoe during physical education class. The parents of the student brought suit against 15 defendants, including the Board of Education, Superintendent, Principal and the physical education teacher, in attempt to recover damages for the maintenance of a nuisance. In addition, the plaintiffs argued that the principal acted outside the scope of his authority in ordering and installing the metal soccer goal on the school grounds without first seeking and receiving the appropriate permission and approval from the school district.

The Court of Appeals ruled in favor of the defendants under the doctrine of sovereign immunity. Evidence presented at the trial indicated that the defendants acted in their public capacities in discretionary roles and their acts were within the scope of their authority and that they acted without willfulness, malice or corruption. In addition, evidence presented showed the soccer goal was paid for by community groups and was intended for joint use by the school and several community agencies. Therefore, approval was not required for equipment which was procured through community agencies rather than through school district channels.

The judges in the case closed with an interesting comment stating:

> 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).

North Carolina

Court Case #1. Suits were brought against the city and school board to recover damages for personal injuries sustained by a minor in a gymnasium leased by the school board to the city. The plaintiff, who was mildly retarded, suffered serious and permanent brain damage when he fell eight feet from gymnasium bleachers to the floor.

Under the state law, provisions of General Stauates 115lC-263 and 115C-264 provide that:

> ...local boards of education shall have authority to adopt rules and regulations by which school buildings, including cafeterias and lunchrooms, may be used for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property. [Emphasis added]

Therefore, the school board was statutorily immune from liability. Plemmons by Teeter v. City of Gastonia 302 S.E.2d 905 (N.C. App. 1983).

Court Case #2. A high school student and his father brought suit seeking recovery for injuries sustained by the student during a school-sponsored baseball game. The student was injured, while running to first base after

receiving a base on balls, when he tripped and fell over a metal spike which was embedded in the ground along the base path and which was concealed from view by dirt and the chalk used to designate the base line. The suit alleged that the injury was caused by negligent maintenance of the field by the board through the ballfield employees.

The defendant board were found not liable because they were protected by governmental immunity. Even though the board purchased liability insurance to cover damages caused by the negligence or torts of its employees, the policy contained an exclusion for injury arising out of participation in athletic contests sponsored by the insured. Overcash v. Statesville City Board of Education 348 S.E.2d 524 (N.C. 1986).

South Western Reporter

The following 4 cases reported are from the South Western Reporter. The states included are Arkansas, Kentucky, Missouri, Tennessee, and Texas.

Missouri

Court Case #1. A six-year-old child, by his guardian, brought action against his physical education teacher for injuries sustained during physical education class. The injury occurred when the child tied a jump rope to the top of the jungle gym, started to swing down, fell and broke his arm. The plaintiff claims that the teacher was guilty of negligence through improper supervision.

Evidence presented at the trial showed the physical education teacher in charge of 22 students on the school playground. The class was working on jump roping during

the period. Near the end of the class the teacher allowed the students to play on the playground equipment. The next time the teacher saw the plaintiff was when he fell to the ground.

The Court of Appeals upheld the lower courts decision in favor of the defendant school teacher. Under the facts, there was no evidence of negligence. The defendant had an obligation to exercise ordinary care to supervise the children. Ordinary care does not require having each of 22 six-year-olds constantly and continuously in sight. Such would be impossible. There was no indication in the evidence the defendant was inattentive, careless or was failing to perform his supervisory obligations. In addition, there was no evidence the plaintiff required any special supervision or had previously conducted himself in a dangerous fashion. Clark v. Furch 567 S.W.2d 457 (Missouri, 1978).

Court Case #2. An action was instituted against defendant school officials for fatal injuries sustained by plaintiff's decedent on school premises. The plaintiffs claim that the defendants were liable for inadequate supervision and negligence.

The death occurred as two students were walking from the locker room to the gym floor. Although there were no eyewitnesses to the incident, an inquiry performed by the principal indicated that the decedent and another student were fooling around when the student picked up the decedent whereupon the decedent either fell or was dropped on his head. The decedent reported to the nurse's office. The

nurse found no apparent sign of extreme injury and the decedent returned to class. After he became worse, he returned to the nurse's office where he was taken to his physician and expired shortly thereafter. An autopsy revealed the decedent had sustained a skull fracture and his death was caused by a massive cerebral hemorrhage.

Evidence presented at the trial indicated that the decedent's regular physical education teacher was at a authorized workshop and the other physical education teacher was supervising the decedent's class as well as his own regularly scheduled class. The teacher was in the locker room, waiting on the last students to leave at the time of the incident.

The trial court sustained the defendant's motions to dismiss on summary judgment. On appeal, the court concluded that the action was a 'disfavored' action, the pleadings were insufficient and therefore the case was reversed and remanded back to trial.

In arguing that their motions to dismiss should have been granted, the defendants contended that as officers of the school district, they are protected by immunity and cannot be held liable except for commission of an intentional tort. However, the judge ruled that the granting of summary judgment was an error as there was inconclusive facts presented. Specifically,

> 1) Did the combining of the class size create a size limit which exceeded state regulations?, 2) Did the defendants know that the student involved in the incident had the inclination of being quarrelsome?, and 3) Hearsay evidence may not be relied upon either to avoid or support a summary judgment.

Finally, the judge reported:

> We will repeat that the tort liability of supervisory public school employees and teachers for inadequate supervision of their students is highly subjective, and the scope of their duty is extremely narrow. Nevertheless, we do not find the defendants to be immune, and we cannot say that in the absence of admissible evidence showing the circumstances or the manner in which Daniel was injured, defendants have shown by "unassailable proof" that they are entitled to judgment as a matter of law."

Kersey v. Harbin 591 S.W.2d 745 (Mo. 1979).

Court Case #3. A student brought suit against the school district and the physical education instructors for injuries he sustained in a physical education class. The plaintiff was injured when he fell and landed on the trampoline's exposed springs.

The Supreme Court upheld the lower court's decision ruling that the doctrine of sovereign immunity barred the student's suit against the school district. However, it was further stated that the doctrine of immunity did not extend to the physical education instructors and therefore they could be held liable for a negligent act. The case against the physical education instructors was reversed and remanded back to trial.

It is important to note in the cases involving the state of Missouri, there is no clear statement regarding the scope of an individual instructor's duty to proper supervision. Although all judges agree that:

> ...no line of authority clothes school teachers from liability for their negligent acts and that in a teacher-pupil relationship, a duty to exercise some degree of care exists, the complexities of the relationship make it imperative that standards be permitted to evolve as different fact situations arise.

Spearman v. University City Public School District 617 S.W.2d 68 (Mo. 1981).

Texas

Court Case #1. An action was brought against the school district, three football coaches and the trainer for injuries received by a high school student while playing football. The plaintiff alleged that he was injured as a result of negligent supervision, instruction and coaching by the school district's employees.

The Court of Appeals held that the defendants were protected from liability under the doctrine of governmental immunity. In specific:

> 1) the school district was an integral part of the statewide public school system and its activities, including its participation in state interscholastic football program, were not local in nature and benefitted all of the people in the state, so that the football program was a governmental function and the doctrine of governmental immunity barred the action, and 2) recreational and financial aspects of the football program did not render it an activity that was proprietary in nature, where primary purpose of program was educational benefit accruing to students involved in it, so that the program was a governmental function to the district.

Garza v. Edinburg Consolidated Independent School District 576 S.W.2d 916 (Tx. 1979).

North Western Reporter

The North Western Reporter includes cases from the following states: Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin. From 1977 to 1987 there were 19 cases reported.

Nebraska

Court Case #1. This is a wrongful death action brought by the parent as administratrix of the estate of her son against the school district. The plaintiff's son died as a result of being accidentally struck in the left occipital region of his skull by a golf club during a physical education class. Recovery in this case was sought on the ground of lack of supervision.

Mandatory golf instruction during physical education classes at school began five years earlier. This year's instruction began on a Monday, a day the decedent was absent. On this day the students received instruction on the golf grip, stance, swing, etiquette, and safety. The class was coeducational and taught by two teachers. On the second day of class the decedent was present. Class was being held in the gymnasium due to inclement weather. In addition, one of the regular teachers was absent, but was replaced by a student teacher. The instructions for the day were as follows:

1) students were divided into groups of four or five students;

2) each group of students was to use the same mat to hit the plastic golf balls off of;

3) only one student per group was to hit golf balls at a time;

4) the remaining students in each group were to sit in the designated area away from the student swinging the golf club;

5) after finishing hitting the golf balls the student was to return to the designated sitting area; and

6) when all of the students were back at the designated area, the next student in each group was directed to retrieve the balls and the procedure was repeated.

The plaintiff's decedent, who prior to the date of his death had never had a golf club in his hands, was having difficulty so he asked someone to help him. A fellow student came forward and showed the decedent how to grip the club and then took some practice swings. Unaware that the decedent had moved closer, the student hit the decedent with the club on the follow-through. At the time of the accident the student teacher was helping another student a few mats away, while the other teacher was positioned on the other side of the gymnasium working with the girls.

The teacher, who was absent on the day of the accident, testified that he and the other teacher would see that only one individual was at each mat when the students were to commence their swings. While the students were swinging, he would patrol up and down the line to make sure everything was fine. The student teacher, who had been at the school for five weeks, testified that he had received no instruction from any of the regular teachers or faculty prior to the commencement of the class, nor did he have a lesson plan.

> Where lack of supervision by an instructor is relied on to impose liability, such lack must appear as the proximate cause of the injury, with the result that the liability would not lie if

> the injury would have occurred notwithstanding the presence of the instructor.
>
> The Supreme Court of Nebraska reasoned: 1) the school district had the duty to anticipate the danger that was reasonably foreseeable when instructors were teaching golf to ninth graders who were not familiar with the rules of golf and, in the case of the student who was killed when struck by a golf club, who had never been exposed to the game, 2) the record established that lack of supervision was the proximate cause of death of the ninth grade student, and 3) since the school district instructors should have foreseen intervening negligent act of ninth grade student who fatally struck classmate with golf club during physical education class and, if district's employees had exercised proper supervision, the death would not have occurred, intervening negligence of classmate did not preclude district from being held liable for the student's death, therefore 4) one who is capable of understanding and discretion and who fails to exercise ordinary care and prudence to avoid obvious danger is negligent or contributory negligent.

The plaintiff was awarded $3,470.06 for special damages and $50,000.00 for general damages. It should be noted however, that two of the justices disapproved of the judgment holding that the decedent was guilty of contributory negligence. Brahatcek v. Millard School District, School District #17 273 N.W.2d 680 (Neb. 1979).

Court Case #2. The plaintiff, a referee, brought suit against the school district for injuries sustained while refereeing a basketball game. The plaintiff alleged that he slipped and fell in an area within the gymnasium where moisture had accumulated on the floor surface from a leak in the ceiling and that the condition of the floor surface was the proximate cause of his injury. He further alleged the defendants had knowledge of the wet condition of the floor but failed to notify or apprise the plaintiff of such fact.

The trial court entered judgment in favor of the defendant school district. The Supreme Court, after reviewing the evidence, supported the trial court's decision. The higher court held that the decision by the lower court was equivalent to a jury verdict and, unless clearly wrong, would not be overturned by the appellate court. Studley v. School District No. 38 of Hall County 316 N.W.2d 603 (Neb. 1982).

South Dakota

Court Case #1. A student, who was injured in a required physical education class, brought action against the school district and teachers to recover for his injuries. The student was injured in a wrestling match when he was thrown to the ground and his left ankle was broken. When the injury occurred, this particular match was being officiated by a classmate.

The sole issue involved the summary judgment granted by the Circuit Court which found the defendant not liable based on sovereign immunity. Upon appeal, the plaintiff claimed that the school district's purchase of liability insurance waived their defense of sovereign immunity.

The Supreme Court held:

> where the school district was not a governmental unit below the state level whose traditional immunity had been statutorily waived at the time of the injury, the student had no permission to sue the district and the teachers in tort liability on this type of action and with the absence of such permission no suit could prevail.

Furthermore, the purchase of liability insurance did not provide that permission. The court added:

> The county is authorized to carry insurance to indemnify against its statutory liability, but the fact of insurance does not create a cause of action where none existed in the absence of insurance.

Merrill v. Birhanzel 310 N.W.2d 522 (S.D. 1981).

North Dakota

Court Case #1. A personal injury suit was brought against the school district on behalf of a first grade student who was injured when she fell off a slide on the school playground during recess. A teacher's aide, employed by the school district, was supervising the playground at the time of the injury. The teacher's aide watched as the student climbed to the top of the slide and began her descent down the slide in the proper sitting position. However, she was not watching when the student fell off of the slide. When the student fell off of the slide, she hit her elbow on a flat rock, approximately four to six inches in diameter, which was lying near the slide.

The action claimed that the school district had negligently maintained the school playground and had negligently failed to provide adequate supervision of the students on the playground. The claim asserted that the existence of the rock near the slide constituted negligent maintenance of the playground which was a proximate cause of the student's injury.

In affirming the lower court's decision in favor of the defendants, the Supreme Court held that the evidence presented supported the school district's claim of not being negligent. With regard to the issue of supervision, there was evidence that the aide supervising the playground

activity at the time of the injury, was stationed near the injured student and had watched her correctly climb and begin her descent down the slide. This was sufficient to conclude that negligent supervision was not the proximate cause of the child's injury. With regard to the issue of playground maintenance, evidence revealed that the rock was buried beneath grass and topsoil and not exposed, therefore, negligent maintenance of the school playground was not substantiated. When considered together there was enough evidence to sustain the trial court's verdict. Besette v. Enderlin School District No. 22 310 N.W.2d 759 (N.D. 1981).

Note: The jury at the trial court was given instructions on what could constitute negligence on the part of the school district. For the benefit of other professionals the court stated:

> 1) A school must exercise ordinary care to keep its premises and facilities in reasonably safe condition for use of minors who foreseeably will make use of premises and facilities.
> 2) Schools are under a duty to insure the safety of their students during playground activities as well as a duty to properly maintain the premises.
> 3) The school owes to its children to exercise such care of them as a parent of ordinary prudence would observe in a comparable circumstance.
> 4) The duty of care owed a child is greater than that owed an adult against unreasonable risk of injury. The standard of care used in dealing with adults, however, is not considered adequate for those entrusted with the care of children. The degree of due care increases with the maturity of the child, and
> 5) While an adult is held to the standard of a reasonable man an infant is held to a standard of care which would be exercised by the ordinarily prudent child of his own age, capacity, intelligence and experience. Negligence, as applied to a minor child, is the doing of that which an ordinarily prudent person of the age,

> intelligence, experience and capacity of such child would not do under the same or similar circumstances, or the failure to do that which such a person would do under the same or similar circumstances.

Minnesota

Court Case #1. A plaintiff brought action on behalf of his son, individually and as his natural guardian, against the school district superintendent, principal and physical education teacher for injuries received by his son in a physical education class. The plaintiffs alleged the injury was caused by improper instruction by the teacher and improper supervision on the part of the superintendent and the principal.

The facts of the case revealed that the class was participating in a gymnastics unit. On the day of the injury the class was practicing a 'headspring over a rolled mat' exercise. The class was taught by a first year certified physical education teacher because the regular teacher had to report for military duty.

The allegations of negligence against the school teacher were based on the arguments that he was teaching the plaintiff's class the headspring without first teaching the necessary progression steps and that he was not properly spotting the students while they performed the exercise. The superintendent and the principal were alleged negligent because they had not properly developed, administered and supervised the physical education curriculum, nor properly trained the 'substitute' teacher to fill in for the regular teacher, nor properly supervised the physical education class.

The trial court dismissed the claim against the superintendent because he was not directly involved with the supervision of the class. However, the court awarded the plaintiffs a sum of $1,013,639.75 due to the negligence of the principal (10 percent) and the teacher (90 percent). In addition, the court held that procurement of liability insurance in the sum of $50,000.00 by the school district, waived their absolute defense of governmental immunity for torts committed by its employees, thereby, making the school district jointly and severly liable in the amount of $50,000.00 to the student and his father.

The Supreme Court, in affirming the lower court's decision held:

1) the principal was negligent for not closely supervising the planning of a unit of gymnastics when a young teacher with little experience was involved,

2) the teacher was negligent for improperly instructing the students by not using the proper exercise progressions listed in the state curriculum guide,

3) the teacher was negligent for improperly spotting the student during the exercise,

4) the teacher was not protected under the doctrine of discretionary immunity because the improper teaching of a headspring essentially involved a ministerial function, because it involved decisions made at the operational level of conduct,

5) the teacher was not protected under the doctrine of discretionary immunity in regards to the way he spotted the class while they performed the headspring, because it

was the teacher's responsibility to see that the headspring was safely taught and properly spotted and the manner in which the teacher chose to do was a decision made on the operational level of conduct and clearly involved a ministerial duty, and

6) the principal was not protected by the doctrine of discretionary immunity because he was negligent for not properly supervising the physical education teacher, which was not a policy-making decision. Larson v. Independent School District No. 314, Braham 289 N.W.2d 112 (Minn. 1980).

