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LIABILITY FOR ACCIDENTS IN
PHYSICAL EDUCATION

by

Clinton N. Fitzpatrick

LIABILITY FOR ACCIDENTS IN
PHYSICAL EDUCATION

A Term Paper
Presented in Physical Education 530
To Eastern Illinois University

In Partial Fulfillment Of The
Requirements For the Degree
Master of Science in Education

by

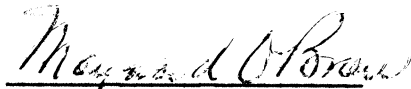
Clinton N. Fitzpatrick

July, 1960

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PHYSICAL EDUCATION

This paper has been approved as
partial fulfillment of the require-
ments for the Degree Master of Science
in Education.

Approved:



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ACKNOWLEDGMENTS

The writer wishes to express his indebtedness to Dr. Maynard O'Brien, Physical Education Department, Eastern Illinois University, for his assistance in the preparation of this paper.

To my wife, Veronica, for her patience and understanding love during the preparation of the paper.

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I. STATEMENT OF PROBLEM

The problem of liability for injuries that occur in physical education is of great concern to physical educators according to Voltmer and Esslinger.¹ They state that:

Physical educators have become increasingly concerned about the legal implications of injuries which occur in the physical education program. The increasing number of law suits to collect damages for injuries incurred in physical education has serious implications for all professional workers in the field. Not only can they be personally sued for damages but a suit successfully brought against the school district may eliminate or seriously emasculate the physical education program.

With this view in mind, it is the purpose of this paper to study the basic principles of legal liability as they are related to the field of physical education and to present them in a simplified manner.

An understanding of the principles of legal liability could possibly reduce the number of liability cases that occur in the physical education program. An examination of statistics shows a need for more attention paid to the legal implications of liability. At least 264 cases that involved liability in physical education and athletics have been examined. It was found that two-thirds of these cases have occurred since 1942, and that half of them have occurred since 1945.²

Factual information can be used by the physical educator to guide and direct his program to enable him to meet the safety needs of the

¹Edward F. Voltmer and Arthur A. Esslinger, The Organization and Administration of Physical Education (New York: Appleton-Century-Crofts, 2nd Edition, 1949), p. 203.

²Samuel M. Fahr, "Legal Liability for Athletic Injuries," Journal of Health, Physical Education, and Recreation, XXIX (February, 1958), pp. 12, 78.

students. The following statistics substantiate the well established fact that more injuries occur in physical education classes, intramurals, and varsity sports than anywhere else in the school program.

Poe³ discovered in a study in 1941 that of the 168 legal court cases involving public school pupils, the highest number occurred in health and physical education, and a comparison of the number of reported legal cases revealed the following:

Causes	Number
Dangerous or defective condition of school buildings.....	24
Industrial arts.....	16
Health and Physical Education.....	76
Transportation of pupils.....	35
Miscellaneous.....	<u>17</u>
	Total 168

The National Safety Council⁴ revealed that in 1953 in school buildings about one-third of the injuries requiring the attention of a doctor or causing absence from school occurred in gymnasiums. On the school grounds they occurred most frequently in football and baseball during unorganized play and in running accidents and falls during unorganized play.

The following data given by the National Safety Council⁵ also indicates the number of accidents occurring in the field of physical education as compared to other areas in the school plant. The statistics cover all grades from kindergarten through the twelfth grade, and are

³Arthur Poe, School Liability for Injuries to Pupils (New York: New York Teachers College, Bureau of Publications, 1941), p. 5.

⁴The National Safety Council, Accident Facts, 1953.

⁵Ibid., 1955, 1957.

based upon all the accidents reported to the National Safety Council in the years of 1955 and 1957. The statistics are based upon the school plant accidents which totaled 90.1% of the total number of accidents reported of school jurisdiction type.

