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Tort Liability of Physical Education Teachers and Athletic Coaches

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TORT LIABILITY OF PHYSICAL EDUCATION TEACHERS AND ATHLETIC COACHES

BY

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INTRODUCTION

The purpose of this study is to investigate teachers' liability in the fields of physical education and athletics, causes of liability and preventive measures; also, to make recommendations concerning liability in order to relieve the pressure on physical education teachers and athletic coaches concerning personal liability charges.

It has been stated that the teacher's fear of being sued has done more to weaken our physical education programs than any other single factor. Teachers feel they cannot afford to teach correctly an activity which might result in an injury to one of their pupils. Consequently, the programs have been so modified and restricted that many of the worthwhile program outcomes we should expect are not achieved.

What the teacher fails to realize is that if he has taken every reasonable precaution and used every reasonable safety device and practice, he will not be held liable in a suit for injury. The participant of a class assumes what is termed a normal risk. It is when negligence, either direct or contributory, can be proved that the teacher may be held liable.

According to Lloyd, Deaver, and Eastwood, about 50 per cent of the accidents occurring in physical education classes can be avoided. The manner in which a person executes a program will make it either reasonably safe or unnaturally hazardous.[1]

DEFINITIONS

Assumption of risk	The knowledge of the servant either actural or constructive as to hazards to be encountered and his consent to take a chance of danger of being injured.[2]
Attractive nuisance	An instrument which is on the premises of another and is attractive to children of tender years.[3]
Commission act	Positive doing as contrasted with omission as a commission of a crime.
Contributory negligence	Is conduct on the part of the plaintiff (or one who complains) which falls below the standard to which he should conform for his own protection and which is a legally contributing cause co-operating with the negligence of the defendant in bringing about his harm. (This type of negligence is very seldom used when minors are involved.[5])
Court "Action"	Is the formal demand of one's rights from another person or party made and insisted upon in a court of justice. If a claim is allowed to be tried, it is said to be "actionable".[6]
Damage	Is injury or loss to a person's well being.[7]
Damages	The indemnity recoverable by a person who has sustained an injury either in person, property, or relative rights through the fault of another person.[8]
Defendant	A person or party against whom relief or recovery is sought in an action or suit.[9]
Foreseeability	Is to see if a person can anticipate an accident before it happens.[10]
Liability	Is legal responsibility.[11]
Malfeasance	Is the act that a person commits and he knows it to be wholly wrongful and unlawful.[12]
Misfeasance	The doing of a lawful act in an unlawful or improper manner especially in a culpable negligent manner.[13]

Negligence	Defined by the United States Supreme Court to "be failure to do what a reasonable and prudent person would have done under the circumstances."[14]
Nonfeasance	Is the omission to perform a required duty some act which one is bound as a matter of legal or official duty to perform.[15]
Nuisance	Is anything which arises from the unreasonable, unwarrantable or unlawful use by a person of his own property.[16]
Omission	The neglect to perform what the law requires.[17]
Plaintiff	He who, in a personal action, seeks a remedy for an injury to his rights.[18]
Prudent Person	Determining the only line of conduct which was wise to meet the action or conduct of the situation.[19]
Proximate Cause	That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without, would not have occurred.[20]
Res Ipsa Loquitur	Means "the thing speaks for itself." It applies when the defendant's negligence is presumed upon proof that the instrumentality causing the injury was in control of the defendant and that accident would not have happened in the absence of negligence.[21]
Respondent Superior	This person has to answer to the acts of his servants.[22]
Tort	Any wrongful act for which a civil action will lie.[23]
Tortfeasor	Is the person who is guilty of injury caused by negligence.[24]
Tort Liability	The responsibility of one who commits a wrong against the property or person of another to answer to the injured by payment of damages.[25]

REVIEW OF LITERATURE

Negligence and Liability

Negligence is any conduct which falls below the standards established by law for the protection of others against unreasonable risk of harm. In every case involving actionable negligence, there are three elements essential to its existence: (a) the existence of a duty on the part of the defendant to protect the plaintiff from the injury of which he complains, (b) a failure by the defendant to perform the duty, (c) an injury to the plaintiff from such failure of the defendant.[26]

The law prohibits careless action; whatever is done must be done well and with reasonable caution. The failure to employ care when the results are injuries to others may result in tort liability or misfeasance.