Court Case #2. A father brought action for himself and on behalf of his minor daughter against the teacher, school district and manufacturer of the vaulting horse arising from a gymnastics accident involving a vaulting horse from which the pommels had been removed. The plaintiff testified that she vaulted successfully several times, but then as she was performing another vault, one of her fingers stuck in a hole, causing her to fall on the wooden floor to the side of the horse and to sustain permanent injury to her right leg. The plaintiff claimed that the teacher had provided insufficient matting around the horse to protect the students from falls to the floor. In addition, the plaintiff alleged negligence on part of the vaulting horse manufacturer for not warning of the danger posed by the holes. The major issue was whether the evidence presented was sufficient to allow the jury to infer negligence without the benefit of expert testimony.

The District Court entered a directed verdict or judgment in favor of all of the defendants. Upon appeal, the Supreme Court affirmed the lower court's decision toward the manufacturer reasoning that there was insufficient evidence to show negligence on their part.

However, the Supreme Court reversed the decisions favoring the teacher and school district and remanded the case back to trial. The court held that negligence could be found if a jury deemed the removal of the pummels, even though it was a prevailing custom among physical education teachers, as conduct falling below the requirements of reasonable care. Finally, the court held that expert testimony was not essential and that a lay jury was capable of determining whether a teacher, of ordinary prudence, would use a vaulting horse despite two holes in its surface. Tiemann v. Independent School District #740 331 N.W.2d 250 (Minn. 1983).

Michigan

Court Case #1. A father, individually and on behalf of his minor son, brought suit against the city and the school district to recover for loss of sight in his son's right eye. The injury occurred when the plaintiff's son was playing among piles of sand on the school playground, which were being used for reconstruction of the baseball diamonds, and was hit in the eye by a 'dirt rock' thrown by another child. Testimony revealed that the piles of sand were not fenced in or otherwise rendered inaccessible to children and that previous to the injury, there were complaints to the defendants, by the parents of the

children playing on the school grounds concerning the dirt piles and the resultant 'dirt fights'.

The Circuit Court entered accelerated judgment in favor of the city and summary judgment in favor of the school district based on the defense of governmental immunity. On appeal, the plaintiff raised two questions. Specifically, that: 1) the adjacent playground was not a part of the school building, thereby excluding the doctrine of governmental immunity from applying, and 2) the maintenance, repair or reconstruction of a school playground was not a governmental function thereby excluding the doctrine of governmental immunity from applying. In affirming the lower court's decision, the Court of Appeals held that: 1) the playground was part of the school building, and 2) that the reconstruction of part of the playground was a governmental function. Therefore, both questions were blanketed under the doctrine of governmental immunity. Monfils V. City of Sterling Heights 269 N.W.2d 588 (Mich. 1978).

Court Case #2. An elementary school teacher and principal were sued for injuries suffered by a student while playing a game of 'kill' during recess. The plaintiffs alleged that the minor plaintiff suffered personal injuries caused by negligence of the defendants. Specifically, that the principal negligently breached her duty to supervise the teachers and set rules and guidelines for the safety of minor pupils under her supervision and that the instructor of the classroom to which the minor

plaintiff was assigned, negligently breached his duty to supervise the recreational activities of his students.

The game of 'kill' consisted of one participant of the game having possession of a football while all of the other participants of the game attempted to obtain the ball from him by means of tackling and jumping. The plaintiffs characterized the game as 'ultra dangerous.' In addition, the plaintiffs alleged that both the teacher and the principal had observed the students playing 'kill' on numerous occasions without ever stopping them nor providing them with proper supervision.

On the day of the injury the defendant school teacher was on leave of absence. He contended that he had no responsibility to supervise or control the minor plaintiff at that time and that any duty imposed by law was owed by the substitute teacher who was in charge on the day in question.

The trial court granted summary judgment for the teacher on the ground that since the defendant was absent on the date of the injury he owed no duty to supervise the minor plaintiff. In addition, the trial court also granted summary judgment for the principal on the ground that she was immune from liability by virtue of governmental immunity.

The Court of Appeals held that the school teacher was not liable on the theory of negligence since he was not present, nor had any child been placed in his charge when the student was injured. However, the Court of Appeals found that the principal had negligently performed her

supervisory powers. The court held that even though supervisory powers of the school principal were incident to her public function, she had the duty to reasonably exercise those powers in such a way as to minimize injury to her students. Thus, where the principal negligently performs that duty, governmental immunity does not insulate her from all liability. Cook v. Bennett 288 N.W.2d 609 (Mich. App. 1979).

Court Case #3. The plaintiff, who suffered subluxation of two vertebrae which resulted in quadriplegia, brought action against the school district and a doctor. The claim alleged that the defendant's failure to detect or diagnose the plaintiff's physical condition as unsatisfactory to participate was the proximate cause of the injury. The facts of the case showed that the plaintiff was examined by the doctor five months prior to the injury and his physical condition was approved to participate in combative sports. The examination was a requirement of the school district's physical education policies.

The trial court granted summary judgment for the defendant doctor on the ground that there was no genuine issue as to any material fact and that the physician was therefore entitled to judgment as a matter of law. In addition, the trial court granted summary judgment for the defendant school district on the ground of governmental immunity.

The Court of Appeals reversed the decision based on the grounds that there was an issue of fact where the doctor failed to detect or diagnose a defect or disease in

the plaintiff. The court held that the facts in the case needed consideration by a jury and should not have been dismissed. However, the court held that the school district was immune from liability because the doctrine of governmental immunity was deemed constitutional. Deaner v. Utica Community School District 297 N.W.2d 625 (Mich. App. 1980).

Court Case #4. A plaintiff brought action against the athletic director, high school principal, school superintendent and the school district for injuries received, paraplegia, while lifting weights in preparation for high school football team tryouts. The complaint alleged that the defendants negligently supervised the coach and allowed him to abuse students and to threaten and pressure them into attempting athletic feats beyond their capabilities. In addition, the complaint alleged that the gymnasium facilities were inadequate and defective, due to a lack of ventilation, which caused the plaintiff to perspire excessively, contributing to his injuries.

The trial court granted an accelerated judgment to the defendants on the grounds of governmental immunity. Upon appeal, the case was reversed in part, affirmed in part and remanded back for trial.

In reversing the lower courts decision, the Court of Appeals referred to Cook v. Bennett, 288 N.W.2d 609 (Mich. 1980). According to the analysis set forth in Cook, supra, it appears that the principal in the instant case should not be covered by the cloak of governmental immunity.

> As in Cook, the principal had a duty to reasonably exercise supervisory powers so as to minimize injury to his students. The principal of the school maintains direct control over the use and condition of the facilities. Therefore, if the weight lifting room was, in fact, improperly equipped and designated for that use, the defendant principal would bear direct responsibility. Moreover, if the summer weight lifting program was, in fact, in violation of the Michigan High School Athletic Association rules and regulations, it would be the principal who would be in charge of such a program. Finally, it must be noted that weight lifting is an activity which requires special training and supervision; overexertion and resultant injuries are foreseeable and frequent in the absence of proper supervision. If such a program was to be conducted in the high school, the principal had the duty to minimize injury to the participating students.

In addition, the athletic director was held liable under the same reasons as stated previously. The court reasoned that the outcome 'should apply with equal vigor to that person who is in direct control of the athletic program.'

Possible negligence of the coach and the other school employees could not be imputed to the school superintendent merely because he was in a supervisory position. Therefore, allegations that he was negligent in supervisory responsibilities were insufficient to allege 'personal neglect.'

Finally, the school district was immune from suit because it was not liable under the defective building exception to the governmental immunity statute. The court ruled that the injury occurred from the lack of supervision not the defect in the building. Vargo v. Svitchan 301 N.W.2d 1 (Mich. App. 1981).

Court Case #5. The plaintiff brought action against the school district after his minor son was injured while participating in a practice session of the school's football program. The suit involved the sole issue of whether the day-to-day operation of a public school, including the administration and supervision of a football program, was a governmental function and, therefore, entitled to immunity.

In affirming the lower court's decision in favor of the school district, the Court of Appeals held that the public school, in operation of its athletic program, was engaged in a governmental function and was entitled to immunity from tort liability. Although there were many justices with dissenting opinions to the matter at hand, the Court based its decision on the rulings found in Lovitt v. Concord School District 228 N.W.2d 479 (Mich. 1975), Cody v. Southfield-Lathrup School District 181 N.W.2d 81 (Mich. 1970), Richards v. Birmingham School District 83 N.W.2d 643 (Mich. 1957), Watson v. Bay City School District 36 N.W.2d 195 (Mich. 1949) and McDonnell V. Brozo 280 N.W. 100 (Mich. 1938). The court held:

> ...school district immune from tort liability where plaintiff decedent died of heat prostration during a particularly severe football practice session...physical education activities have been held to constitute a governmental and not a proprietary function...the football game was part of the school's physical education program. The function is inherently educational, a governmental function without a doubt...

Churilla v. School District for City of East Detroit 306 N.W.2d 381 (Mich. App. 1981).

Court Case #6. An action was brought on behalf of an elementary school student who was struck and knocked to the paved playground by another student during recess. The complaint alleged that the principal was negligent in the hiring of the school ground supervisors and that the teachers were negligent in the supervision of these employees, specifically, not controlling the children while they were running on the playground. In addition, the plaintiff alleged the defendants intentionally and/or negligently created a nuisance by failing to hire and supervise competent personnel, instruct students on proper conduct and warn students of the danger. Finally, the complaint alleged the playground was structurally defective.

The trial court granted summary judgment to the defendants on the grounds of governmental immunity. The Court of Appeals, citing the ruling in Bush v. Oscoda Area Schools 275 N.W.2d 268 (Mich. 1979) held that:

> employee actions performed within the scope of a governmental function are cloaked with governmental immunity.

Therefore, the court concluded that the teacher and the principal were performing governmental functions and were immune from liability. However, the higher court reversed the lower court's decision by allowing the complaint, which alleged that the playground was structurally defective, to be amended. Everhart v. Board of Education of the Roseville Community Schools 310 N.W.2d 338 (Mich. App. 1981).

Court Case #7. An action was brought on behalf of a four-year old preschool student who suffered a broken left hip when a ping-pong table fell upon her. The suit contended:

1) that the daily operation of a public school system is not a governmental function; and 2) that, if the operation of a public school system is a governmental function, the claim here falls within the public building exception to the governmental immunity doctrine.

In affirming the lower court's decision in favor of the defendant school district the Court of Appeals held that the state had consistently found that the operation of a public school system was a governmental function:

> that is, it involves an activity, fulfilling the public's educational needs, that can only be effectively accomplished by the government.

As set forth in Deaner v. Utica Community School District, 297 N.W.2d 625 (1980):

> ...the government plays a pervasive role in the area of education, appropriating substantial state funds to that field and declaring education as a public policy.

In addition, the building exception to the doctrine of governmental immunity was deemed inappropriate because the source of the injury was not a dangerous or defective condition of the building, rather the inadequate supervision of the students by their teacher. Lee v. School District of the City of Highland Park 324 N.W.2d 632 (Mich. App. 1982).

Court Case #8. An action was brought against the physical education instructor and the school system for

injuries received by a student in a junior high school wrestling class. The suit claimed that the teacher was negligent in:

> 1) the failure to supervise the physical activities of the students in a mannner and method commensurate with the expected standards of care, and 2) the failure to obtain a written authorization from a parent to participate in an activity which is strenuous and violent physical exercise.

The trial court granted summary judgment in favor of the defendants based on the doctrine of governmental immunity. In affirming the lower court's decision the Court of Appeals stated:

> 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.

Furthermore, the Court of Appeals, after reviewing the decisions in Bush v. Oscoda Area Schools, 275 N.W.2d 268 (1979), Everhart v. Board of Education of the Roseville Community Schools, 310 N.W.2d 338 (1981), and Gaston V. Becker, 314 N.W.2d 728 (1981), decided that the Supreme Court: would now hold that an employee who is acting within the scope of his employment is immune from suit. Therefore, the defendants were immune from suit. Lewis v. Beecher School System 324 N.W.2d 779 (Mich. App. 1982).

Court Case #9. A student and her parents filed action against two school districts, the boards of education and various employees of each school district for injuries received from an assault upon her in the locker room of a high school following a girls' basketball game. The action

claimed that the defendants were negligent for failing to sufficiently supervise the locker room.

The Circuit Court denied the school district's and employee's motion for summary judgment finding that they were not protected by governmental immunity. However, the Court of Appeals reversed the decision in favor of the defendants.

In order to state a valid claim against a governmental agency such as a school district, Michigan state law requires that the plaintiff:

> must plead facts in avoidance of governmental immunity. This means that the plaintiff must demonstrate either that the school district's activity comes within one of the statutory exceptions to governmental immunity or that the activity did not constitute the exercise or discharge of a governmental function.

The appellate court reversed the decision on the school district based on the following reason:

> The plaintiff's complaint tried to invoke the public building exception to governmental immunity, specifically 'premises liability', for failing to provide a separate locker room and facilities for the visiting team.

However, the 'premises liability' allegation must show a defective or dangerous condition in the building itself. Therefore, the public building exception is inapplicable.

In addition, the court based its decision on the outcomes in Churilla v. East Detroit School District, 306 N.W.2d 381 (1981) and Deamer v. Utica Community School District, 197 N.W.2d 625 (1980). The former case held that the school's operation of a football program was a governmental function, while the latter held the school's

physical education program was a governmental function. Finally the court reported:

> ...the school district's operation of extracurricular sports programs such as the girl's basketball programs here involved, provides opportunities to student athletes which, as a practical matter, could not be provided except through the operation of the public schools...view such programs as an adjunct of the school district's statutory mandate to provide students with physical education and they are an aspect of the school's day-to-day operations...the purpose, planning, and carrying out of such extracurricular programs can only be effectively accomplished by the school district...school districts were engaged in a governmental function.

The appellate court also found the employees not to be negligent. This was based on the fact that they were acting within the scope of their employment and therefore, they were blanketed with governmental immunity. Grames v. King 332 N.W.2d 615 (Mich. App. 1983).

Court Case #10. A 13 year old student, through her mother, brought suit against a public school physical education teacher for injuries which resulted after she was attacked by another student during class. The suit alleged that the teacher was negligent by breaching her duty to exercise reasonable care and precaution for the safety of her students.

The defendant moved for summary judgment on the ground that she was protected from the plaintiff's suit by governmental immunity. The trial court granted the motion. The sole issue on appeal was whether the trial court erred in granting the defendant's motion for summary judgment.

In deciding whether or not the teacher was immune from liability the Court of Appeals determined that the test to

use was whether or not the alleged tortious conduct fell within the scope of employment, rather than whether or not the alleged tortious conduct involved discretionary rather than ministerial acts. The higher court held that the teacher was not negligent because the duty alleged to have been breached was imposed upon her because of her public employment. Pope by Pope v. McIntyre 333 N.W.2d 612 (Mich. App. 1983).

Court Case #11. A plaintiff brought action against the football coaches and helmet manufacturer for injuries received by his son during a junior varsity football game. The claim alleged that the defendant coaches had failed to properly supervise, instruct and train his son to participate in the football program and that such failure proximately caused the injury (quadriplegia).

The Circuit Court entered summary judgment in favor of the defendant coaches. Upon appeal, the sole issue for the Court of Appeals to consider was whether the trial court erred in granting the defendants motion for summary judgment on the basis that they were immune from suit because of governmental immunity.

Once again, the appellate court based its decision on the reasoning used in Churilla v. East Detroit School District, 306 N.W.2d 381 (1981). The court concluded that the defendants were immune from liability because:

> A public school in the operation of its athletic program, including the administration and supervision of a football program, is entitled to governmental immunity. Further, teachers and supervisors of the programs are entitled to governmental immunity when they have performed

> their duties within the scope of their employment (Regulski v. Murphy, 326 N.W.2d 528 (1982). Boulet by Boulet v. Brunswick Corporation 336 N.W.2d 904 (Mich. App. 1983).