Causes	Percent	
	1955	1957
Auditorium and classrooms.....	9.4%	9.7%
Corridors.....	4.0	2.8
Fences and walls.....	1.0	1.1
Laboratories--homemaking.....	.7	.6
Laboratories--science.....	.6	.5
Lockers (room and corridor).....	1.1	.8
Playrooms.....	1.4	2.2
Shops.....	5.4	4.6
Showers and dressing rooms.....	.9	1.0
Stairs and stairways (inside).....	3.9	3.2
Steps and walks (outside).....	2.2	2.0
Toilets and washrooms.....	1.4	1.1
Apparatus (playground).....	5.0	5.6
Baseball--softball.....	3.6	5.2
Basketball.....	5.9	6.7
Circle games.....	.4	.8
Football.....	6.9	8.7
Hockey.....	.2	.2
Soccer and soccer type games.....	1.7	1.9
Swimming.....	1.3	1.0
Track and field events.....	1.1	2.4
Volleyball and similar games.....	2.2	2.5
Other organized games.....	7.8	8.9
Unorganized activities.....	7.4	9.5
Other buildings.....	1.9	2.0
Other grounds.....	12.7	6.3

Statistics released by various states operating under benefit and protection plans show the percentage of occurrence of injuries in various athletic activities. The data clearly points out those activities where more concentrated attention should be given to do whatever is possible to prevent accidents.

During the school years of 1930-1931 through 1952-1953, reports of injuries for which claims were paid in Wisconsin indicate the

following:⁶

Football.....	58.1%
Basketball.....	21.6
Boxing.....	2.8
Physical education.....	6.6
Wrestling.....	1.7
Other sports.....	9.1
Travel.....	0.1

The following data indicates percentages of injury payments made in Minnesota from 1937 to 1952:⁷

Baseball.....	3.8%
Basketball.....	22.5
Football.....	62.1
Hockey.....	1.9
Physical education.....	4.3
Swimming.....	0.1
Track.....	2.5
Wrestling.....	1.7
Other.....	0.1

Michigan compiled the following data from thirteen years of experience operating on a benefit plan:⁸

Football.....	68.8%
Basketball.....	16.6
Physical education and intra- mural.....	6.8
Baseball.....	4.6
Track and cross country.....	2.3
Swimming.....	0.2
Wrestling.....	0.4
Transportation.....	0.1

The variations of percentages in the preceding statistics are caused by different schedules on which payments are allowed. Some

⁶Wisconsin Interscholastic Athletic Association, Thirtieth Year Book, 1953, p. 205.

⁷Minnesota State High School League, Official Handbook, 1952, p. 94.

⁸Michigan High School Athletic Association, Bulletin, Annual August Issues Since 1941.

percentages appear considerably higher in some states than others. This results from the fact that a state may allow a claim for a reported injury that might not be covered in another.

The frequency of accidents resulting in liability suits should be of concern to everyone connected with the operation of the school system, but especially to those people working in physical education. The National Safety Council⁹ sent questionnaires to cities in various states in order to attain information on the subject of school liability. The results showed that all the school systems were concerned and that practically all the teachers were covered by insurance. Of particular interest was the section in the questionnaire concerning student coverage. Of the ten cities in Illinois that sent back the questionnaire, results indicated that three districts did not provide coverage for interscholastic athletic participants. However, all ten cities replied that they had an accident plan available in the schools. Statistics showed that the biggest percentage of the schools did have an accident plan available.

Many times the occurrence of a liability suit resulting from accidents occurring in physical education activity has a chance to result in some very uncomfortable circumstances on the part of the defendant. The most important one would probably be having to meet judgments that may be ruled against the defendant. When an individual is held liable for an accident, he must pay the person to whom the judgments have been

⁹The National Safety Council, School Liability Questionnaire, Transcripts.

awarded.¹⁰ Circumstances of this nature might be prevented if the individual had an understanding of the legal principles of liability. It is up to the individual to be familiar with the principles of law governing his particular field.

¹⁰ Herbert J. Stack and Elmer B. Siebrecht, Education for Safe Living (New York: Prentice-Hall, Inc., 1947), p. 350.

II. DEFINITION OF LEGAL TERMS

For purposes of clarification and convenience to the reader, certain legal terms used in this paper shall be defined at this time.

ACTION. An ordinary proceeding in a court by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong; the right to sue or to bring action.