Careless action, or negligence, may be defined as the habitual failure to do the right thing. The term "negligence" has been defined by the United States Supreme Court to "be the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done." The essence of the fault may lie in omission or commission. The duty is dictated and measured by the exigencies of the situation. Negligence has always related to the circumstances in which one is placed, and what an ordinarily prudent man would do or omit in such circumstances.[27]

In general, negligence can be of two kinds: (1) behavior which a reasonable man would have realized involved an unreasonable risk of

injury to others, and (2) failure to do an act which one is under duty to do for the protection of another. An act which involves an unreasonable risk of harm to another may be negligent even though it is done with reasonable care, skill, preparation, and warning, because negligence is inherent in the act. In other circumstances, an act may become negligence because of lack of care, skill, preparation, or warning, although the act in itself would not have constituted negligence had reasonable care, skill, preparation, or warning been used.[28]

It then would be negligent to permit pupils to use an instrument or to participate in an activity which is in the control of an individual who knows that the risk of injury is great. Since there exists a special relationship between teacher and pupil, the teacher is duty-bound to control the conduct of pupils in such a way as to prevent any one of them from causing foreseeable bodily harm to others.

Although some types of negligence appear to be outside the scope of the public school teacher's likely conduct, it is easy to imagine situations arising in the ordinary school-day life which might involve most of the types of negligence as defined.[29]

Harper has abstracted a list of ways in which a person could be held accountable for his actions.

1. It is not properly done; appropriate care is not employed by the actor.

2. The circumstances under which it is done create risks, although it is done with due care and precaution.

3. The actor is indulging in acts which involve an unreasonable risk of direct and immediate harm to others.

4. The actor sets in motion a force, the continuous operation of which may be unreasonably hazardous to others.

5. He creates a situation which is unreasonably dangerous to others because of the likelihood of the action of third persons or of inanimate forces.

6. He entrusts dangerous devices or instrumentalities to persons who are incompetent to use or care for such instruments properly.

7. He neglects a duty of control over third persons who, by reason of some incapacity or abnormality, he knows to be likely to inflict intended harm to others.

8. He fails to employ due care to give adequate warning.

9. He fails to exercise the proper care in looking out for persons who he has reason to believe may be in the danger zone.

10. He fails to employ appropriate skill to perform acts undertaken.

11. He fails to make adequate preparation to avoid harm to others before entering upon certain conduct where such preparation is unreasonably necessary.

12. He fails to inspect and repair instrumentalities or mechanical devices used by others.

13. His conduct prevents a third person from assisting persons imperiled through no fault of his own.[30]

Liability for negligence is based upon two considerations: (1) the character of the conduct, and (2) the nature of the results. The amount of caution required is proportioned to the amount of threatened or apparent danger. The legal cause of an injury is the cause which in the natural sequence of events produced the result. If this chain of events is broken in any way, then it could be that the defendant could be relieved of his liability to the plaintiff.[31]

The first test for determining the liability of a person causing injury to others is the test of foreseeability. When a reasonably prudent person could have foreseen the harmful consequences of his

negligent act and disregards the foreseeable consequences, he is liable for negligent conduct. The exposure of persons to unreasonable risks characterizes negligent conduct.[32] The test of foreseeability of danger and the care and caution necessary to avoid it is what would be considered reasonable by an ordinary, reasonable, and prudent man. When a person is doing anything in which an individual of ordinary prudence can foresee danger of harm to others, the law imposes duty upon him to employ reasonable care. For example, the district was not liable for an injury sustained by a pupil who fell through the plaster-board ceiling in a schoolroom when hiding in the attic during a recess game, because it could not have been foreseen that a pupil would gain access to the attic.[33]

The far-reaching implications of liability for negligent conduct may be seen from the following outline abstracted from rules in the law of torts. If the person's negligent conduct has resulted in any injury to another so as to create a right of action, he may also be liable:

1. For physical harm resulting from fright or shock or other similar and immediate emotional disturbances caused by the injury or the negligent conduct causing it,

2. For additional bodily harm resulting from acts done by third persons in rendering aid irrespective of whether such acts are done in a proper or negligent manner,

3. For any disease which is contracted because of lowered vitality resulting from the injury caused by his negligent conduct, and

4. For harm sustained in a subsequent accident which would not have occurred had the person's bodily efficiency not been impaired by the original negligence.