Court Case #12. The father of a boy who had drowned in a beginner's swimming class, filed a wrongful death action against the school administrators, swimming class instructors and pool attendant. The suit contended that the instructors, including the pool attendant, negligently failed to give the decedent mouth-to-mouth resuscitation before removing him from the water, and failed to place him on a spine board while in the water. In addition, the instructors failed to properly administer mouth-to-mouth resuscitation and cardiopulmonary resuscitation procedures after removing the decedent from the water. Finally, the plaintiff specifically alleged that the class instructors breached their duty of care by failing to:

> 1) properly observe each child enrolled in the swimming class, 2) position themselves around the swimming pool, 3) immediately provide assistance and first aid in the event of an accident, and 4) refrain from activities which would distract their attention from their supervisory responsibilities.

Also, the suit alleged that the school administrators failed to supervise the children enrolled in the class and failed to warn the children's parents:

> 1) of the condition of the pool premises, 2) that there was no lifeguard on duty during the class, and 3) that there was lack of constant supervision of the students in the swimming class.

The Circuit Court granted summary judgment for the defendants on the theory that their acts were discretionary and thus immune from tort liability. The central issue

raised on appeal was whether the alleged acts or omissions of the defendants were discretionary or ministerial.

In this present case, the Court of Appeals followed the case of Ross v. Consumers Power Co., 363 N.W.2d 641 (1984), which held that individual government employees were immune from tort liability only when they were:

> a) acting during the course of their employment and were acting or reasonably believe they were acting, within the scope of their authority; b) acting in good faith; and c) performing discretionary-decisional, as opposed to ministerial-operational acts.

When the decisions in Ross, supra, were applied to the present case the following decisions were:

> 1) ...defendant class instructors exercised personal judgment in determining where the resuscitation should take place...this constitutes a discretionary act for which the instructors were protected with immunity.,
> 2) ...the Ross Court concluded that the actual execution of [a discretionary] decision is a ministerial act...mouth-to-mouth resuscitation and cardiopulmonary resuscitation procedures were ministerial acts...instructors not protected with immunity.,
> 3) ...instruction and supervision were essentially ministerial-operational activities for which there was no immunity from tort liability...instructors not protected with immunity., and
> 4) ...the school administrators alleged failure to supervise children and warn children's parents of possible dangers were acts or omissions that constituted ministerial-operational acts...school administrators not protected with immunity.

Therefore, the Court of Appeals affirmed in part, rescue procedure, and reversed in part for the plaintiff. Webber v. Yeo 383 N.W.2d 230 (Mich. App. 1985).

Court Case #13. A high school student brought action against the school district and physical education instructor for damages and injuries sustained during a

physical education class. The students were playing touch football during the class. The plaintiff was injured when he was tackled and thrown to the ground. The complainant alleged that the teacher failed to adequately supervise and instruct the class and failed to intervene when the players began to use excessive force. Specifically, the plaintiff alleged the teacher absented himself from the playing field, reading the morning newspaper rather than supervising the football game. In addition, the plaintiff alleged that proper equipment was not provided.

The trial court granted the defendants' motion for summary judgment based upon the claim of governmental immunity. The Court of Appeals reversed the lower court's decision holding that the physical education instructor's supervision, or nonsupervision, of his students constituted a ministerial act (Ross, supra, and Bandfield v. Wood, 364 N.W.2d 280 (1985), therefore, denying the defense of governmental immunity. The case was remanded back to trial. Hyman v. Green 403 N.W.2d 597 (Mich. App. 1987).

Southern Reporter

The Southern Reporter includes cases from the following states: Alabama, Florida, Louisiana and Mississippi. From 1977 to 1987 there were 16 cases reported.

Louisiana

Court Case #1. A high school student brought action against the school board to recover for injuries sustained while performing a wrestling drill in a required physical education class. The plaintiff contended that the injury

occurred due to improper instruction on the part of the teacher.

Evidence presented indicated that the plaintiff failed the board's physical examination because his vision was below a designated standard and was therefore, ineligible to tryout for the school football team. He did, however, participate in the exercises and non-contact drills. As was in accordance with the coaches' policy, all of the football players had physical education together which meant the plaintiff was in that class. After spring training, the physical education class began a six-week unit on wrestling and weightlifting, alternating each day between both sports. The first three wrestling classes consisted of warm-up calisthenics and instructions in basic positions and moves, with the moves being demonstrated and then performed by the students 'by the numbers'. In this procedure each move was broken down into numbered components, and the students upon command moved methodically through the entire maneuver, at first slowly and then with gradually increasing speed. On the fourth or fifth day the students, after warming up, were paired off and required to wrestle 'hard' in a 30-second drill, using not only the moves they had been taught, but also any others which came to mind. During the drill the plaintiff attempted to avoid being pinned by arching with his neck and feet, usually termed 'bridging', which he had been shown both as a conditioning exercise and as a wrestling maneuver. During this maneuver, the plaintiff suffered paralysis.

The Court of Appeals upheld the trial court decision in favor of the defendants. The evidence presented supported the conclusion that the physical education teacher's instruction and preparation for and supervision of the drill in which the student was injured did not fall below a locally or nationally accepted reasonable standard of care for teachers under similar circumstances. In addition, expert testimony presented by both sides did not conclusively show one party as being guilty. Green v. Orleans Parish School Board 365 So.2d 834 (La. 1979).

Court Case #2. An action was brought against the school board for damages sustained when a student fell on the school playground. The injury occurred during a physical education class, at which time the class was engaged in playing softball. While rounding second base the student tripped and fell over a piece of concrete, which was embedded in the ground directly on the path, or very near it, between the two bases on the softball diamond.

The court held that the injury occurred due to the hazardous condition present on the playground. The court concluded that it was a breach of the required standard of care on the part of the school board to allow the hazardous condition to exist and therefore, the school board was found to be negligent. Ardoin v. Evangeline Parish School Board 376 So.2d 372 (La. 3rd Cir. 1979).

Court Case #3. A plaintiff filed suit against the school district because of injuries sustained by her daughter, while playing in the defendant's school yard.

The daughter lacerated her thigh on a protruding screw when she slid down a tether ball pole, located next to the monkey bars. At the time of the accident there were approximately 170 children in the school yard under the supervision of one teacher, who also had the responsibilities of unloading the school buses and overseeing the students in the school basement.

The Court of Appeals upheld the trial court's verdict in favor of the plaintiff. The court stated that the location of the pole next to the monkey bars was in such close proximity that it should have been foreseeable that a child would be inclined to switch from one apparatus to the other. In addition, the court determined that the lack of supervision on the school yard and the protruding screw on the pole constituted negligence on the part of the school board. The plaintiff was awarded $7,500.00, on behalf of her injured daughter, for pain, disfigurement, and future cosmetic expenses. Gibbons v. Orleans Parish School Board 391 So.2d 976 (La. 1980).

Court Case #4. The plaintiff brought suit for injuries sustained in an automobile accident involving student athletes. The claim stated that the school board had an obligation to provide its students/football players with transportation to the doctor's office and the lack of the close supervision resulted in the injury.

The facts established that prior to the opening of school, anyone participating on the high school football team had to obtain a physical examination, a requirement mandated by the Louisiana High School Athletics

Association, the organization which regulates and coordinates high school athletics throughout the state. The boys were told that they could obtain free physical examinations from a doctor in a nearby town or that the physical examination could be administered by a different doctor. However, such examinations might involve the payment of a fee. The boys were also informed that they would have to provide their own transportation to the doctor's office. The plaintiff rode in a car driven by another student/football player. On the return trip, the car swerved into another lane and collided with a pickup truck. After the car stopped, it was rear-ended by another car. As a result of the accident, the occupants received injuries.

The Court of Appeals affirmed the trial courts decision in granting summary judgment for the defendants. The court held:

> The school board has no more of a duty to transport students to a doctor's office to obtain physical examinations than it has to transport students to a store to obtain pen and paper with which to prepare work assignments. The ultimate responsibility rests 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. 1980).

Court Case #5. In a wrongful death suit, the mother of a mentally retarded youngster sued two school teachers and their insurer, the school board and its insurer, and the automobile driver. The mother claimed that improper supervision and the failure to exercise reasonable care on

the part of the defendants led to the death of her son, when he was hit by a passing car.

Her son, age seventeen, attended a school for the mentally handicapped. Previous tests conducted on her child revealed that he had an IQ of 52 and a mental age of seven years, but, was an educable mentally retarded youngster. To her son's credit, he was chosen as a member of the school's Special Olympics basketball team. This was a school sanctioned activity, with practice sessions held during the regular physical education class period. The school's physical education teacher was in charge of and responsible for the training of the team in its preparation for regional competition. In addition, a mathematics teacher helped as an assistant coach. The school at which they taught did not have a gymnasium. Normally, the team practiced on a dirt court next to the school. However, in order to acclimate the team to playing on wooden floors, the surface they would play on in the upcoming competition, the head coach decided to practice at a municipal facility located three blocks from the school. Instead of waiting for the physical education teacher to go to the gymnasium, the assistant coach proceeded to take the boys, against the physical education teacher's instruction, because they were becoming increasingly 'fidgety'. The plaintiff's son was struck by a car when he darted out between two parked cars while on the way to the gymnasium.

> The Court of Appeals held that: (1) where the Special Olympics team was taken off campus for practice, the teachers having the duty of supervision should have foreseen the likelihood that an adolescent with a mental age of seven

> years might act impulsively as did the decedent when he suddenly dashed out into the street at a heavily traveled intersection, and that this was within the scope of the duty imposed upon the teachers, and 2) the teachers failed to see that the group was accompanied by a sufficient number of supervisory personnel and also breached their duty by failing to select the safest route from the campus to the municipal facility.

Therefore, the teachers were found to be negligent. The court awarded the plaintiff $50,000.00 for pain and suffering and for the loss of love and affection.

The school board was not shown to be negligent because they did not have a duty to build a separate gymnasium for use by the mentally retarded students. In addition, the board was not negligent in failing to provide bus transportation for the students to the gymnasium. The driver of the automobile which struck the decedent was also found to be not liable. Foster v. Houston General Insurance Company 407 So.2d 759 (La. App. 1981).

Court Case #6. The father, individually and as administrator of the estate of his minor son, sued the athletic coach, school board and school's liability insurer to recover for injuries which his son sustained, when he crashed through a glass panel of a gymnasium foyer, while engaging in an unsupervised race during physical education class. The suit claimed that the student was injured due to the lack of proper supervision on the part of the physical education teacher and due to the negligence of the school board by maintaining a plate glass panel in the foyer of the gymnasium.

The facts of this case indicated that the physical education teacher was conducting relay races in class.

At the conclusion of each race, the participants were instructed to sit along the wall of the gymnasium 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. Following one of the races, the plaintiff's son and other members of his team went into the lobby to get a drink of water from the fountain. While they were in the foyer, the plaintiff's son decided to race another student to determine the order they should be positioned in the next race. The race was to be from the fountain to the glass panel and back again. When the plaintiff's son reached the panel, running at his full speed, he pushed off the panel with both hands causing the glass to break. He fell through the glass sustaining multiple cuts on his arms and right leg and was bleeding profusely. The injured student was treated by the physical education teacher and was taken to the hospital for further treatment.

The Supreme Court held that the school board was negligent where:

> 1) a nonsafety glass panel, identical to that through which the student crashed, had been broken when a visiting coach walked into it several years previously and had been replaced by safety glass, and 2) the foyer was located less than five feet from the traffic pattern of spectators and was directly accessible to the basketball court and, thus, the school authorities ought to have known of the hazard it created.

In addition, the court held that the minor plaintiff was not contributorily negligent as the race in the foyer was simply an unsupervised extension of the relay races

being conducted and the minor had no reason to be aware that the panel was not of safety glass. The court considered the behavior normal for a twelve year old boy and that he exercised care expected of his age, intelligence and experience. The court awarded the plaintiff $12,000.00 plus medical specials. Wilkinson v. Hartford Accident and Indemnity Company 421 So.2d 440 (La. App. 1982).

Court Case #7. The mother of a student brought action against the school board claiming negligence due to improper supervision and maintaining an unreasonably hazardous condition. Her 12-year-old son was playing ball in the school yard during the noon recess when he was struck in the mouth by a rock thrown by another child. At the time of the incident there was approximately 170 students playing on the playground under the supervision of three school teachers.

In upholding the lower court's decision in favor of the school board the Court of Appeal held that the playground area was well supervised. In support of this decision it was stated 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.

In Partin v. Vernon Parish School Board, 343 So.2d 417 (La. App. 1977), the law requires that such supervision be reasonable but there is no requirement that the supervisor have every child under constant scrutiny.

In addition, the court held that the playground area was not an unreasonably hazardous condition on the school grounds. As was brought out through testimony, the area was unpaved mud and dirt in which some small rocks had surfaced. It was not:

> some sort of rock pile which enticed children to use for ammunition.

This decision was reinforced by the decisions of Wilkinson supra (411 So.2d 22) and Ardoin supra (376 So.2d 372) where the conditions were unreasonably hazardous and injuries occurred. Hampton v. Orleans Parish School Board 422 So.2d 202 (La. App. 1982).

Court Case #8. The mother of a student filed a negligence suit against the School Board from injuries received by her daughter during recess. The mother claimed negligence due to lack of supervision and allowing students to use equipment for uses other than what it was designed.

The plaintiff's daughter was playing in the school yard during her lunch recess at the same time several other children were rolling a stand used for volleyball or tether ball around the playground. These stands consisted of large tires filed with concrete in which poles were imbedded. The base of one of these stands was rolled over the plaintiff's daughter's fingers causing the injury. Testimony during the trial indicated that there had been some problems before with the students playing with the stands in spite of warnings by the principal for them not to do so.

The Court of Appeal held that the evidence supported the findings that the school board was negligent in allowing the student access to stands used for volleyball and tether ball for any purpose than the aforementioned. As in the Gibbons case (391 So.2d 976, La. App. 1980), the stands were not held to be inherently dangerous. However, the misuse of the stands by the students and the principal's knowledge of the continued misuse and the possibility of injury required that measures be taken to prevent access to the stands.

In addition, the school board was found negligent due to improper supervision. Testimony indicated that there were about 200 children playing in the school yard at the time of the injury and there were only two teachers assigned to the school yard along with the principal.

Finally, the plaintiff's daughter was not found to be contributory negligent and therefore was not barred from recovering for her injuries. Based on these decisions the plaintiff was awarded $5,000.00. Santee v. Orleans Parish School Board 430 So.2d 254 (La. App. 1983).

Court Case #9. A high school student brought action against the school board for vicarious liability for injuries he sustained during a wrestling match with the girls high school basketball coach. The incident occurred after practice when the plaintiff challenged the coach to a wrestling match. Two mats were placed together and the coach and the student began wrestling. The injury occurred when the plaintiff's foot became lodged between the two mats and while falling to the mat, he broke his ankle and

pulled the tendons and ligaments in the ankle joint, requiring surgery.

In reversing the District Court's decision in favor of the student, the Court of Appeals held that the high school coach did not act unreasonably in accepting the invitation of a high school student, who weighed 160 pounds and was one of the strongest athletes in school, to engage in a wrestling match and therefore, the school could not be held vicariously liable. In addition, the student both knew and appreciated the risk of being injured while wrestling, despite his disclaimer of knowledge or appreciation of the possibility of injury. This decision was based on the holdings in Stafford v. Catholic Youth Organization, 202 So.2d 333 (La. App. 1967). Kluka v. Livingston Parish School Board 433 So.2d 302 (La. App. 1983).

Court Case #10. A father, individually and on behalf of his minor daughter, sued the school board, physical education teacher, and insurer of the teacher for damages arising out of an injury his daughter suffered during a high school physical education class. The action claimed that the injury occurred due to lack of proper supervision by the teacher.

The facts of the case indicated that the plaintiff's daughter, a straight "A" student and recipient of more than four years of instruction in the use of trampolines, requested permission to jump on the trampoline along with four other students. The teacher set up the trampoline, watched the girls for a few minutes and then went and talked to another teacher. After the teacher was out of

sight, the plaintiff's daughter insisted that all five girls should bounce on the trampoline. After one bounce all five of the girls fell to the trampoline mat. In this fall, the plaintiff's daughter's right arm and wrist were broken.

In upholding the lower court's decision in favor of the school district and teacher, the Court of Appeals ruled:

> 1) the teacher exercised reasonable supervision and was not negligent, where teacher repeatedly instructed students that no more than two students were to jump on the trampoline at the same time, students were well aware of the rule and fact that a violation of it would increase the risk of injury, but instead of following the rule, five students jumped on the trampoline at the same time, with the result that one of them was injured, and 2) the "greater degree of care" standard applicable when students are required to use or come in contact with an inherently dangerous object, or to engage in an activity where it is reasonably foreseeable than an accident or injury may occur did not apply since the trampoline was not an inherently dangerous object, and had the students followed instructions of the teacher, the activity was not one where it was reasonably foreseeable that an accident or injury might occur.