ASSUMPTION OF RISK. The term is usually employed as applying to the risks and dangers ordinarily incident to the employment of a servant and which he assumes, if they are so obvious that he is presumed to know of their existence and in respect to which the master is not required to warn a servant of ordinary intelligence, knowledge and experience.

CIVIL ACTION. An action brought to enforce a civil right.

COMMON LAW. A system of elementary rules of general judicial declarations of principles; in its broad sense it is that great body of unwritten law, founded upon general custom, usage, or common consent, and in natural justice, or reason.

CONTRIBUTORY NEGLIGENCE. Such negligence on the part of the plaintiff as to make the injury the result of the united, mutual, concurring, contemporaneous negligence of the parties.

CORPORAL. Pertaining to the body; as corporal injury.

DAMAGES. Idemnity to the person who suffers loss or harm from an injury; a sum recoverable as amends for a wrong.

IMMUNITY FROM SUIT. Freedom from liability in a civil action.

IN LOCO PARENTIS. In the place of a parent.

LIABILITY. That condition of affairs which gives rise to an obligation to do a particular thing to be enforced by action.

PLAINTIFF. A person who brings a suit, action, bill, or complaint.

PRUDENCE. Such care and diligence as an ordinary person would use under the same or similar circumstances.

PROXIMATE CAUSE. That cause of an injury which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the injury would not have occurred.

QUASI. Relating to or having the character of.

RESPONDENT SUPERIOR. Let the superior respond, that is, let the principal or master be answerable for the acts of his agent or server.

SOVEREIGN. A ruler; a king; the supreme power in a government.

STATUTE. An act of the legislature as an organized body; it is the written will of the legislature, expressed according to the form necessary to constitute it a law of the state, and rendered authentic by certain forms and solemnities.¹¹

¹¹James A. Ballentine, Law Dictionary with Pronunciations (Rochester: Lawyers Co-operative Publishing Company, 1948).

III. NEGLIGENCE IN THE LAW

The basis for liability suits in physical education stems from negligence on the part of the administrator or teacher. Negligence is defined as the failure to act as a reasonably prudent and careful person would under the circumstances involved.¹² Therefore, it is up to the courts to decide whether the defendant involved in a liability suit acted as a reasonably prudent and careful person. Courts interpret a reasonably prudent person to be one who would anticipate danger or accident.¹³ The courts place emphasis on the principle of foreseeability; that is, the teacher would be held negligent if he acts in such a way any reasonably prudent person would have regarded as dangerous to the pupil's safety.¹⁴

According to the great weight of authority, negligence can not occur unless there is a duty toward the person injured. Rosenfield¹⁵ points this out when he states:

The teacher is "in loco parentis" (in place of a parent) in relation to the pupil. As a result of this relationship the teacher's duties and rights may be even greater than those of a parent. The teacher must act in relation to the child as a reasonably prudent and careful person would act under the circumstances. This is one of the conditions of a teacher's position. Where no duty is involved, there can be no negligence.

¹²Harry N. Rosenfield, Liability for School Accidents (New York: Harper and Brothers Publishers, 1940), p. 3.

¹³Voltmer and Esslinger, op. cit., p. 203.

¹⁴Newton Edwards, The Courts and the Public Schools (Chicago: University of Chicago Press, 1955), p. 475.

¹⁵Rosenfield, op. cit., p. 4.

Harper¹⁶ points out that negligence may arise from a number of aspects of negligent behavior. An act may be negligent because:

1. It is not properly done; appropriate care is not employed by the actor. Example: the instructor who permitted a student to use the trampoline without spotters.
2. The circumstances under which it is done create risks, although it is done with due care and precaution. Example: two softball games are played on opposite ends of an area which is not large enough to avoid overlapping outfielders.
3. The actor is indulging in acts which involve an unreasonable risk of direct and immediate harm to others. Example: the physical education instructor placed a boy at a certain position to mark where the shot-put landed. The instructor put the shot which hit the boy's head.
4. The actor sets in motion a force, the continuous operation of which may be unreasonably hazardous to others. Example: a person who, without justification, frightens a horse or dog which becomes uncontrollable.
5. He creates a situation which is unreasonably dangerous to others because of the likelihood of the action of third persons or inanimate forces. Example: instructor permitted a student to ride a bicycle on a playground which was over-crowded with other pupils. This resulted in an injury to another student.
6. He entrusts dangerous devices or instrumentalities to persons who are incompetent to use or care for such instruments properly. Example: instructor permits students to use fencing foils without supervision.
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 upon others. Example: failure of instructor to supervise and control the conduct of a bully on a play area.
8. The actor failed to employ due care to give adequate warning. Example: instructor who was responsible for supervision absented himself from the area. Another example was involved when a student was struck by a car