Furthermore, a person may be liable for injuries resulting from his conduct where the prior physical condition of the plaintiff is unknown.[34]

The general theory of liability for tort may be summarized briefly. A tortious act is a wrongful act consisting of the commission or omission of an act by one, without right, whereby another receives some injury, directly or indirectly, in person, property, or reputation. A tort may arise out of the following acts: (a) an act which without lawful justification or excuse is intended by a person to cause harm and does cause the harm or injury complained of, (b) an act in itself contrary to law or an omission of specific legal duty which causes harm not intended by the person so acting or omitting, (c) an act or omission causing harm which the person so acting or omitting did not intend to cause, but which might and should, with due diligence, have been foreseen and prevented.[35]

In Georgia, there is no express statute which abrogates the common law rule of nonliability. A municipality, school district, or board of education is not liable for injuries sustained by a pupil on a public school campus.

> Since the Physical Education and training of school children of elementary and high school grades, including physical and gymnastic exercises, athletics, physical games, sports, and the like, are generally considered a governmental function inasmuch as the physical development of children is as important for good citizenship as their mental development, it is the general rule that school districts, school boards and other agencies or authorities in charge of public school enjoy immunity from tort liability for personal injury or death sustained by pupils, in the absence of legislative enactment to the contrary.[36]

The teacher has been held liable for the creation or maintenance of a nuisance resulting in personal injury to a pupil. Bush v. Nowalk, 122 Conn., 426. The New York rule is even more stringent, where it has been held that boards of education are liable for their own negligence

in failing to maintain a school gymnasium or similar equipment in a reasonably safe condition wherein injury incurred to pupils or other persons occupying the status of invitees.[37]

School districts in the state of Washington are not liable for injuries resulting from accidents relating to any athletic apparatus or appliance (jumping hurdle). Under facts as stated, physical education instructors having charge of supervision of injured students would not be personally liable for a student's injuries, but would be liable for negligently failing to use reasonable care to prevent aggravation of injury. This is a question of fact.[38] An opinion was handed down on the following case:

"A small boy about the age of ten and a grade school student is directed by his physical education instructor to scale a series of four hurdles. The boy informs the instructor that he can't, having tried previously, and the instructor overrides the protest and the student makes the attempt upon the order of the instructor. The boy successfully clears two of the hurdles but misses on the third and breaks his leg, but the instructor does nothing for him at the end of the physical education period which coincides with the end of the school day. The instructor allows the lad to hobble home with the help of a small brother. The boy, as a result, has to spend the next six weeks with his leg in a cast."[38] The instructor was not liable unless he failed to take unreasonable action.

The words of the statute (Laws of 1917, chapter 92, Rem. Rev. Stat., 4706) exonerating school districts from liability for torts of commission or omission relating to playground and athletic apparatus

used in connection with the playground owned, operated or maintained by the school district, are all-embracing. That statute exempts school districts from liability for any and all accidents which occur upon any athletic apparatus or appliance that is used in connection with any playground owned or maintained by the school district.[39]

In the case of Yarnell v. Marshall School District, 17 Wn. (2nd) 284, 135 P. (2d) 317, in addition to allegations that the apparatus involved (a swing of excessive height) was a dangerous instrumentality, and that the defendant school district had been notified and warned by the principal of the school that it was obviously dangerous and should be removed, it was further alleged that the plan adopted by the school district which provided for the use of the swing "was so palpably and obviously dangerous and defective as to impress upon the mind of any reasonably prudent person that it was dangerous and unsafe, and that injury to a pupil of said school of the age of plaintiff by the use thereof would necessarily result." The court nevertheless held that plaintiff had failed to state a cause of action, saying:

> Section 4706 bars any action against a school district for any noncontractual acts or omission of such district . . . relating to any park, playground, or field house, athletic apparatus or appliance owned, operated, or maintained by the school district. The situation disclosed by appellant's complaint falls within the bar of the statute.[40]

The Snowden case, supra, involved a defective baseball backstop. It was held that the exemption from liability given school districts by the 1917 act (28.58.030 RCW) was applicable to a situation where a passerby who was not using the equipment was injured by the collapse of the athletic apparatus or appliance.