Smith v. Vernon Parish School Board 442 So.2d 1319 (La. App. 1983).

Court Case #11. An action was brought against the school board to recover for injuries to a child which occurred while she was playing on school grounds after school had closed. The issue was whether the Board was liable as a matter of law to the child's parent, because of lack of supervision even though the accident occurred after hours.

The facts of the case indicated that the child was in kindergarten and had returned to school thirty minutes after closing to participate in track practice. The practice was conducted by the Tambourine and Fan Club, a group that worked with the principal and the teachers to sponsor athletic events, educational programs and other activities with the approval of the Board's District Superintendent. The injury occurred while the student was waiting for the coach to arrive. The students began to play with a tether ball pole, which was an iron rod about four feet long mounted on a base of concrete in a rubber tire. Some of the children had laid the pole on its side in order to roll it around in a circle while the children jumped over it. As the plaintiff was doing this, he fell and the tire rolled on his head injuring him.

The Civil District Court and the Court of Appeal held that the school board, through the track club, was negligent of improper supervision. Although the track club was an independent group not formally related to or connected with the school, it had the permission of the Board's District Superintendent and the school's principal to use the school grounds; the school's principal and teachers worked with the club personnel in various activities; and the principal announced the practice over the public address system. Perhaps most important of all, from a flyer distributed by the teachers, the parents were assured that their children would be under 'tight supervision' while they practiced on the grounds. Augustus

v. Joseph A. Craig Elementary School 459 So.2d 665 (La. App. 4 Cir. 1984).

Court Case #12. An action was instituted to recover against the school board for injuries sustained by a nine-year-old child when he fell from a set of gymnastic rings in a high school gymnasium. The child was attending a dance recital in the adjacent auditorium when he wandered into the gymnasium. The critical issue as to the Board's liability was whether the set of gymnastic rings in an unlocked and unsupervised gymnasium, which was accessible to children, presented an unreasonable risk of harm.

The Court of Appeals concluded that if the doors had been locked, the accident would not have happened and that the Board's failure to lock the doors was a cause-in-fact of the accident. However, the Supreme Court in citing Pierre v. Allstate Insurance Company, 242 So.2d 821 (1971), reported:

> a determination of cause-in-fact does not necessarily result in liability. After determining causation, the court must also determine what was the duty imposed on the defendant and whether the risk which caused the accident was within the scope of the duty.

When carefully examining the testimony presented: 1) the unsecured rings were removed from the position of security by older boys; 2) an older boy grabbed the plaintiff's son by the feet and started swinging him; and 3) the gymnastic rings on suspended ropes did not present an unreasonable risk of harm in normal use, which did not include swinging, the Supreme Court reversed the lower court's decision ruling that there was no association between any duty

imposed on the Board and the injury which occurred. Dunne v. Orleans Parish School Board 463 So.2d 1267 (La. 1985).

Court Case #13. The plaintiff, on behalf of her son, brought action against the school board, the physical education teacher, the teacher's aide and the International Indemnity Insurance Company. The suit alleged that the negligence by the board and its employees resulted in the injury to the student.

The teacher's aide was sent to the class to replace the regular physical education teacher so she could attend a conference with the principal. The plaintiff's son's right femur was fractured during the physical education class when a fellow student fell on the leg. The injury occurred while the students were playing a makeshift football game using a paper cup. The regular teacher testified that she saw the fall in which the plaintiff's son's leg was broken. However, neither teacher knew that the game was going on and the boys knew they were not supposed to play rough games.

The trial court held that the school board and the insurer were liable for negligence as a result of improper supervision in the class. As a result of the judgment the plaintiff was awarded $200,000.00. In addition, the regular physical education teacher and the teacher's aid were found not to be liable.

Both the school district and the plaintiff appealed the decision. The plaintiff did not agree with the finding that the teachers were not negligent.

The Court of Appeals held that the school board and the teacher were negligent. Although the court hesitated to find the regular physical education teacher negligent, it was stated:

> We recognize that a school teacher charged with the duty of supervising the play of children must exercise a high degree of care toward the children, however, the teacher is not the absolute insurer of the safety of the children she supervises. Our law requires that the supervision be reasonable and commensurate with the age of the children and the attendant circumstances. There is no requirement that the supervisor, especially where the play of some ninety children is being monitored, have each child under constant and unremitting scrutiny.

However, the court reasoned that the regular teacher should have noticed the activity in time to stop it and that her own testimony confirmed her duty owed to the students by stating that she considered it her duty to prevent 'roughhousing', and that she would have stopped the game if she had seen the game. Marcantel v. Allen Parish School Board 490 So.2d 1162 (La. App. 3 Cir. 1986).

Florida

Court Case #1. The parents of a middle school student brought suit against the Board, its insurance company and the physical education instructor at the school, seeking damages for injuries their son received while performing on a trampoline. The complaint alleged that the instructor ordered the plaintiff's son to perform certain acrobatics on the trampoline. When the student refused, the teacher physically picked him up and put him on the trampoline. After ordering the student to do the routine, the student attempted a flip, during which he injured his knee and

teeth. The claim reported that the teacher had provided minimal instruction and that the student was not prepared to perform such activities safely.

The trial court dismissed the complaint against the instructor and the student appealed. The Appeals Court reversed the trial court's decision and the Supreme Court affirmed this decision. The courts held that an individual suit against a state employee, but not against the state was 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. Therefore, the school employee may be made a party defendant in an action for personal injuries allegedly occassioned by the employee's negligence while acting in the scope of his employment. District School Board of Lake County v. Talmadge 381 So.2d 698 (Fla. 1980).

Court Case #2. A student and his guardian brought action against the school board for injuries resulting from a football drill. The action stated that the injury was due to the coaches failure to exercise reasonable care, the school's failure to provide the plaintiff with adequate equipment and the failure of the school to provide adequate instruction in regards to the conducting of practice drills.

The testimony in the case showed that the plaintiff, on the first day of practice, did not receive a helmet because the school did not have a sufficient number of the

correct sizes available. On the second day of practice several of the players were instructed to participate in an 'agility' drill, and although the drill did not involve blocking or tackling, it did involve coming into contact with other players. No special precautionary instructions were given to the players who had no helmets or mouth guards relative to those players who had such equipment. During the drill, the 'no contact drill' participants became more aggressive in nature, 'hitting harder and getting rowdy'. When the plaintiff took his turn in the drill, the first without all of the proper equipment on, he was hit in the face by his teammate's helmet. As a result, the plaintiff suffered facial injuries and his front teeth were shattered. In addition, the plaintiff presented expert testimony to the effect that no player should be permitted to participate in a drill like this without a helmet.

The trial court awarded the school district a directed verdict and the plaintiff appealed. The District Court of Appeals reversed the lower court's decision and remanded the case back to trial. Leahy v. School Board of Hernando County 450 So.2d 883 (Fla. App. 1984).

Alabama

Court Case #1. An action was brought against the county board of education for injuries sustained by a student when he was struck by a fellow student on the head with a baseball bat during physical education class. The plaintiff claimed that the Board of Education was under an express or implied contractural obligation to maintain a

safe atmosphere for the students under its supervision during school hours and that the Board breached that obligation as a result of the incident.

At the time of the incident the physical education teacher was supervising 50-60 students. In addition, testimony revealed that several weeks prior to the assault the plaintiff's father had met with the principal to discuss the situation in which his son was being 'picked on' by another student in the class.

The Circuit Court and the Supreme Court entered judgment in favor of the board of education. In rendering this decision the courts held that:

> The plaintiff failed to submit any evidence of an express contract on the part of the Board...there were no Alabama cases holding that a school board is impliedly obligated to furnish a safe atmosphere to students under its jurisdiction...In order for the plaintiff to recover under the evidence presented in the complaint filed, we would have to breathe life in a cause of action or causes of action that have heretofore never existed in this state...There being no cause of action in implied contract or strict liability, no amount of evidence would be sufficient to allow the plaintiff to recover.

In addition, the court noted that if the plaintiff had sued for negligence, the only possibility would have been whether or not the supervision of 50-60 students by one teacher was adequate. Brown v. Calhoun County Board of Education 432 So.2d 1230 (Ala. 1983).

New York Supplement, California Reporter and Federal Reporter

There are 13 cases reported on from the New York Supplement Reporter. In addition, there is one case from

The California Reporter and one case from The Federal Reporter.

New York

Court Case #1. The plaintiff brought action against the school district for injuries his daughter sustained when she fell from a playground 'jungle gym' during a supervised school recess period. The facts showed that the student was wearing mittens at the time of the injuries which was against school regulations. The complaint alleged that the school district's failure to enforce the rules, through the supervising teachers, constituted negligence which was the proximate cause of the injuries.

In reversing the lower court's decision which favored the school district, the Supreme Court, Appellate Division ruled that the trial court was in error to dismiss the complaint and that the question was for a jury to decide. Therefore, the case was remanded back to trial. Ward V. Newfield Central School District Number One 412 N.Y.S.2d 57 (N.Y. 1978).

Court Case #2. An action was brought against the school district by the father of a high school student who sustained a fractured leg in a track and field contest. The suit claimed that the district's failure to properly train and indoctrinate his son in the sport of track was the proximate cause of the injury.

The lower court returned a verdict in favor of the school district because the claim was filed late, six months after the injury. In reversing the lower court's decision the Supreme Court held:

> ...we cannot say that the defendants were prejudiced by the delay in filing so as to impede their efforts to investigate the allegations of negligence. Therefore, the late filing of the claim should have been permitted.

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

Court Case #3. A 17-year-old claimant's mother brought action against the school district and others for damages resulting from injuries to her son who seriously injured his neck and cervical spine while competing on the high school football team. The late suit was filed and granted because the claimant believed that the school district should have to pay the medical bills.

In affirming the lower court's decision to grant the plaintiff's late claim, the Supreme Court held:

> Not only were the school district's employees, including the football coach, present when the infant claimant was injured, but also written claims were made within the statutory period for the school district to pay the boy's rapidly mounting medical bills.

In addition, where the claimant's widowed mother was

> preoccupied following her son's injuries with maintaining her full-time secretarial job to support her six children while at the same time arranging for special fusion surgery for her injured son, the trial court did not abuse its discretion in permitting tardy service both as to claim of infant claimant and derivative claim of his mother.

Coonradt v. Averill Park Central School District 427 N.Y.S.2d 531 (N.Y. 1980).

Court Case #4. A plaintiff was awarded $1,400,000 for the wrongful death of her husband where evidence sustained determined that the school district was negligent with respect to the maintenance and construction of a railing on

a platform in the gymnasium. The decedent was killed when, in an attempt to climb up from a step ladder to a platform, the railing gave way causing him to fall.

Evidence presented indicated that the nut and bolt, which should have secured the railing around the platform, were not in place and that the school had no program of preventive maintenance or inspection of the facilities in the gymnasium. In addition, testimony revealed that the construction of the railing and post was not in accordance with the proper construction practice. Finally, testimony indicated that the platforms in the gymnasium were used extensively for various school functions, in addition to being used by students without permission, and that it was foreseeable that an 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 (N.Y. 1981).

Court Case #5. An action was brought against the school district by a high school baseball spectator to recover for injuries sustained when she was struck in the eye by a foul ball as she stood behind the fence along the third-base line. The plaintiff sought judgment alleging that the school district was negligent in failing to provide safe and proper screening devices along the base lines of its field.

The trial court returned a verdict in the plaintiff's favor, assessing damages in the amount of $100,000.00. Upon appeal, the Court of Appeals reversed the lower court's decision holding that the owner of a baseball field

is not an insurer of the safety of its spectators, rather, it is only under a duty to exercise 'reasonable care under the circumstances' to prevent injury to those who come to watch the games played on its field. Where the proprietor of the ball park provided an adequate screening area behind home plate where the danger of being struck is greatest; where the school district equipped its field with a backstop which was adequate and where the plaintiff could not prove that the screened bleachers were filled or that the backstop was inadequate, the school district could not be found liable. Akins v. Glens Falls City School District 441 N.Y.S.2d 644 (N.Y. 1981).

Court Case #6. A plaintiff, individually and as a parent, brought suit against the board of education for injuries received by her daughter when she struck a gymnasium wall while running a speed test. The action alleged that the defendant was negligent in failing to follow the recommendations in a New York State Physical Fitness Screening Test manual for designing the course and in failing to provide adequate instructions and supervision for the students performing the test. Specifically, the manual read:

> To insure maximum safety and performance...leave at least 14 feet of unobstructed space beyond the start and finish lines so that pupils will be able to run at top speed past the finish line without danger of running into the gymnasium wall or colliding with other pupil...since many inexperienced runners tend to slow up as they approach the finish line, the teacher should encourage all pupils to run through the finish line.

Testimony at the trial revealed that the finish line was eight feet from the wall and that the only instructions given by the teacher were to run around the cones three times while your partner timed you.

The supreme court held that there was sufficient proof from which a jury could conclude that the school was negligent with respect both to design of the speed course and failure to provide adequate instructions for students performing the test and that such negligence was the proximate cause of the injury. Therefore, the lower court's decision was reversed and the plaintiff was granted a new trial. Ehlinger v. Board of Education of New Hartford Central School District 465 N.Y.S.2d 378 (N.Y. 1983).

Court Case #7. The supreme court of New York reversed a lower court's decision by allowing a late notice of claim against the school district to be served for injuries sustained by a student in a playground mishap. The student fractured her elbow while using a slide on the grounds of the school district.

At the time of the injury the student was 11 years old. The accident was reported immediately to the school district, whereupon, the defendant paid for the surgery. It was determined at that time that future surgery would be required. When the student was sixteen years old the additional surgery was performed. Although the school district initially agreed to pay the medical bills, it subsequently declined.

The court ruled: 1) where the school district had received actual notice of the injury on the day it occurred, 2) where the claim was late because the claimant was relying on the school district to pay for the medical bills, and 3) where the full extent of the claimant's injury was not ascertainable until the student attained a greater physical maturity, the claimant should have been permitted to serve a late notice of claim. Tetro v. Plainview-Old Bethpage Central School District 472 N.Y.S.2d 146 (N.Y. 1984).

Court Case #8. A student's guardian, filed a late notice of claim individually and on behalf of her son, for injuries sustained when the child's eye and surrounding area came in contact with a cleated shoe worn by one of his classmates during a physical education class football game. The facts in the case showed the supervising teacher was present at the time of the injury and took the student to the school nurse where he received medical attention. Also, the nurse filled out a report on the injury. The plaintiff received some medical attention over a period of time, with the expenses being paid by the defendant and/or its carrier. Four and one-half years later, the student had an optic tumor removed, upon which the plaintiff was notified that neither the defendant nor its carrier would cover the medical expenses.

The Supreme Court held that the late notice of individual claim against the school district should have been dismissed because it exceeded the time limit for the commencement of an action. However, the court further

ruled that the discretion of the trial court was not abused in allowing the late filing because, 1) the student, who was injured, was an infant, 2) the school received a detailed report of the injury within 24 hours of the injury, and 3) 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 (N.Y. 1984).

Court Case #9. The plaintiff brought action against the school board due to improper supervision to recover for injuries sustained by her son while playing on the playground. The child was enrolled in a school for the trainable mentally retarded children.

The teacher of the class had the children outside so they could experience as much as possible and allow them to independently select games or playground equipment. The plaintiff's child was chasing another student around the playground, playing a game called 'monster'. Testimony revealed that these two children played the game frequently during the playground period. During the class, the two students disappeared behind a storage shed, whereupon, the teacher found the plaintiff's son, face down on the ground and motionless. As a result of the accident, the student suffered extensive head injuries.

The plaintiff called an expert witness to the stand who had 36 years of experience in special education. The expert witness testified that purposeless, freestyle running during school hours was dangerous and never

permitted for any child, but was especially hazardous where mentally retarded children were concerned.

The trial court awarded the injured student $400,000.00 and the plaintiff's mother $29,276.32 in finding the defendant's guilty of improper supervision. In affirming the lower court's decision, the Supreme Court held that the testimony presented indicated the teacher's awareness of the perceptual motor difficulties and poor hand-eye coordination and therefore, a prima facie case of the school board's negligence in failing to supply adequate supervision was established. Rodriguez v. Board of Education of the City of New York 480 N.Y.S.2d 901 (N.Y. 1984).