¹⁶Fowler W. Harper, A Treatise on the Law of Torts (Indianapolis: Bobbs-Merril, 1938), pp. 171-176.

when crossing a street between the gymnasium and the athletic field. Negligence was found because no cross-walk was provided, no safety instruction was given to the students, and no warning signs for motorists were posted.

9. Of a failure to exercise proper care in looking out for persons whom the actor has reason to believe may be in the danger zone. Example: the physical education teacher who did not clear the students from the area directly behind the batter in a baseball game.

10. The actor fails to employ appropriate skill to perform acts undertaken. Example: inability to perform first aid when it should have been administered.

11. He fails to make adequate preparation to avoid harm to others before entering upon certain conduct where such preparation is reasonably necessary. Example: the instructor permitted students to use horizontal bar without a mat underneath.

12. He fails to inspect and repair instrumentalities or mechanical devices used by others. Example: the failure to inspect flying rings and other hanging equipment periodically.

A negligent person may not always be held liable due to a series of defenses set up by law to protect the individual. Stack and Siebrecht¹⁷ list these defenses as:

1. To result in liability the negligence must have some substantial connection with the injury complained of.

2. Just as it is true that a teacher must refrain from being negligent with respect to the pupils, so must the pupils refrain from being negligent with respect to their own welfare.

3. A person cannot sue a teacher to recover for damages for a risk voluntarily assumed through participation in an activity of which the risk was a normal and necessary concomitant.

¹⁷Stack and Siebrecht, op. cit., p. 352.

4. No one can be held liable for an injury caused by an act of God, such as the unexpected slamming of a glass transom due to a sudden gust of wind.

It is up to the courts to make the final decision as to whether negligence was the cause of the accident. Many times they will be guided by similar cases that have preceded theirs, and it is against this background of judicial technique that the nature of negligence must be viewed.¹⁸ Therefore, people working in the field of physical education should become acquainted with some of the more important liability cases related to their field. An individual who has an understanding and knowledge of the principles of law governing his field of work can usually control accidents. The individual who is not familiar with the law governing his chosen profession can not devote his ability to the fullest extent.

¹⁸Rosenfield, op. cit., p. 3.

IV. PERSONS THAT CAN BE HELD LIABLE

The possibilities of legal involvement by physical education personnel in liability cases have been pointed out previously in this paper. And with the increase of the number of activities being offered in the physical education programs today, there is going to be an increase in the risks of individual liability. In liability suits, certain individuals might be held liable while others are immune from such liability. The following is a breakdown on those persons that might possibly be held liable in case of an accident.

THE SCHOOL DISTRICT AND SCHOOL BOARD. The common-law rule is that a school district, or a school board, is not liable for injuries to pupils in the absence of a statute.¹⁹ The fundamental reason supporting this common-law rule of nonliability is that the state, as a sovereign, is immune from liability. Therefore, the school district being an agent of the state is also cloaked with the state's immunity.²⁰ The theory of sovereignty is based upon the medieval dogma that the king could do no wrong, but the absence of a king in America allowed the state to be assumed as sovereign. This led to the theory that the state could not be sued without its consent.²¹

¹⁹Madaline Kintner Remmlein, School Law (New York: McGraw-Hill Company, Inc., 1950), p. 254.

²⁰Edwards, op. cit., p. 394.

²¹Ibid., p. 394.