As to the second portion of your inquiry which involves the question of the personal liability of the Physical Education instructor, we believe that under the general rule, such instructor would be subject to liability on the same basis as the employee of any other employer. See 43 Am. Jur. 223, Public Officers, 466. Under the facts stated, there is nothing to indicate negligence prior to the accident. However, the statement of facts indicates a possible suggestion of negligence with respect to aggravation of the inquiry.[41]

Another court opinion of importance states:

> We are of the opinion that the Physical Education instructor of the school district who had charge of the supervision of the student at the time of injury would be liable for negligently failing to use reasonable care, in the light of all the circumstances, to prevent the accident or the aggravation of the student's injury. This is basically a question of fact.[42]

The problem of liability of assistant or intern teachers in coaching and physical education has developed recently due to the increased number of intern teachers and large classes that require more than one teacher.

The last legislature of Oregon authorized school districts to employ teacher aides and intern teachers, but they are subject to rules and regulations of the State Board of Education of Oregon. The term "teacher aides" as used in the Act is defined as meaning a noncertified person employed by a school district whose assignment consists of and is limited to assisting a certified teacher. Also, the term "intern teacher" is defined as meaning a regularly enrolled student of an approved teacher education institution who is noncertified and who teaches under supervision of the staff of such institution and of the employing school

district in order to acquire practical experience in teaching and for which the student receives financial compensation from the school district.[43] Oregon statutes relating to student teachers from State Normal Schools vests the student teacher "with full authority to teach during the time such student is so assigned." Thus it would appear that student teachers and aides are subject to the same, or substantially the same rules of law relating to tort liability as may be applied to other employees of a school district.[44] The court in its decision in discussing the nonliability of school officials for the negligence of their subordinates said:

> It is the universal rule that a public officer is not personally liable for the negligence of an inferior officer unless he, having the power of selection, has failed to use ordinary care in the selection.
>
> School directors are entitled to all the immunities of public agents who are charged with a duty which, from its nature, cannot be exercised without availing themselves of the services of others, and the doctrine of respondent superior does not apply in such cases.[45]

Applying the foregoing principles to the inquiry presented, it can be generally stated that a school board principal or superintendent would not be liable for the negligence of a teacher or student teacher which resulted in personal injury to the student. Under the same principle, it would appear that the "supervising teacher" who would not be present at the time of the injury would not be liable any more than a principal or superintendent would be. A superintendent, principal or supervising teacher could only be held "directly" liable if it is illegal and proven that there was a violation of a duty such as hiring an incompetent person as a student aide or intern teacher.[46]

Boundary lines should be kept far enough away from walls and other obstructions to prevent possible collisions. Tree roots, posts, stones, and the like should be removed from the play areas. Rakes, shovels, and other tools must not be left on the ground. Loose, soft gravel can also prove to be dangerous. Excess gravel should be carried away. Sweep sand from outdoor hard surface courts because it promotes slipping.

Many elementary and high school children have the misguided idea that a person who is safety-minded is a sissy. The instructor must correct this erroneous thinking. A proper attitude must be taught, not with the idea of having students refrain from all activity that might have a degree of danger attached, but they should study the possible areas of danger and do everything possible to eliminate the hazards. When they have done this, they should go ahead confidently with their activity.

Another point to be considered deals with the reporting of injuries. Sometimes boys get the idea that it is a sign of manliness not to report and take care of an injury or illness. This matter should be discussed with the students and the importance should be emphasized. As an aid in reporting accidents, a definite system should be worked out and all pupils should be aware of the proper procedure.

First aid supplies should be handy to all play areas and should be kept under lock and key. The supply of material should be checked periodically and items that are getting low should be replenished. A person trained in first aid should be available at all times and should have access to the equipment.[47]

Another area in which teachers are often liable is that of first aid and medical treatment of injured pupils.