Court Case #10. A student, who was injured in a physical education class, was granted permission to serve a late notice of claim against the school district. The records showed that the student was sent immediately to the nurse's office after the injury, however, the claim for the injury was sent in 20 days after the mandatory claiming day. In reversing the lower court's decision, the Supreme Court held:

> the school district acquired actual knowledge of the essential facts constituting the claim immediately after the accident. Where the school district had made no showing of any prejudice, the claim should have been granted.

Pepe v. Somers Central School District 485 N.Y.S.2d 315 (N.Y. 1985).

Court Case #11. A personal injury action was brought against the board of education after a student was injured in the schoolyard between 8:00 A.M. and 8:25 A.M. The

action claimed that the defendant was required to provide schoolyard supervision even though the school day had not started.

The Supreme Court, in affirming the lower court's decision observed:

> 1) the board had the same duty towards the students in its care and custody as was owed by a reasonably prudent parent, 2) it was for a jury to decide whether or not the school board had a duty to provide schoolyard supervision prior to the start of school, and 3) only a jury could find the board liable if it determined that a reasonably prudent parent would have found the schoolyard supervision necessary, therefore, the

decision of the case was for a jury to decide. Toure v. Board of Education of the City of New York 512 N.Y.S.2d 151 (N.Y. 1987).

Court Case #12. The mother of an injured student, individually and on her son's behalf, brought an action against another student and the school district alleging improper supervision on part of the physical education teacher was the proximate cause of the injury. The plaintiff's son was injured during a wiffleball game when her son and the defendant student became involved in an altercation. The plaintiff's son received injuries to his nose and teeth.

During the trial, the plaintiffs established that the defendant student had previously been involved in a fight with two boys and had placed himself in a position requiring discipline. As a result, the jury returned a verdict in favor of the plaintiffs totaling $8,500.00, with 20% of the damages to the defendant student.

The Supreme Court, Chenango County, granted the school district's motion to set aside the jury verdict, holding that the proximate cause of the plaintiffs' sons injuries was the unforeseen intervention of the defendant student and accordingly, no liability could be attributed to the school district.

The Supreme Court, Appellate Division ruled in favor of the defendant school district holding:

> 1) the defendant student's disciplinary record did not show such a strong propensity to engage in violent or physical behavior as to warrant a finding that the school district should have isolated or supervised him to a greater degree than other students, and 2) the physical education teacher was a mere 25 feet from where the altercation occurred and he responded immediately when he became aware of the dispute between the students.

Hanley by Hanley v. Hornbeck 512 N.Y.S.2d 262 (A.D. 3 Dept. 1987).

Court Case #13. A student brought action against another student and the school district after a shot put was dropped on his hand during a physical education class. The action claimed that the fellow student was negligent in dropping the shot put on the plaintiff's hand and that the school district was negligent due to improper supervision and for failing to provide proper instructions concerning the handling of the shot-put.

The lower court granted the defendant's motion for a summary judgment. The Supreme Court reversed the lower court's decision because there were questions as to whether or not the plaintiff's cause of action had any merit.

Specifically, the court ruled:

> 1) there were sufficient factual issues concerning the degree of supervision and the propriety of the instructions provided by the school district to preclude a grant of summary judgment; 2) the teacher's supervision was in question when, even though he testified that the shot-put was a dangerous activity requiring special care, he was 15 yards away supervising students performing the high jump; and 3) testimony presented by the teacher and the student concerning the instruction given was conflicting.

Therefore, it was up to a jury to decide what proximately caused the injury in question. Merkley v. Palmyra-Maceden Central School District 515 N.Y.S.2d 932 (N.Y. 1987).

California

Court Case #1. The parents of a 12 year old boy brought suit against the school district to recover damages for the wrongful death of their son. The plaintiffs' son suffered fatal injuries after school hours when he fell from his skateboard on the school's playground. The boy gained entrance to the playground either through an unlocked gate or a hole in the fence. The complaint alleged that the school district was negligent for the maintenance of a dangerous condition and for the failure to supervise and maintain the school grounds or to notify the parents that the gates were not locked or the fence not repaired.

In affirming the lower court's decision favoring the school district, the Court of Appeals held that:

1) regardless of whether the fence was in disrepair or the gate unlocked, there was not a situation where the defect, in and of itself, was inherently dangerous;

2) even though the school district knew the playground was used for playing a dangerous activity, the alleged defects merely allowed access to the area, while the injuries were a direct result of the dangerous conduct of the plaintiffs' son and not of any defective or dangerous condition of the property; and

3) based on the decision in Dailey v. Los Angeles Unified School District, 87 Cal. Rptr. 376, 1970, the duty of supervision is limited to school-related or encouraged functions and to activities taking place during school hours. Bartell v. Palos Verdes Peninsula School District 147 Cal. Rptr. 898 (Cal. 1978).

Federal Court

Court Case #1. A fifteen year old girl was injured while on training for her position on the school's rowing crew team. The injury occurred, after she had rowed for one to two and half hours, when she observed and then participated in for the first time an exercise called the 'Harvard Step Test'. The test required that she step briskly up and on a sixteen inch high bench, step back to the ground and repeat the process rapidly for two minutes. While the plaintiff was performing the exercise she fell to the ground and injured herself bringing out the suit.

The United States Federal District Court granted the defendant a directed verdict and dismissed the case. Upon appeal, the Court of Appeals ruled that the question of negligence was for a jury to decide. Specifically,

1) a photo in evidence would have permitted the jury to conclude that the bench was placed on a somewhat uneven surface of a field;

2) a jury could draw the reasonable inference that the bench was improperly positioned in the first place by the coach, causing an unreasonable risk of harm to a young, inexperienced, and somewhat fatigued participant and the coach had no recollection of testing the step bench for stability;

3) a jury could draw the reasonable inference that the supervision given the student after the test began was unreasonably inadequate since the coach was looking at his stopwatch and not supervising the exercise; and,

4) being no factors identified, such as ice, snow, wind, or dizziness on the part of the plaintiff, it would not be unreasonable for a jury to draw the inference that the cause of the plaintiff's fall was the unstable condition of the bench. Therefore, the case was remanded back to trial to be decided by a jury. Hornyak v. Pomfret School 783 F.2d 284 (1st Circuit, 1986).

From 1977 to 1987 there were 19 college court cases involving physical education teachers, athletic directors and coaches, intramural sports directors and their respective Board of Regents, Trustees and/or Education. The lawsuits alleged negligence due to improper instruction and supervision, improper treatment of injury and medical assistance, improper training of referees and maintaining unsafe facilities. The cases in this chapter have been

categorized by state, and within each state, by chronological order.

College Cases

Maine

Court Case #1. An action was brought as a result of the plaintiff being struck in the eye with a hockey blade which flew off of a hockey stick. The plaintiff was participating in a hockey game during a hockey clinic which was sponsored by the college.

The defendants claimed that they were not liable because the plaintiff's father and mother had signed two agreements releasing the defendants from any liability. The agreements read as follows:

> I understand that neither Bowdoin College nor anyone associated with the Hockey Clinic will assume any responsibility for accidents and medical or dental expenses incurred as a result of participation in this program....I understand that I must furnish proof of health and accident insurance coverage acceptable to the College....[signed] Leonard F. Doyle" (emphasis added).
>
> "I fully understand that Bowdoin College, its employees or servants will accept no responsibility for or an account of any injury or damage sustained by Brian arising out of the activities of the said THE CLINIC. I do, therefore, agree to assume all risk of injury or damage to the person or property of Brian arising out of the activities of the said THE CLINIC. [signed] Margaret C. Doyle" (emphasis added).

The defendants were found liable based on the following statement. Courts have traditionally disfavored contracts which exclude negligence liability and which contain language which exempts a party from liability for his own negligence.

The Supreme Court of Pennsylvania has set forth the applicable legal principles governing construction of contractural clauses in Employers Liability Assurance Corp. v. Greenville Business Men's Association, 224 A.2d 620,623 (1966). In the decision it is stated:

> contracts providing for immunity from liability for negligence must be construed strictly since they are not favorites of the law...such contracts 'must spell out the intention of the parties with the greatest of particularity'...and show the intent to release from liability 'beyond doubt by express stipulation' and '[n]o inference from words of general import can establish it'...such contracts must be construed with every intendment against the party who seeks the immunity from liability...the burden to establish immunity from liability is upon the party who asserts such immunity.

In addition, the agreement signed by the plaintiff's mother makes no reference to injuries proximately caused by the negligent conduct of Bowdoin College or its agents. The courts agree that any language in an agreement which is ambiguous should be construed against the drafter. Doyle v. College 403 A.2d 1206 (Me. 1979)

Indiana

Court Case #1. A student brought action against the college to recover damages for injuries received while participating in a recreational baseball practice. The action claimed that the college was negligent for failing to properly supervise the practice and for failing to provide adequate safety for the students under its care.

The facts in the case showed that a senior member of the baseball team wanted to set-up a fall practice season with the hope that it would lead to an improved spring program. The coach of the team had no objections to the

practices but, he was unable to attend because he coached football during the practice time. The practice sessions were held at a city-owned park because the college field was used for football. Also, the college coach gave the senior player the baseball equipment to use and the player secured money from the Dean of Men to purchase baseballs for the practices. During fielding practice one day, the plaintiff was hit in the eye with a batted ball which resulted in the injury. The ball was hit by the senior leader.

The Circuit Court granted summary judgment in favor of the college. In affirming the lower court's decision, the Court of Appeals ruled the college had no duty to supervise the baseball practices. Specifically, the plaintiff cited several cases which showed that school authorities had a duty to exercise reasonable care and supervision for the students under their guidance. However, these cases involved supervising young school children. In Campbell v. Board of Trustees of Wabash College, 495 N.E.2d 227, 232 (1986), the court noted college students are not children. Specifically,

> save for very few legal exceptions, they are adult citizens, ready, able, and willing to be responsible for their own actions. Colleges...are not expected to assume a role anything akin to in loco parentis or a general insurer.

Also, the college student who hit the ball was not considered an agent of the college, therefore, under Indiana law:

> there is no duty so to control the conduct of a third person as to prevent him from causing physical harm...

Finally, the court pointed out that the students knew that there would be no professional coaching assistance or supervision, or any written guidelines for play. Swanson v. Wabash College 504 N.E.2d 327 (Ind. 1987).

Ohio

Court Case #1. A football player, who injured his foot when it went through a glass door in the field house, brought suit against the state university alleging negligence in failing to replace the glass with a more secure type of material. The injury occurred while the football team was doing an exercise called 'liners', which entailed running wind sprints.

After the trial court ruled in favor of the university the plaintiff appealed the judgment with three assignments of error. Specifically,

> I. The plaintiff was entitled to a finding that the defendant university was negligent as a matter of law and that said negligence was a proximate cause of the plaintiff's injuries in that the uncontroverted evidence established: (a) the defendant knew that the installation of non-safety glass adjacent to an area of play created an unreasonable risk of harm to users of the field house; (b) the defendant stocked laminated safety glass which they installed in hazardous areas prior to and subsequent to 1975; (c) the defendant university was aware in 1976 that a tennis player had fallen into a glass door in the same facility and sustained serious injuries; (d) laminated safety glass was not installed in the glass doors which resulted in the plaintiff's injuries in 1983; and (e) that if laminated safety glass had been installed in said door, the plaintiff would have sustained minimal injuries if any.
> II. The court erred in failing to find that the defendant maintained a nuisance on the described premises and with knowledge, since 1975 and/or

> 1976, that said nuisance created an unreasonable risk of harm to users of said facility and it failed to abate said nuisance resulting in injury and damage to the plaintiff.
> III. The court erred in finding that the university had no knowledge of potential injury to the users of the field house, that it was not foreseeable that a user including the plaintiff would likely be injured as a proximate result of the known condition of the premises and therefore said university was not negligent in the ownership, maintenance and use of said facility.

In supporting the lower court's decision the Court of Appeals held:

> 1) there was conflicting evidence which permitted reasonable minds to reach different decisions; 2) the university did not have to apply a higher standard of care to the invitee even though the university employed a number of scientific and technical experts; 3) the university did not breach its duty to the plaintiff by knowing that a dangerous condition existed, where evidence showed that the high window breakage rate was due to vandalism and balls breaking the windows; 4) the university did not consider the windows in the doors to be an unreasonable risk of harm, especially that it was in compliance with applicable building codes and regulations regarding glass doors; and 5) the university was not aware of a dangerous condition or unreasonable risk of harm since there was only one glass door incident in 30 years.

In addition, the court commented that:

> a great deal of factual conflict exists in the record as to whether the plaintiff's contact with the doors was unavoidable, or a diversion, consisting of a jumping kick-turn off the glass doors push-bar type door handle.

Curtis v. State 504 N.E.2d 1222 (Ohio, 1986).

Utah

Court Case #1. The University appealed a judgment in favor of a student who was injured in a skiing accident while using skis rented from the university. The plaintiff, who was enrolled in a beginner's ski class, was

injured when the release mechanism in her bindings did not work properly, which resulted in the injury to her leg.

Evidence presented at the trial indicated:

> 1) the plaintiff had no prior skiing experience, 2) her first ski class consisted of a film and oral ski instruction, 3) her instructor suggested that she rent skis and equipment from the University Bookstore, and 4) the student who issued her the equipment was a part-time employee and he failed to direct the plaintiff to at least go through the necessary motions to test the release mechanism of the bindings.

In addition, an expert in the field of biomedical engineering testified that the injury occurred because the bindings were set too tight and the toe piece was not adjusted properly so that the boot could not rotate as it should out of the ski, and that had the boot been released from the ski, the student would not have sustained the injury.

In upholding the lower court's decision the Supreme Court held that the evidence supported the finding that the university employee, who rented the skis to the student, was negligent in failing to direct the student to at least go through the necessary motions to test the release mechanism of the bindings, and that his negligence proximately caused the student's injuries. In addition, since the student was a novice skier, she lacked the knowledge of danger that existed regarding the bindings and therefore did not assume the risk of her subsequent injury. The court further concluded the plaintiff was also negligent because of inattentiveness in class concerning instructions given by the teacher and that such negligence was also a proximate cause of her injuries.

Based on the judgments the plaintiff was awarded $1,796.70 for special damages and $17,500 for general damages which was reduced to $14,715.08. This was based on the university being 75% negligent and the plaintiff being 25% negligent. Meese v. Brigham Young University 639 P.2d 720 (Utah, 1981).

Court Case #2. A student brought action against the college claiming that the basketball coach and the student trainer were negligent in the handling of his injury. In addition, the plaintiff brought action against the physician who first treated his injury.

The plaintiff sprained his ankle during a practice scrimmage whereupon the coach turned the treatment over to the student trainer for the College. The first treatment involved soaking the ankle in a bucket of water for ten to fifteen minutes, removing the ankle from the ice and walking on it for three to five minutes. This procedure was to be followed two or three more times during the practice. The plaintiff continued the treatment at home and later on that evening the student trainer stopped by to help the plaintiff get into bed, elevate his foot and put ice on the ankle.

The next day the plaintiff went to see a physician who x-rayed the ankle which revealed a sprain, not a fracture. The doctor instructed the plaintiff to continue wrapping and 'icing' the ankle for a period not to exceed 72 hours. Following the 72 hour period the student trainer started warm whirlpool treatments.

Once again, the plaintiff was checked on at home by the student trainer. This time the student trainer observed that the plaintiff was soaking his ankle in ice because 'it made his foot feel better'. The student trainer immediately called the attending physician who instructed him to stop the ice treatment, wrap the foot with Atomic Balm, which created heat, and elevate his foot while sleeping.

The following day, the student visited the physician, who sent him to the hospital. The plaintiff was diagnosed as suffering from thrombo phlebitis and as having apparent frostbite of the fourth and fifth toes along with smaller areas on the bottom of his foot and heel. The plaintiff's hometown doctor, who attended to him afterwards, rated his right lower extremity as being 90% disabled due to amputation of a gangrenous toe, removal of some tissue and muscle of the right foot, and osteomyelitis of the right foot.

The trial court held that the plaintiff was 100% negligent and such negligence was the proximate cause of his injuries and that the College and the physician were not negligent. In upholding the lower court decision, the Supreme Court held: to find the trainer negligent would mean that he was held to a higher standard of care than that which governs physicians and surgeons. Laymen or athletic trainers cannot have a higher standard of care placed on them than professionals. Gillespie v. Southern Utah State College 669 P.2d 861 (Utah 1983).

Louisiana

Court Case #1. The plaintiff, a thirty-four year old college student, brought action against the State Board of Education seeking to recover for injuries sustained when he hit his head on the bottom of the swimming pool, when executing a dive after swimming class had ended. The plaintiff contended that the teacher: 1) failed to properly instruct him as to the correct manner in which to perform the surface dive and as to the reasonable precautions which must be observed, and 2) breached his duty by failing to properly supervise the exercise after class.