Williams and Brownell²² state that boards of education are regarded as quasi-corporations of the state and as such they are not liable for injuries caused by the negligence of their agents. However, the boards are liable for their own negligence. Williams and Brownell²³ further state that:

In this case negligence must be proved, and depends largely on defects of construction of facilities or defects in maintenance which have been reported by the person in charge to the board which is responsible for keeping the facilities in good repair. If the board of education employs a certified or licensed teacher of physical education, and the teacher fails to notify the proper authorities that the equipment or facilities are unsafe, the teacher rather than the board is remiss in the performance of duty.

Certain cases related to the common-law of nonliability of school districts and school boards have emerged. In the case of Anderson v. Board of Education,²⁴ a pupil was struck on the head by a swing and killed while legally present on the playground of a school. It was claimed that the board was negligent because it permitted a dangerous situation to exist. The court, however, refused to allow damages due to the fact that the board was an agent of the state.

In a recent Michigan case,²⁵ a spectator at a football game was injured when the bleachers on which he was seated collapsed. He brought suit against the school district claiming that they were negligent in setting up the bleacher without solid footing, and because the district,

²²Jesse F. Williams and Clifford L. Brownell, The Administration of Health Education and Physical Education (Philadelphia: W. B. Saunders Company, 1956), pp. 390-391.

²³Ibid., p. 391.

²⁴Anderson v. Board of Education, 49 N.D. 181, 190 N.W. 807.

²⁵Richards v. School District of City of Birmingham, 83 N.W. (2nd) 643 (Mich.).

in sponsoring the football game, was exercising a proprietary function. The lower courts ruled in favor of the school district, whereupon the plaintiff appealed, but to have the higher court uphold the lower court's decision. Again the decision was based upon the theory that the district was performing a governmental function vested in it by the law.

In Alaska one whose car was in collision with a school bus as the result of the alleged negligence of the bus driver brought an action against the district for damages incurred.²⁶ The court ruled in favor of the district by claiming that the district was an agency of the state, and it was not liable on account of injuries resulting from the negligence of its officers or employees in the performance of their duties, in the absence of statute imposing such liability.

The weight of precedent of previously decided cases supports the doctrine of immunity from liability for school districts and school boards. There is a trend, however, toward disregarding the doctrine. If immunity from liability was disregarded, school districts could suffer tremendously from judgments that might be ruled against them.

SCHOOL BOARD MEMBERS OR TRUSTEES. Although most school districts and boards of education are immune from liability, the question is often raised as to the possibility of board members or trustees being personally held liable for injuries that occur in schools of their jurisdiction. It seems to be a common agreement among most authorities that school board members and trustees are immune from personal liability when acting

²⁶Tapscott v. Page, 17 Alaska 507.

in good faith in their official capacity, unless provisions are made so by statute.²⁷ In commenting upon this principle of liability, Rosenfield²⁸ says that:

....in the absence of evidence of bad faith or improper motives, school-district trustees and officers cannot be held personally liable for the negligent performance of the duties imposed upon them in their corporate capacity as a board, nor can they be held liable for the negligence of the employees of the school district. Some states have put this exemption of board members from liability directly into statutory form.

TEACHERS, SUPERVISORS, AND COACHES. Knowing that school districts and school boards are immune from liability, many individuals will then file suit against school employees. It is for this reason that workers in the field of physical education have to be alert for accidents. They are personally liable for their own negligence.²⁹ Samuel M. Fahr³⁰ reveals two contrasting cases that illustrate this point of view. The essence of each case is as follows:

In a recent New Jersey case, a 14 year old high school Freshman jumped a gym horse, the mat slipped, and he broke his arm. He sued the gym teacher unsuccessfully. First, he had been warned that there was always a risk in this activity; so he assumed the risk. Second, proper mats had been carefully placed about the horse. Third, the defendant coach had demonstrated the trick beforehand. Fourth, the gym instructor personally, and with a student volunteer, supervised the class. Finally, correct first aid measures were immediately administered.

Contrast that case with another in the same year. The plaintiff was seriously injured in the head in a school boxing match. He had had no instruction, was matched against a boy who had been boxing for two years and was not wearing a protective helmet. The plaintiff successfully sued the coach.