If a pupil is injured, the teacher present should immediately call for the school nurse and physician. If no person with medical training is available, the proper action to be taken by the teacher depends upon the nature of the injury. If immediate first aid treatment is necessary, the teacher is obligated by his relationship to the pupil, in loco parentis, to do the best he can. Only such first aid treatment knowledge expected of laymen is required of teachers in these circumstances, but every teacher should be trained in at least the rudiments

of first aid. If the injured pupil does not need immediate attention, the teacher should await the attendance of a medically trained person rather than attempt to do something which might harm the pupil. Either the failure to act when he should or unwise action may lead to a charge of negligence against the teacher.[48]

Teachers without medical training should not attempt medical treatment. If they do so and act unwisely, they may be subject to a charge of negligence. For example, two teachers who held a pupil's infected hand in scalding water causing blisters and permanent disfigurement were held to be negligent, although no one would presume for a moment that the teachers were not well intentioned. In this case if the teachers thought that the pupil's infection was so serious that it could not wait until after school for attention by his parents or family physician, they should have sent the boy home with a note to that effect, or sent him directly to the family physician.[49]

Cases Involving Liability

New York - 1939 - Kolar v. Union Free School District No. 9, Town of Lenox 8 NYS. (2nd) 985

Pupil injured when jumping over German horse in Physical Education class. Alleged negligence in that instruction was inadequate before dangerous exercise. Held board would be liable only if instructor were incompetent. Instructor found competent. Instruction had been given; supervision of pupils during exercise was adequate. District not liable.

Montana - 1943 - Bartell v. School District No. 28, Lake County, 137 p. 2d 422

Physical Education teacher told boy, not in class, to stand at a certain place and mark where shot fell in shot putting exercise; instructor cast shot which hit plaintiff's head. Alleged that immunity rule did not apply because there was positive action to place plaintiff in danger. Held that "active misconduct" might be an exception but not the circumstance here. District not liable. Plaintiff sued district only -- not the Physical Education teacher.

New York - 1946 - Wilber v. City of Binghamton 66 NYS 2d 250

Pupil injured by stone batted by another pupil when teacher in charge of playground had gone into building to answer phone. Held every act of every pupil cannot be anticipated. City not liable.

California - 1943 - Charonnat v. San Francisco, Unified School District 133 (2d) 643

Two boys had a fight during noon recess; one was injured. One teacher was supervising large grounds with 150 pupils playing. Held supervision inadequate. District liable.

California - 1942 - Brown v. City of Oakland 124 p. (2d) 369

Sand pit constructed for broad jump had been abandoned; child attending nearby ballgame cut on glass in sand. Held invitation to attend ballgame included invitation to use equipment in close proximity thereto. Use of abandoned sand pit as sand box by children foreseeable. City liable.

New York - LaValley v. Stanford - 272 App. Div. 183, 70 NYS (2d) 460 (1947)

An instructor in Physical Education was held personally liable for permitting two strong boys, who had received no instructions in boxing, to engage in that sport with the result that one of them was very seriously injured. The court stated that it is the duty of a teacher to exercise reasonable care to prevent injuries to the pupils under his care and supervision. According to the court, pupils should be warned before they are permitted to engage in a dangerous and hazardous exercise. Teacher liable.

New York - 1944 - Govel v. Board of Education of Albany 60 NE (2d) 133

Pupil injured in running-jump somersault exercise. Teacher liable for injury sustained in sport beyond skill of pupil.

New York - 1943 - Millver v. Board of Education, Union Free School District No. 1 of Albion 50 NE (2d) 529

Pupil injured when playing on fire escape at recess, access being possible because of defective door; sued teacher in charge of playground at recess and school district. Teacher liable because of inadequate supervision.

New York - 1940 - Cambareri v. Board of Education of Albany 28 NE (2d) 968

Pupil injured in tumbling race because mat, not firmly fixed, slipped on slippery floor. District liable.

New York - 1941 - Lee v. Board of Education of New York City 31 NYS (2d) 113

Pupil hit by car when playing football on street as part of physical education class; street not marked off for play. Question of negligence for jury.

New York - 1946 - Sullivan v. City of Binghamton 65 NYS (2d) 838

Pupil injured by fall from ramp at recess; sued city and school district; case against city dropped. School district liable for maintaining dangerous playground equipment.