The facts of the case are as follows. The course was taught by an employee of the defendant and was fully qualified to teach the course. On the day the surface dive was taught the plaintiff was absent from class. The following class period, the teacher reviewed the elements of the skill with the class. However, the plaintiff was tardy to class. During the class, the plaintiff was unable to perform the dive satisfactorily. As a result, he asked another student to assist him after class. The teacher allowed the students to stay afterwards and he himself stayed to act as lifeguard. After watching the other student perform the skill, the plaintiff attempted the dive. As a result, he struck his head on the bottom of the pool.

In upholding the lower court's decision, in favor of the defendant, the Court of Appeals judge agreed with the trial judge's opinion. In specific,

> ...The Court feels that proper instruction is one of the many elements of the reasonable precautions required by our courts. That instruction is required on the basis of the increased risks to the student over what is to be expected from classroom instruction. Where a school in the normal course of instruction, places a student in a more perilous situation than in an ordinary classroom, it owes that student a duty of proper instruction. That duty does not require that each student receive the instruction, but that adequate instruction be offered. It would be a serious blow to schools in general and universities in particular (who lack sanctions to compel attendance), to impose liability in a case where adequate instruction was offered but not received due to some neglect on the part of the student....

This is not to say, however, that there may never be a time when individual and personal instructions must be given. The existence of such a duty would depend upon the age and experience of the student, as well as the nature of the danger involved.

The Court of Appeals also agreed with the trial court that the defendant did provide adequate supervision. The law only requires that supervision be reasonable and commensurate with the age of the student and the attendant circumstances. As noted in Banks v. Terrebonne Parish School Board, 339 So.2d 1295, La. 1976,

> ...the fact that each student is not personally supervised every moment of each school day does not constitute fault on the part of the School Board or its employees.

The defendant did not breach a duty owed to the plaintiff and, therefore, is not liable. Perkins v. State Board of Education 364 So.2d 183 (La. App. 1978).

Michigan

Court Case #1. A student brought suit against the university seeking to recover damages based upon an injury

sustained while attempting to perform an exercise in 'movement' class. The issue at hand was whether or not the university was protected from liability through governmental immunity.

The trial court entered summary judgment in favor of the university and the plaintiff appealed. The Court of Appeals held that the operation of a state university was a governmental function and immune from tort liability.

In reaching this conclusion, the court noted that:

> the state constitution expresses a strong public policy of encouraging the means of education. Furthermore, the constitution expressly mandates that the Legislature appropriate monies to maintain institutes of higher education.

Holzer v. Oakland University Academy of Dramatic Arts 313 N.W.2d 124 (Mich. App., 1981).

Nebraska

Court Case #1. A plaintiff brought a personal injury action against a state university as a result of being hit in the eye with a plastic golf ball during a physical education class. The class was being held indoors due to inclement weather. Twenty-six students, using irons, were arranged in an oval-circle formation. During the course of the practice session, the plaintiff was struck in the eye by one of the golf balls hit by another student, resulting in a near total loss of vision in that eye.

An expert witness testified that in his opinion the oval formation employed in this case, whereby the students are hitting the plastic-type ball toward each other, was inappropriate. He advocated a formation where the students would stand in two rows, back to back, approximately 10

yards apart, facing the opposite wall, and hit the balls to that wall. In addition, he testified that he was not aware of any recognized textbook on physical education which mentioned any danger in the use of plastic golf balls.

However, another expert with 37 years of golf teaching experience, testified that she had used the oval formation and believed that it gave the instructor the best view of the class. She also testified that the oval formation had certain safety advantages over other formations in that it kept the students away from each other and minimized the danger of being struck by a swinging golf club.

Finally, the instructor of the class, who had taught golf at the college level for 25 years, testified that she had used the oval formation for teaching golf for a number of years. In her opinion the primary danger in a golf class was from being struck by a swinging club. Also, she believed that the oval formation conformed to acceptable physical education standards.

The District Court entered a judgment in favor of the student. On remand, the lower court returned a verdict in favor of the university and the plaintiff appealed.

> The Supreme Court judge stated:
> It would serve no useful purpose to set forth in greater detail the specifics of the various experts testimony. It should be obvious from the above description that there was a direct conflict in their opinions as to whether or not the class was conducted with due regard for the safety of the students.

Therefore, the Supreme Court upheld the lower court's decision. The university was found not to be negligent.

Catania v. University of Nebraska 329 N.W.2d 354 (Neb. 1983).

South Dakota

Court Case #1. A state college student brought action against the board of regents and the gymnastics instructor to recover for injuries sustained while performing on a trampoline during a class. The action alleged that the injury occurred as a result of the instructor's failure to supervise, failure to adequately instruct and supervise the utilization of the trampoline, and failure to provide proper safety instructions. The same theories were brought against the Board.

The trial court granted a motion to dismiss, concluding the complaint failed to state a claim upon which relief could be granted and that the complaint was barred under the doctrine of sovereign immunity. The Supreme Court upheld the lower court's decision granting the board of regents sovereign immunity concluding that:

> the "sue and be sued" clause contained in the state constitution did not, in the absence of statutory authority expressly waiving sovereign immunity, create a cause of action against the Board.

However, the Supreme Court reversed and remanded back to trial the lower court's decision concerning the teacher. The court concluded that the issue of whether immunity extended to a state employee depended on the function performed by that employee - discretionary or ministerial. Since the trial court did not have the opportunity to review this cause of action the individual liability needed

further consideration. Kringen v. Shea 333 N.W.2d 445 (S.D. 1983).

New York

Court Case #1. In a case where the defendant's negligence had already been proven, the sole issue before this Court was to assess damages. The plaintiff fractured her elbow while performing a gymnastic stunt in a physical education class at the State University of New York at Stony Brook. Therefore the plaintiff was awarded $3,500.00 for her injury, pain and suffering. Zegman v. State 416 N.Y.S.2d 505 (N.Y. 1979).

Court Case #2. A plaintiff brought action against the Community College for injuries she received while attempting to do a 'straddle vault' by jumping over a 'horse', after observing a classmate successfully perform that exercise. The plaintiff claimed that the injuries were due to improper supervision and instruction by the physical education teacher.

Testimony during the trial revealed that the plaintiff had never attempted the feat before. At the time of the injury, the teacher was in another part of the gym and did not witness the accident. Earlier in the class period the teacher had given preliminary instructions to the entire class on the use of the 'horse' and other equipment, but had never demonstrated it to the class. The plaintiff testified, without contradiction, that the teacher never asked her whether she had gymnastic experience and that the teacher was aware that she was overweight; and that such a person generally needs more instructions than others.

However, there was not testimony presented which stated that the feat was required to do, therefore, the plaintiff did it on her own will.

The Supreme Court, in reversing the lower court's decision, held that the evidence presented was sufficient to raise factual issue as to negligence and precluded summary judgment for the defendant. Thus, in the absence of evidence that the plaintiff's injury was exclusively the result of her own negligence, questions of fact exists for a trial. The Court also declared:

> this holding, of course, is no indication of how the trial court should rule on a motion for dismissal at the end of the plaintiff's case.

Lorenzo v. Monroe Community College 422 N.Y.S.2d 230 (N.Y. 1979).

Court Case #3. The plaintiff, a student from Harpur College, was injured while playing in a game called 'ultimate frisbee' between a Harpur team and one from Syracuse University. The plaintiff, running toward the west wall and looking back over his shoulder for a thrown frisbee, was unable to stop, striking one of the doors. The glass in the door shattered as the plaintiff's upper torso went through the door, severely lacerating his right arm. The plaintiff alleged, in his action, that the defendants breached their duty of providing reasonable care by not foreseeing that an injury could take place with the doors close to the court.

During testimony it was determined that the teams entered the gymnasium through the help of a person inside the building, believed to be a janitor, because the doors

were locked. Also, the plaintiff testified that he was aware of the presence of the walls and the doors when he participated in the game. In support of its assertion that the evidence presented was insufficient to submit the case to a jury, the defendant argued that it did not authorize the use of the gymnasium; had no previous knowledge of the plaintiff's use, could not foresee the manner in which it would be used and, finally, that the gymnasium was not defective in its construction or design, nor was it unsuited for its ordinary purposes.

The Supreme Court, in upholding the lower court's decision in favor of the plaintiff, concluded that it was proper for the trial court to submit the issue of negligence to the jury. The court concluded that the defendant should reasonably have foreseen the plaintiff's presence in the gymnasium located as it is on the campus of a large university, and that some of its students, and their guests, might use the facility without express permission. In addition, the Court held that the close proximity of the doors to the basketball court sideline could be found to present a danger to a player in a hotly-contested basketball game. That danger was enhanced, of course, with the playing of a running game employing the length of the gymnasium. The court concluded that the university breached its duty by the location of the glass doors which were the proximate cause of the injury. Eddy v. Syracuse University 433 N.Y.S.2d 923 (N.Y. App. Div. 1980).

Court Case #4. The claimant brought action against the state when he fell into a drainage ditch while chasing a fly ball during an intramural softball game. The claimant alleged negligence on the state's part in designating the area in question for use as a baseball field and in failing to place a fence, barricade or warning sign around the drainage ditch.

Evidence indicated that the game was played on a makeshift field usually reserved for soccer. Also, it was proved that the drainage ditch was located 15 to 20 feet from the third base line and parallel to the line.

The Court of Claims rendered a decision in favor of the plaintiff, finding the State negligent. It concluded:

> the State owed a duty of reasonable care to the participants in the game and that their duty was breached when the State assigned an unsafe field for the game.

The court found that the ditch was:

> an inherently dangerous condition and that it was foreseeable that the claimant would attempt to field a foul ball in the area of the ditch.

The Supreme Court reversed the lower court's decision holding that:

> the duty owed by the State to the claimant required that it exercise reasonable care under the circumstances to prevent injury to those who engage in the ball game. This duty did not, however, encompass insurance of the safety of those who played on the field. Intramural sporting activities involve inherent dangers to participants. This claimant, in electing to play, assumed the dangers of the game.

The Court concluded that:

> the State was required only to act reasonably in providing a field of play for the claimant...the

> field of play was adequate for its intended purposes.

Scaduto v. State 446 N.Y.S.2d 529 (N.Y. 1982).

Court Case #5. An action was brought to recover for personal injuries sustained during an intramural floor hockey game in the university's gymnasium. The injury occurred when an opposing player pushed the claimant from behind into the gymnasium wall, in an attempt to steal the hockey puck from him. The claimant, in return grabbed his opponent just above the knees and attempted to tackle him. However, the claimant was flipped by the student, whereupon, he fell on the claimant's neck, injuring him seriously. The claimant contended that the proximate cause of the injury was attributable to the State for failing to adequately instruct and supervise the referees who supervised the game.

The Supreme Court, in affirming the lower court's decision, agreed that the injury occurred when the claimant attacked his opponent, and was not attributable to a lack of supervision and training by New York State relative to the referee's officiating. In citing Scaduto v. State, 446 N.Y.S.2d 529 as the precedent case:

> the duty owed by the State to claimant required only that it exercise reasonable care under the circumstances to prevent injury in the game.

The court found no lapse of duty and, in any event, concluded that the referee's officiating was not a proximate cause of the injury. Pape v. State 456 N.Y.S.2d 863 (N.Y. 1982).

Court Case #6. A member of a women's intercollegiate varsity softball team was injured while sliding into third base on a makeshift softball diamond, after the regular playing surface was rendered unplayable because of heavy rains. The trial court, holding that the State had a duty to inspect the field for unsafe conditions and that such duty became more clearly defined when the game was moved to a makeshift field, rendered a judgment in the sum of $18,000.00 in favor of the claimant. The Supreme Court affirmed the lower court's decision holding:

> 1) the comparative negligence statute abolished the doctrine of assumption of risk and contributory negligence as absolute bars to recovery,
> 2) evidence that the plaintiff caught her foot on a depression close to the base which was concealed by grass established a prima facie case of negligence on the part of the school, and
> 3) the plaintiff was engaged in a normal activity associated with playing softball when she was injured, therefore, she was not contributorily negligent.

Lamphear v. State 458 N.Y.S.2d 71 (N.Y. 1982).

Court Case #7. A student brought action against the state for injuries received when he slipped and fell in the men's locker room at a state university. The student was searching for an empty locker to hang up his clothes when he slipped and fell on the edge of a puddle of water approximately one-eighth of an inch deep, four to five feet in diameter, and 20 to 30 feet from the showers.

Testimony revealed that the plaintiff had previously slipped but had never fallen and that he had reported the wet and slippery conditions to the instructor. In addition, another student testified on behalf of the

student that he had slipped on the locker room floor and had reported the accident to his instructor and the security office.

The Supreme Court held that: 1) since it could be found that persistent accumulation of water on the floor of the locker room created a foreseeable risk, 2) the State had been warned of the condition through its employees, and 3) the State did not use reasonable care to eliminate the hazard by putting down a non-slip surface or by posting warning signs, therefore, resulting in the State being liable for the injuries. Van Stry v. State 479 N.Y.S.2d 258 (N.Y., 1984).

Iowa

Court Case #1. The wife of a faculty member, who died of cardiac arrest while participating on the faculty intramural basketball team, filed suit seeking to recover workers' compensation benefits for the death. The claim alleged that at the time of his death, the decedent was acting in the course of his employment and that the death arose out of his employment.

The Supreme Court in granting the wife the benefits, relied on the industrial commissioner's report which stated:

> recreational or social activities are business related in the course of employment when the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

Where the tuition paid by the students accounted for 73% of the college's revenue and where student recruitment

and retention were major concerns of the college, the college was seeking to distinguish itself by the quantity and quality of attention the students received from the faculty members, including outside the classroom. Therefore, the intramural basketball program gave the students an opportunity to have personal contact with faculty members and made a contribution to student retention. This conclusion supported the finding that the professor's participation in the intramural basketball game was in the course of his employment. Briar Cliff College v. Campolo 360 N.W.2d 91 (Iowa, 1984).

California

Court Case #1. An injured basketball player brought action against a university basketball player, the state, the university athletic director and the basketball coach for personal injuries caused when the opponent basketball player struck the plaintiff with his fist. The Superior Court, Los Angeles County, awarded the plaintiff $25,000 against the university basketball player. Also, the trial court determined that the university basketball player was not an employee of the State of California and thus the plaintiff could not recover under the doctrine of respondeat superior against the other named defendants.

On appeal the appellant alleged that since intercollegiate athletics are 'big business' and generate large revenues for the institutions who field teams in such competition, the athletes who represent those institutions should be considered to be employees or agents of those institutions under the doctrine of respondeat superior.

The Court of Appeals affirmed the lower court's decision holding that the university basketball player was not a 'servent' of the university and was not considered an 'employee' within the meaning of the Tort Claims Act. Therefore, the appellant could not recover for damages against the other respondents. Townsend v. State 237 Cal. Rptr. 146 (Cal. App. 2 Dist. 1987).

Federal

Court Case #1. A college freshman brought action against the college to recover for injuries received when she was hit in the eye with a softball during practice. The claim stated that the college was negligent for failing to provide proper medical assistance.

The facts of the case showed that the plaintiff, who was deaf, was hit in the eye by a softball thrown by a teammate. The impact of the softball hitting the eye could be heard 80 to 100 yards away. The paid student coach and the College's Director of Buildings, who were present at the time of the injury, put ice on the eye and sent the plaintiff to her room to rest. Several days later, the plaintiff experienced dizziness and severe blurring and coloring in her eye. After telephoning her parents, she went to see an internest, who immediately sent her to an opthalmologist. The opthalmologist began treatment on the eye, however, an infection set in resulting in the plaintiff's loss of vision in her eye. During the trial, medical experts testified that if treatment would have started immediately, there was ninety percent or greater success rate.

The trial court found the college negligent for failing to provide proper medical assistance and awarded the plaintiff $800,000.00. The United States Court of Appeals affirmed the lower courts decision, but reduced the award to $600,000.00 because it thought the initial award was excessive and not supported by the evidence. Stineman v. Fontbonne College 664 F.2d 1082 (8th Circuit, 1981).

Summary

Elementary and Secondary

From 1977 to 1987 there were 92 elementary and secondary lawsuits involving physical education instructors, athletic coaches and their supervisors, including local school boards or boards of education. These cases were categorized using the seven Regional Reporter Series, the New York Supplement, the California Reporter and the Federal Reporter Series. Overall, 43 cases were decided in favor of the plaintiffs while the defendants were found not liable in 49 cases.