New York - 1939 - Gardner v. State of New York 22 NE (2d) 344

Pupil injured in head-standing exercise; sued state because school was connected with state normal school. State liable for failure of Physical Education teacher to give sufficient instruction before difficult exercise.

California - 1940 - Forgnone v. Salvador Union Elementary School District 106 p. (2d) 932

Pupil twisted arm of another during recess. Held negligence in not providing supervision as required by law. District liable.

California - 1939 - Buzzard v. East Lake School District of Lake County 93 p. (2d) 233

Pupil injured by bicycle ridden by another pupil on playground. Held negligence to permit pupils to ride bicycles on playgrounds while others were playing. District liable.

Georgia - 1957 - Hale v. Davies, 86 GA. App. 126

A high school football player sued the coach and the high school athletic association, a corporation, for the injuries sustained while participating in a football practice. The coach was employed and paid by the high school; he was not employed by the athletic association. The court dismissed the action and held:

> Although the plaintiff was a member of the high school football team, he could not have maintained an action against the school for an injury received while practicing or playing on its football team. Since the Physical Education and training of school children of elementary and high school grades, including physical or gymnastic exercises, athletics, physical games, sports, and the like, are generally considered a governmental function, inasmuch

> as the physical development of children is as important for good citizenship as their mental development, it is the general rule that school districts, school boards, and other agencies or authorities in charge of public schools enjoy immunity from tort liability for personal injuries or death sustained by pupils or other persons in connection therewith, in the absence of a legislative enactment to the contrary, at least where only negligence was involved. It is conceded by the plaintiff that he could not have maintained an action against the school as such.

On the basis of the above authority, it is my opinion that a local school district is not liable in tort under law for injuries sustained by a pupil engaged in school athletic activities.

The preceding cases that were reviewed were placed in the order as district not liable to district liable.

The reason for the author choosing playground cases is the fact that so many Physical Education instructors and coaches are in charge of playground supervision, but all cases could be found in physical education classes.

CAUSES OF LIABILITY

Ways of Being Liable for a Tort

In a physical education class, it is very easy for the instructor to have students engage in activities which are beyond their manageable skills. Some of these activities are tumbling, trampolining, or any activity which is used to develop the motor skills of the individual.

Along the same line of having a student engage in an activity beyond his skill, the student should not be allowed to participate in an activity without being given adequate instruction as to the type of activity and the hazards involved.

The author also feels that some of the coaches and Physical Educators conduct activities in which they themselves are very poorly trained or in which they have not received the proper background.

The use of inferior equipment also rates high in physical education liability cases. By allowing the continued use of this equipment, the instructor, or the school district, is inviting liable suits.

The failure to provide adequate supervision is both an administrative and supervisory error. The number of students may be too large for one supervisor; this is an administrative error. The failure of supervisors to provide on the spot supervision can be committing acts of omission.

It is just as wrong not to provide treatment to an injured person as it is to administer the wrong kind of treatment. Every coach and physical educator should act as a prudent person after an accident.

Another wrong is leaving the scene of activity for a phone call,

cigarette, salesman, or any other reason that could have waited until the end of the class or practice period.

Allowing "horseplay" to get started is also a wrong. It may not look serious, but if an injury results, the physical education instructor or coach is liable for not stopping this type of activity.

Allowing a person to participate in a sport or physical education activity without a physical examination is inviting tort liability.

When a coach or physical educator allows boys to participate in a contest or activity in which the ability and the size of the opponent is superior to the participant's ability, the instructor can be held liable.

One of the most serious problems that coaches and physical education instructors have is the providing of transportation for their athletes. The permitting of a student to drive his car, or borrowing a car to transport participants to ballgames or physical education exhibits makes you and the person whose car you borrow responsible for the action of the driver.

Another phase of physical education and athletics that the author felt is a "wrong" is the running of laps, push-ups, and set-ups as means of punishment. The participant could develop a heart condition due to the fact that it is beyond his ability. We must remember that we are trying to help young people to develop physically fit bodies.

Failure to lock up hazardous equipment when there is no supervisor has resulted in a number of suits from such acts of omission. Any person will try to jump on the trampoline or use "attractive nuisance" equipment if it is available.

There has been very little research completed as to the liability of the teacher-aide, substitute teacher, intern teacher, or to the supervision of an activity without the constant attendance of his or her supervisor.

There is a concern about liability in the use of intern or assistant teachers which has developed due to increased teacher loads and consequent need for these helpers. If, however, a pupil is injured while under the supervision of a student teacher or aide, it is not usually the district that is liable, nor is it the regular teacher. Assuming that the aide has been carefully chosen, the district is not liable for negligent conduct. Otherwise the district could be liable, but if the helper is hired on the recommendation of the teacher, then the teacher is liable for recommending an incompetent aide.

SUGGESTED METHODS OF REDUCING THE POSSIBILITY OF LIABILITY

Physical Education is one area that needs to be evaluated more closely because of the increased number of participants and the lack of instructors. Districts tend to hire unqualified personnel in order to get qualified teachers of other subjects.

All school districts, except in California, New York, and New Jersey, hide behind the common immunity law. They state that they are not responsible for acts of their servants. Yet they hire and fire according to the quality of work produced, skill which their students in the district achieve, and the number of wins and losses that their athletic teams have during the year. The author believes that they should also be held liable for their servants. They should make certain that the servant they hire has the best training for the job as to subject background, skills, philosophy, and objectives of physical education and coaching.

The author feels that the school board can help remove some of the chances for liability if they would do the following:

1. Provide the instructor or coach with adequate liability coverage.
2. Hire only qualified persons with backgrounds in the skills that are to be taught and are being taught.
3. Provide safe equipment to be used.
4. Adjust the size of the physical education classes to be taught during one period. The recommended size by educators is no more than 25.
5. Provide the school with a nurse or doctor who would be on duty for all sports and physical education activities.

Every individual in physical education and coaching, at one time or another, could be sued because of acts of omission or commission. To eliminate this possibility, the author makes the following suggestions:

1. Before the program is started, the instructor or coach should send to the administrator's office his aims, objectives, and an outline of each course that is to be taught. He should also include the method of instruction, aids being used, and the time allotted for each activity.

2. Make weekly or even daily checks of equipment being used and make a report to the superintendent or the board of education with a recommendation to be sent back to the department.

3. The physical education instructor should be sure that when teaching stunts or acrobatics he does not add fancy to facts for the instructor should remember that every child advances differently.

4. Coaches should be sure that each participant is "warmed-up" thoroughly and that every precaution is taken for his safety before the game and before practice sessions.

5. Remove an injured boy even if it would mean losing the game. If something happens to him, you might be working for someone else the rest of your life because of your act of omission or commission.

6. Don't allow a participant to drive someone else's car to games for the purpose of transportation for your team. You and the owner of the other car are both liable.

7. Call or have a doctor administer all first aid treatment if possible. If you do not have a doctor in your town, call a registered nurse. Don't play doctor in any way. Give first aid treatment only. If unsure about the nature of an injury, call a doctor or nurse.

8. Remove any object that has sharp corners from the play area. Keep all hazardous equipment locked up unless under the direct supervision of the instructor.

9. Provide a large enough area for the game or stunt that is being performed so that there will be no chance of falling in bleachers or hitting sharp corners. Pad all pointed, sharp objects.

10. The physical educator or coach could purchase liability insurance to add to their protection from being sued. The author would suggest a $50,000 policy.

CONCLUSIONS AND RECOMMENDATIONS

In conclusion the author feels that the college training physical education instructors and coaches should somewhere in the curriculum make the student aware of the most frequent danger spots of tort liability.

If a person in his instructional training days would spend adequate time reading or studying injuries that can result from different activities, how to recognize them, and how to give aid to the injured, there is very little chance of his being sued later on in his teaching career.

The author feels that any person in physical education or athletics should keep up to date on his reading concerning methods and instructions so as to broaden his background. This will help the person to act as a prudent person in time of injury.

If every person who enters the field of physical education and coaching would first purchase liability insurance up to $50,000, he would eliminate the chance of a judgment against himself.

If a physical education instructor or coach acts as a prudent person, there would be no fear of teaching motor skill activities.

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