The lawsuits alleged negligence due to improper instruction and supervision, improper or lack of safe equipment, inadequate or unsafe facilities and the willful and wanton misconduct of the teachers and coaches toward the students. In addition, some of these lawsuits alleged negligence against the local school authorities for the improper training of their school employees which led to the direct injury of a student.

Atlantic Reporter

In the Atlantic Reporter there were 16 cases reported. Overall, eight of the cases were decided for the plaintiff while eight cases were decided for the defendant.

New Jersey (1). The appeals court overturned the lower courts decision which granted the physical education teacher and school board summary judgment. The case was remanded back to trial because there were questions of fact presented which needed to be decided by a jury.

Pennsylvania (10). Six of the cases were decided in favor of the plaintiffs while 4 cases were upheld for the defendants. The 4 cases ruled in favor of the defendants were based on the doctrine of governmental immunity. However, there were 4 cases in which the appeals court overturned the lower courts decision granting the defendants governmental immunity. Specifically, under the Political Subdivision Tort Claims Act, where the injury occurred because of the failure to exercise proper care in the custody and control of real estate, public officers and employees may be liable.

Also, where participation in an activity was found not to be voluntary, the defense of assumption of risk was not upheld for the defendants. In addition, a school district was found to be liable for not providing safe environment where an unreasonable risk was created and the children involved lacked a full appreciation of the potential danger.

Delaware (1). Judgment was upheld in favor of the defendants when an action was filed on the grounds of

inadequate supervision. The appeals court ruled that the teachers had followed the guidelines established in the school handbook while supervising playground activities.

Maryland (2). The defendants were found not liable in both cases. In one case the defendants were not liable of improper supervision, improper instruction and failing to provide proper equipment where the plaintiff was found to be contributorily negligent (Note: the state does not honor the doctrine of comparative negligence).

Also, the defendants were not negligent in placing a handicapped eighth-grade student in a regular physical education class. The Individual Education Program (IEP) developed and based on the students past performance could not be challenged in a court of law when the parents had agreed to the course content. Therefore, the teacher and school board did not fail to exercise reasonable care to protect the student from injury.

District of Columbia (1). The defendant school teachers and school district were not negligent for improperly supervising a playground. The teachers had followed the school's operative plan for supervision on a playground area, the students were on an authorized area of the playground and the injury was the consequence of an unforeseeable intervening act of a third party which could be neither anticipated nor prevented.

Maine (1). The state, as outlined in the Maine Tort Claims Act, required that a claimant against a governmental entity file a notice claim with the entity within 180 days after the cause of action accrued. However, because the

plaintiff was a minor at the time of the injury, because no one would take any legal action for the minor, and because the plaintiff was deprived of any reasonable means of pursuing his claim, he was allowed to file a claim when he reached the age of maturity.

North Eastern Reporter

The North Eastern Reporter reported 14 cases involving physical education and athletics. Ten of the cases were decided in favor of the defendants while the plaintiffs recovered damages in four law suits.

Illinois (10). Eight of the 10 cases reported on from the state were decided in favor of the defendant because the plaintiffs could not prove that the injuries which occurred were a result of willful and wanton misconduct on the part of the defendants. Section 3-106 of the Tort Immunity Acts states:

> Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used as a park, playground or open area for recreational purposes unless such local entity or public employee is guilty of willful and wanton negligence proximately causing such injury.

In addition, children may not maintain actions against their parents for mere negligence but may do so only in the case of willful and wanton misconduct. Through Sections 24-24 and 34-84a of the School Code enacted by the State General Assembly:

> Teachers and other certified educational employees shall maintain discipline in the schools. In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of

> parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians.

This section confers in loco parentis status upon educational employees in matters relating to discipline and supervision of school activities. Only willful and wanton conduct destroys educators immunity.

The plaintiff was awarded $77,000.00 for damages where the defendants actions amounted to willful and wanton misconduct. The physical education teacher was negligent for improper supervision which was the proximate cause of the injury. In addition, the student was fearful of performing the skill because of her failure on prior attempts.

The second case awarded in favor of the plaintiff was based on trial error. The supreme court determined that it would not be unduly burdensome to hold school districts to the duty of ordinary care when providing students with athletic equipment and therefore could be held liable if willful and wanton misconduct was proved. Indiana (2). The decisions of both cases were ruled in favor of the plaintiffs. In the first case, the teacher was negligent for failing to conform her conduct to a certain standard.

In the second case, the athletic coach was found negligent in conducting an activity in unsafe conditions which breached his duty in providing the students with an appropriate standard of care. However, it should be noted

that the school district was not found liable on the issue of incurred risk because the student had knowledge and appreciation of the risks involved in the sport.

Massachusetts (1). The defendants were found not liable for inadequate supervision and conducting an activity under unsafe conditions. However, the judge ordered a new trial requesting that a jury rule separately on each charge. This request was denied by the supreme court.

Ohio (1). The defendants, the board of education and the physical education teacher, were not found negligent for intentional inflicton of emotional distress. Under state law, the plaintiff had to prove that he suffered severe emotional stress and not just embarrassment or hurt feelings.

Pacific Reporter

The Pacific Reporter published 4 cases decided between 1977 and 1987. Both the plaintiffs and the defendants were awarded favorable decisions in two cases.

Montana (1). The plaintiff was denied recovery because the statute of limitations had expired. The state allowed 3 years from the time the cause of action accrued to file a claim.

Oregon (3). The defendants were found liable in 2 cases where the proximate cause of injury was due to improper supervision and failing to follow various training and safety guidelines. It should be noted that both awards were reduced because the state has the defense of comparative negligence.

The defendant school district was not found liable of improper supervision where a student was attacked by three students while attending a basketball game. The key factor in this decision was that the game was not between rival schools and the school district had taken precautions to protect the plaintiff from reasonably foreseeable acts of third parties. In order to prove improper supervision the basketball game would have had to inspire violence.

South Eastern Reporter

There were 4 cases reported on from the South Eastern Reporter. Three of the cases were found in favor of the defendants based on sovereign immunity while the plaintiff was awarded the decision where the defendants acts implied simple negligence.

Virginia (1). The state does not allow the defense of governmental immunity to stand for the employees of local governmental agencies when injuries are a result of their own acts of simple negligence. Therefore, the plaintiff was awarded the decision.

Georgia (1). The defendants acted in their public capacities in discretionary roles and their acts were within the scope of their authority and they acted without willfulness, malice or corruption. Therefore, they were protected under the doctrine of governmental immunity.

North Carolina (2). The defendants were not liable in either case because they were protected under the doctrine of governmental immunity. In one case, even though the school board purchased liability insurance to cover damages caused by the negligence or torts of its employees, the

policy contained an exclusion for injury arising out of participation in athletic contests sponsored by the insured. Finally, a school district was not negligent for leasing their gymnasium for uses other than school purposes, providing its use was consistent with the proper preservation and care of the public school property.

South Western Reporter

The South Western Reporter published four cases that were decided during 1977-1987. Three cases were decided in favor of the defendants while one case was decided in favor of the plaintiff.

Missouri (3). The defendant school teacher was not found liable of improper supervision where he exercised ordinary care and there was no indication in the evidence that he was inattentive, careless or was failing to perform his supervisory obligations. In addition, there was no evidence that the injured student required special supervision.

The two remaining cases each involved the doctrine of governmental immunity. State law provided local school districts with governmental immunity. However, the doctrine of governmental immunity did not extend to teachers in that they could be held liable for a negligent act.

Texas (1). The state provided the defendants with governmental immunity. Therefore the school district, the football coaches and the trainer were relieved of any negligence.

North Western Reporter

There were 19 cases reported on in the North Western Reporter. Seven of the cases were ruled in favor of the plaintiffs, while the defendants won 12 of the cases.

Nebraska (2). The court upheld the decision for the plaintiff where the defendants were guilty of improper supervision which was the proximate cause of the injury. However, where the trial court held that the decision of the lower court was equivalent to a jury verdict and, unless clearly wrong, would not be overturned by the appellate court.

South Dakota (1). The state protects the school districts and teachers from liability under the doctrine of governmental immunity. Even the purchase of liability insurance by the school district does not waive their rights to protection under the doctrine.

North Dakota (1). The verdict was decided in favor of the defendant school district where inadequate supervision and unsafe playground maintenance was alleged. The court ruled that the supervising teacher was present and near the child at the time of the injury and that the rock was buried beneath the topsoil, therefore not constituting negligent maintenance. The school district exercised ordinary care to keep the facilities in reasonably safe conditions.

Minnesota (2). Both cases were decided in favor of the plaintiffs due to improper supervision, improper instruction and negligence. State law does not protect teachers under the doctrine of discretionary immunity when teaching a skill because that is a ministerial function.

Also, the teacher was not protected for the manner in which he spotted the skill being performed because this was considered a ministerial duty. Both decisions were made on the operational level of conduct. Finally, the principal was not protected by discretionary immunity because improper supervision of the teacher on his part was not a policy-making decision.

A teacher was found liable for conduct falling below the requirements of reasonable care for removing the pummels from a vaulting horse. Also the court determined that expert testimony was not necessary, that a jury could determine whether a teacher, of ordinary prudence, would use a vaulting horse despite two holes in its surface. Michigan (13). Prior to 1984, school districts, teachers and coaches enjoyed protection from liability, in most cases, because they were protected under the doctrine of governmental immunity. Evidence to this fact was supported by the findings in 11 cases where the defendant school districts, teachers and coaches were protected by governmental immunity in nine of the cases. The only exceptions to the doctrine were the findings of a principal and an athletic director negligent for failing to reasonably exercise their supervisory powers to ensure the safety of their students.

However, the court decision in Ross v. Consumers Power Co., 363 N.W.2d 641 (1984), changed the state's stance on governmental immunity. Prior to the decision, the doctrine held that: 1) school districts could be sued under the defective building exception to governmental immunity---the

source of injury had to be due to a dangerous or defective condition of the building; 2) the day to day operation of an athletic program or physical education program were governmental functions, thereby entitled to immunity; and 3) teachers and coaches were protected by governmental immunity if they were acting within the scope of their employment. The Ross decisions held that individual government employees were immune from tort liability only when they were:

> a) acting during the course of their employment and were acting or reasonably believe they were acting, within the scope of their authority; b) acting in good faith; and c) performing discretionary-decisional, as opposed to ministerial-operational acts.

Since the Ross decision, the state has decided two more cases. In both cases, the instructors were negligent of improper supervision, which were ministerial-operational functions, for which there was no immunity from tort liability.

Southern Reporter

The Southern Reporter published 16 cases involving physical education and athletic programs from 1977-1987. Of the 16 lawsuits, the plaintiffs recovered damages in 9 cases while the defendants were found not liable in 7 cases.

Louisiana (13). Seven of the state cases were decided in favor of the plaintiff. In five of the cases, improper supervision was the primary theory on which the defendant teachers were found negligent. Another case found the defendants negligent for breaching the required standard of

care by maintaining a hazardous condition on a playground. Finally, the defendants were found negligent for maintaining a hazardous condition by having non-safety glass in an area of high traffic pattern, especially since an injury had occurred several years earlier and the broken glass was replaced by safety glass.

Of the six cases that were ruled in favor of the defendants four of the decisions were based on proper instruction, proper preparation and/or proper supervision. In addition, a school district was found not liable because there was no association between any duty imposed on the board and the injury which occurred. Finally, where a plaintiff was injured in an auomobile accident while on his way to obtain a physical, the court held that the board did not breach their duty of supervision by making the parents transport the student.

Florida (2). Both cases were decided in favor of the plaintiffs. One decision was based on state law which held that an individual suit against a state employee, but not against the state was 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 and property. Also, the plaintiff was awarded a new trial where the defendants may be liable for improper instruction and failing to provide adequate equipment.

Alabama (1). The defendant school board was not found liable for breaching their obligation to maintain a safe atmosphere for the students under its supervision during school hours because the plaintiff failed to submit any evidence of an implied contract on the part of the board. In addition, there were no state cases which held that a school board had an implied contract to maintain a safe atmosphere to students under its jurisdiction.

New York Supplement

The New York Supplement published 13 cases during 1977-1987. Ten of the cases were decided in favor of the plaintiffs while three cases were decided in favor of the defendants.

New York (13). In four of the cases decided against the defendants, the plaintiffs were allowed to file late claims. Reasons included that: 1) the late filing did not prejudice the defendants efforts to investigate the allegations of negligence; 2) the widowed mother of the injured student was working at a full-time job to support her six children while arranging for her son's surgery; 3) the school district knew of the injury and was aware that surgery was necessary in the future, even though it turned out to be five years later; and 4) even though the claim was turned in late, the school district had received actual knowledge of the accident immediately and the filing did not cause any prejudice against the school district. However, there was one case where the supreme court denied a late claim even though the school district was aware of

the injury immediately and even though they had paid for previous medical bills.

In addition, three cases in which the defendants were granted summary judgment in their favor were remanded back to trial because there were questions for a jury to answer. Also, the defendants were held liable in three additional cases where the plaintiffs showed that: 1) the school had no program of preventative maintenance or inspection of the facilities; 2) the school was negligent in failing to provide adequate instruction which was the proximate cause of the injury; and 3) the school did not provide adequate supervision, especially for mentally retarded children who had perceptual motor difficulties and poor hand-eye coordination.

One case decided in favor of the defendant was based on the fact that the owner of a baseball field is only under a duty to exercise 'reasonable care under the circumstances' to prevent injury to spectators. Finally, the supreme court found the defendants not liable where records indicated that a student, who was involved in an altercation, did not have a history of violent or physical behavior which would warrant the school district to isolate or supervise him to a greater degree than the other students.

California Reporter

There was one case from the California Reporter. The case was decided in favor of the defendant school district. California (1). The court ruled that school districts' duty of supervision was limited to school-related or

encouraged functions and to activities during the school hours. Also, the defect in the school property, which allowed access to the playground, was not the proximate cause of the accident.

Federal

Finally there was one case decided in federal court. The reason the case was heard at the federal level was that it was between parties of two states. In this case, the court held that the question of negligence was for a jury to decide and therefore reversed the lower courts decision in favor of the defendants and remanded the case back to trial.

College

From 1977 to 1987 there were 19 college lawsuits involving physical education teachers, athletic directors and coaches, intramural sports directors and their superiors. Overall, nine cases were decided in favor of the plaintiffs while the defendants were found not liable in ten cases.

Maine (1). Even though the parents of the plaintiff had signed agreements releasing the College from liability the defendants were found liable because the injuries were proximately caused by the negligent conduct of the College and/or its agents. In addition, courts have traditionally disfavored contracts which exclude negligence liability and which contain language which exempts a party from liability for his own negligence.

Note: See Employers Liability Assurance Corp v. Greenville Business Men's Association, 224 A.2d 620, 623 (Pa. 1966).

Indiana (1). The defendant college was found not liable for injures sustained by a student during baseball practice which was under the direction of a student player. The degree of supervision for college students is not as high as it would be for elementary and secondary students because, with few exceptions, college students are adult citizens, ready, able and willing to be responsible for their own actions. In addition, colleges are not expected to assume the role in loco parentis.

Ohio (1). The university was found not liable for injuries sustained to a football player when he crashed through a glass door. The record showed that the glass in the door met the standards in the building codes and there was some factual conflict as to whether or not the injury was unavoidable or if the student was 'fooling' around and came in contact with the door.

Utah (2). Even though the plaintiff was found to be negligent to some extent, the university was found liable, specifically, the employee who rented the skis to the student, for negligence which proximately caused the injuries. The employee who rented the skis to the plaintiff did not have enough experience in determining whether or not the bindings he gave to the novice skier were set correctly.

The university was found not liable in the treatment of an injury by a student athletic trainer. The court held

that the plaintiff was 100% negligent and such negligence was the proximate cause of his injuries. In addition, the court held that athletic trainers could not be held to a higher standard of care than physicians and surgeons.

Louisiana (1). The State Board of Education was found not liable for the injuries sustained by a college student when he hit his head on the bottom of the pool while executing a dive. The court held that the instruction was adequate and that the injury occurred due to the neglect on the part of the plaintiff.

Michigan (1). The court held that the operation of a state university was a governmental function. Therefore, the university was immune from tort liability.

Nebraska (1). The university was found not liable for injuries sustained in a golf class that was held indoors due to inclement weather. Expert testimony presented by both sides resulted in a direct conflict in their opinions. Therefore, the supreme court upheld the lower court's decision favoring the defendants.

South Dakota (1). The university Board of Regents were found not liable of improper instruction and supervision where a student was rendered a quadriplegic while performing on the trampoline. The board was protected under the statute of governmental immunity. However, the case against the instructor was remanded back to trial. The court concluded that the issue of -whether immunity extended to a state employee depended on the function performed by that employee - discretionary or ministerial.

New York (7). The court ruled in favor of the plaintiffs in five of the cases presented. Specifically, the defendants were found liable where the injuries were a direct result of:
1) negligence, 2) failing to inspect a field for unsafe conditions, 3) locating breakable glass doors too close to the playing area, 4) creating a foreseeable risk, and 5) failing to eliminate a hazard after being made aware of the hazard.

The two cases in which the defendants were found not liable involved intramural sports activities. The court held in both cases that the duty owed by the State to the claimant required that it exercise reasonable care under the circumstances to prevent injuries. Intramural sports involve inherent dangers to the participants and anyone who participates assumes the dangers of the games.

Iowa (1). The wife of a faculty member was awarded the workers' compensation benefits when her husband died of a heart attack in an intramural basketball game. The court ruled that the faculty member was acting in the course of his employment and that the death arose out of his employment.

California (1). The defendant university was not found liable when a member of their basketball team struck a member of another basketball team with his fist. The court held that the basketball player was not an employee of the state and therefore, the plaintiff could not file a claim under the doctrine of respondeat superior. However, the defendant basketball player was found to be liable.

Federal Court (1). The case was heard at the federal level because it involved parties from different states. The college was found to be negligent for failing to provide proper medical assistance.

CHAPTER V

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Introduction

The purpose of this study was to report the legal liability of elementary, secondary and higher education physical educators, athletic coaches and intramural sports directors from 1977-1987. In Chapter IV the court holdings from this 10 year period were compared to court holdings found in five previous unpublished manuscripts. A total of 111 cases, 92 elementary and secondary cases and 19 higher education cases were reported on in the present study. From the previous five studies 90 elementary and secondary cases and 8 college cases were used. This chapter will discuss the findings as they pertain to the above mentioned disciplines.

Legal Liability of School Boards, School Districts, Boards of Trustees and their Employees

Although the majority of the lawsuits were distinguished by the fact that the injuries occurred while the plaintiff was under the supervision of a school employee, in some instances the lawsuit was brought only against the school district, school board or board of trustees. However, there were also instances when the school employees were found liable even though the school board or board of trustees was protected under the doctrine of governmental or sovereign immunity. Although the rulings are specific to a state, the rulings may be applicable to the other states, including boards and

employees. The following includes the holdings of the courts either for or against these groups/employees:

A school district is immune from suit under the Political Subdivision Tort Claims Act unless the injury occurrs because of failure to exercise proper care in the custody and control of real estate (Pennsylvania).

School districts in the states of Virginia and Missouri are protected from liability under the doctrine of governmental immunity. However, employees of local governmental agencies do not enjoy governmental immunity and are answerable for their own acts of simple negligence.

An 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 (Florida).

Individual government employees are immune from tort liability when they are performing discretionary-decisional, as oppossed to ministerial-operational acts (Georgia, Michigan, Minnesota and South Dakota).

Illinois School Code and the Tort Immunity Act require allegation and proof of willful and wanton misconduct before a school district and its employees can be held liable for injuries arising out of the exercise of their discretionary or supervisory authority.

The purchasing of liability insurance by school boards did not dissolve their protection from liability under the

doctrine of governmental immunity in North Carolina and South Dakota. However, in Minnesota, procurement of liability insurance by the school district waived their defense of governmental immunity for torts committed by its employees.

School boards are immune from liability even if school buildings are loaned for reasons other than school functions provided it is consistent with the proper preservation and care of the public school property (North Carolina).

School districts and their employees are protected from liability under the doctrine of governmental immunity even while conducting interscholastic programs because these programs are governmental functions providing educational benefit to those who participate and watch these programs (Texas).

School districts and their employees are not liable for improper supervision on the playground where supervisory guidelines listed in the Teacher's Handbook are followed (Delaware) and where the school's operative plan for supervision on a playground is followed (District of Columbia).

School districts do not have to provide supervision on playgrounds after school providing that children are not exposed to unreasonable risks or dangers (Pennsylvania). However, a school district is liable for after school operations on its property when members of the school help supervise the activity, announcements about practice are

made in school and the parents are told 'tight supervision' will be provided (Louisiana).

A student, who volunteered to conduct off-season sessions because the regular coach had other coaching responsibilities, is not considered an agent of the college, thereby removing all liability from the board (Indiana). In addition, a university student athlete is not considered a 'servant' of the university and is not considered an 'employee' of the university under the Tort Claims Act and therefore, the plaintiff cannot recover against the state under the doctrine of respondeat superior (California).

School districts and university boards are liable for creating and maintaining hazardous conditions involving the use of non-safety glass in doors in areas characterized by high use and hotly contested games (Louisiana, Maine and New York). However, where glass doors meet building codes and regulations and the high breakage rate is due to vandalism a dangerous condition does not exist. Therefore, the state was not liable (Ohio).

A school board is not liable when placing a handicapped child in a physical education program based on the child's past performances (Maryland).

Contributory negligence on the part of the plaintiff relieves the school board of liablity because the state does not have the doctrine of comparable negligence (Maryland).

To be held liable for intentional infliction of emotional distress, the plaintiff must suffer severe emotional distress not embarrassment (Ohio).

The school district cannot be held liable when the statute of limitations expires (Montana).

A school district is not liable of inadequate supervision where there is no reason to suspect that a high school athletic game would cause an outbreak in violence (Oregon).

A school district is not liable for not providing transportation for students to receive physicals (Louisiana).

A school district is not liable for the actions of a student against another student when there is no record of previous behavioral problems (New York).

The duty owed by the state to students participating in intramural sports activities is that it exercise reasonable care under the circumstances to prevent injury in the game (New York).

A school district is liable when the physical education teacher does not properly supervise an activity and an injury occurs (Oregon).

A school district is liable when its employees do not follow the state athletic association rules (Oregon).

A school district is liable where the proximate cause of injury or death was the lack of proper supervision on the part of the physical education instructor (Nebraska).

The school board is liable for allowing a known hazardous condition to exist (Louisiana).

The close proximity of equipment which creates a dangerous situation or hazard resulted in liability against the school board (Louisiana).

A school district may be liable even after the statute of limitations has expired where it takes additional time to gather information and there are extenuating circumstances (New York).

A school district is liable where there is no program of preventive maintenance or facility inspection and there are improper construction practices (New York).

A college may be liable when a contract excluded negligence liability and contained language which exempted a party from liability for its own negligence - language in an agreement which is ambiguous should be construed against the drafter (Maine).

The board is liable when a student is fitted with improper equipment while engaging in an activity as part of a physical education requirement (Utah).

Varsity athletes should not be exposed to unsafe conditions and the doctrine of comparative negligence abolished the doctrines of contributory negligence and assumption of risk (New York).

There is liability when the university does not remove a foreseeable risk and there was evidence that there was knowledge of the dangerous condition (New York).

A university owes the widow of a faculty member workman's compensation benefits where her husband died from a heart attack while acting within the scope of his employment, participation in an intramural basketball game.

The college is liable for failing to provide proper medical assistance (U.S. Court of Appeals, 8th Circuit).

There is no liability where students purposely disregard safety rules (Louisiana).

Coaches are liable due to improper supervision because they joined in playing the game which took them away from their supervisory duties (Pennsylvania).

Coaches are liable for injuries sustained to a student when practice sessions do not conform to safety standards established by the high school football association (Pennsylvania) and for not following the state athletic association rules (Oregon).

A teacher is liable for not following prescribed exercise progressions (Minnesota).

A principal is negligent for not supervising closely a young and inexperienced teacher (Minnesota).

Teachers must provide a safe way for students when walking to practice (Louisiana).

Similarities and Differences Based on the Present Study and the Previous Studies

Laws have governed the people of the United States for over 200 years. However, from time to time these laws have been ammended or abolished which shows the ever changing philosophies of those individuals or groups that establish the laws. Therefore, some of the court decisions from 1977-1987 were based on these new law trends. In some instances, the present decisions were based on precedent from laws established between 1929 and 1976. Whatever the

time frame, there were some similarities, differences and trends.

Trends in Similarities

The area of supervision, elementary and secondary level, was the main issue in both the previous and present studies. Furthermore, the majority of these cases were decided in favor of the plaintiff(s) in both studies.

In both studies, the majority of elementary and secondary lawsuits based on standard of care or exercising proper care were ruled in favor of the plaintiff(s).

The lawsuits involving the area of elementary and secondary instruction were held in favor of the defendants a majority of the time in both studies.

The courts have ruled in favor of the defendants an overwhelming majority of the time when after school supervision on playgrounds was the issue.

Both studies revealed that the courts are holding for the plaintiff(s) involving injuries due to the breaking of non-safety glass or creating dangerous conditions.

Both studies revealed that the standard of care owed to a college student is less than an elementary or secondary student and therefore, the number of cases held for the plaintiff involving improper supervision was less than for the defendant.

Both studies revealed that the playground was the area where the most injuries occurred.

Both studies revealed that gymnastics and football respectively, were the sports in which the most injuries/lawsuits were reported.

Both studies revealed that court cases involving a death, paraplegia and/or quadriplegia were ruled in favor of the plaintiff(s) a majority of the time.

Although the doctrine of governmental immunity has decreased in number of states, the present study revealed that in the states where the doctrine was applicable it remains a good defense.

Both studies revealed that when students were forced to do an activity the defendants were found liable.

The present study revealed that cases involving substitute teachers were ruled in favor of the plaintiff(s) a majority of the time.

Trends in Differences

The previous studies reported 90 elementary and secondary cases in which 34% of the decisions favored the plaintiff(s). The present study reported 92 elementary and secondary cases with the plaintiff(s) winning 47% of the cases.

The present study reported a large increase in the average number of court cases litigated each year when compared to the previous studies. The present study reported 111 cases over the past 10 years for an average of 11 per year. The previous studies reported 98 cases during a 46 year time span for an average of 2 per year.

The previous studies reported 8 cases involving higher education institutions. Only 2 or 25% of the cases were in favor of the plaintiff(s). The present study reported 19 cases involving higher education institutions. Nine or 47% of the decisions favored the plaintiff(s).

The previous studies reported 15 cases decided on the doctrine of governmental immunity in elementary and secondary schools while the present study reported 20 elementary and secondary school cases based on the doctrine of governmental immunity.

The present study revealed that intramural sports playing areas and intercollegiate playing areas do not have to be kept at the same standard.

The defense of comparative negligence was more prevalant in the present study than in the past studies.

The present study revealed that the doctrine of governmental immunity was present in 10 states which was lower than the previous studies.

The present study revealed that the courts have ruled in favor of the defendants where a dangerous condition existed and there was proof that the condition was present for an exceptionally short period of time.

Recommendations

The present study has revealed the many areas under which lawsuits have been filed and the reasonings behind the decisions handed down by the courts. In order to help reduce the chance of a lawsuit there are many precautions which a professional in the sports or recreation field should follow. It is therefore recommended that:

Students should be grouped according to height and weight in physical education classes when participating in individual sports and the possibilities of collisions are present;

Teachers should teach only those activities in which they have a high level of competency;

Students should be warned of any possible risks especially when participating in high risk activities;

Facilities should be inspected regularly, reporting any safety violations and notifying the supervisor, in writing, of the unsafe conditions;

Schools should establish written procedures for accidents and emergencies and post the procedures where people can see them;

Students should be required to have physical examinations before participating in any activity;

A year-round conditioning program should be established for athletic teams;

High quality equipment from known reputable dealers should be purchased;

Playing areas should be clearly marked and they should be adequate in size;

Rules should be modified to meet the skill level of the participants;

Competent officials should be hired and provided with a good training period;

Instructors should enroll in a law class designed especially for professionals in the disciplines of physical education, athletics or intramural sports;

Individuals should maintain an awareness of the laws which govern their state in the area of tort liability;

A follow up study of those states which have the defense of governmental immunity should be conducted in 1997;

Replication of this study every ten years should be conducted to follow the trends in judgements rendered.

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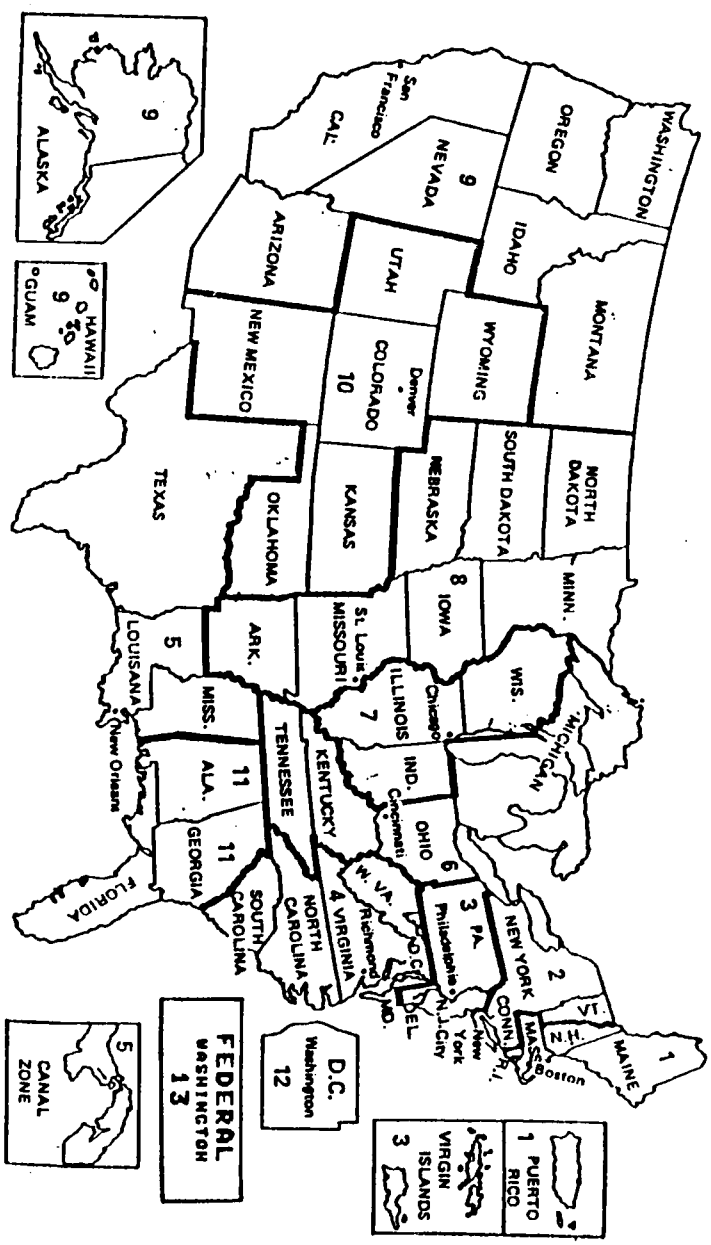
Appendix A

The Thirteen Federal Judicial Circuits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San Francisco
9
NEVADA
IDAHO
MONTANA
ARIZONA
UTAH
WYOMING
NEW MEXICO
COLORADO
Denver
10
NEBRASKA
SOUTH DAKOTA
NORTH DAKOTA
TEXAS
OKLAHOMA
KANSAS
8
IOWA
MINN.
ARK.
St. Louis
MISSOURI
WIS.
LOUISIANA
New Orleans
5
MISS.
ILLINOIS
7
Chicago
MICHIGAN
TENNESSEE
KENTUCKY
IND.
Cincinnati
11
ALA.
OHIO
6
GEORGIA
FLORIDA
W. VA.
Richmond
3
PA.
Philadelphia
NEW YORK
2
SOUTH CAROLINA
NORTH CAROLINA
4
VIRGINIA
N.J.
City
New York
VT.
N.H.
CONN.
R.I.
MASS.
Boston
MAINE
1
DEL.
MD.
D.C.
Washington
12
FEDERAL
WASHINGTON
13
ALASKA
9
HAWAII
9
GUAM
9
CANAL ZONE
5
1
PUERTO RICO
VIRGIN ISLANDS
3

Appendix B

Seven Regional Reporter Series'

Atlantic Reporter

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

North Eastern Reporter

Illinois
Indiana
Massachusetts
New York
Ohio

Pacific Reporter

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

South Eastern Reporter

Georgia
North Carolina
South Carolina
Virginia
West Virginia

South Western Reporter

Arkansas
Kentucky
Missouri
Tennessee
Texas

North Western Reporter

Iowa
Michigan
Minnesota
Nebraska
North Dakota
South Dakota
Wisconsin

Southern Reporter

Alabama
Florida
Louisiana
Mississippi

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