²⁷Lee O. Garber, The Yearbook of School Law (Danville: Interstate Printers and Publishers, 1959), p. 68.

²⁸Rosenfield, op. cit., p. 41.

²⁹Ibid., p. 43.

³⁰Fahr, op. cit., pp. 12, 75.

In Morris v. Union High School District,³¹ a high school football coach was found negligent in permitting an injured player to participate in a game when he knew or should have known the boy was unfit.

A high school physical education instructor in California was held not negligent in permitting a vigorous, robust, sixteen year old boy, whom no one knew to be suffering from a cerebral artery defect ruptured as a result of a blow from a basketball, causing death, to participate in the game after instructing him as to the rules.³²

Also in California, a girl was allowed to recover for injuries suffered from a tumbling exercise.³³ The court based its decision on the fact that the teacher should have taken into consideration such factors as age, sex, physical characteristics and defects, general aptitude for athletics, and intelligence, before requiring her to perform the exercise. It is their opinion that this is the duty of all teachers.

Knowing that there will continue to be increasing pressure to bring suits against the teacher, supervisor, or coach, physical education personnel should give this problem of liability a great deal of consideration.

³¹Morris v. Union High School District, 160 Wash. 121, 294 P 998 (1931).

³²Kerby v. Elk Grove Union High School District, 1 Cal. App. (2d) 246, 36 P (2d) (1934).

³³Bellman v. San Francisco High School District, 11 Cal. (2d) 576, 81 P (2d) 894 (1938).

V. SOURCES OF SUITS IN PHYSICAL EDUCATION

School authorities have to be constantly aware of the possibility of accidents and injuries occurring while the students are under their supervision. The students' safety is in their hands at this time. This awareness applies especially to the individual teacher and coach because they do not have the immunity status as do the school district and board of education.

If the preceding view is kept in mind, the teacher and coach will, or should, know the more common sources of accidents in physical education that might lead to liability suits. Voltmer and Esslinger³⁴ list the following as the most common sources of accidents in physical education:

1. Unsafe facilities:
 - a. slippery floors (especially following dances)
 - b. holes or ruts in outdoor areas
 - c. dangerous obstructions on play areas
 - d. bleachers without guard-rails
 - e. the playing of basketball games on adjacent courts which have the same or overlapping sidelines
 - f. outdoor areas which are lined with unslaked lime
 - g. the use of streets to which automobiles have access for physical education classes and activities
2. Defective equipment:
 - a. spring boards
 - b. flying rings
 - c. diving boards
 - d. horizontal bars
 - e. ball bats

³⁴Edward F. Voltmer and Arthur A. Esslinger, The Organization and Administration of Physical Education (New York: Appleton-Century-Crofts, Inc., 1958), pp. 458-460.

- f. mats
 - g. climbing ropes
 - h. improperly padded radiators
 - i. unsecured lockers
3. Improper supervision:
- a. absent from class
 - b. use of janitor, student teacher, or student assistant while absent from class
 - c. instructor is a passive observer
 - d. failure to prevent pupils from harming others (this is dependent upon the size of the class; district might be held negligent in this case)
 - e. failure to lock up facilities when instructor absent
 - f. failure to inspect equipment and facilities for defects
 - g. failure to report hazardous conditions
 - h. permitting use of faulty facilities before being repaired
4. Improper instruction:
- a. failure to provide adequate instruction
 - b. permitting students to engage in activities that are beyond their ability to perform safely
 - c. failure to instruct a pupil as to the proper method of using a dangerous apparatus
5. Transportation:
- a. use of unbonded public common carriers
 - b. use of private cars without the car and the driver being completely insured
 - c. failure of the school to take out insurance

Some authorities on liability believe the curriculum in physical education is a source for liability suits. Leibee³⁵ contends that essentially the problem involved is the classification by the courts of particular physical education curriculum requirements as dangerous to pupils, upon which classification a finding of negligence has been allowed. A case that confronted a court in California exemplifies Leibee's con-

³⁵Howard C. Leibee, Liability for Accidents in Physical Education, Athletics, Recreation (Ann Arbor: Ann Arbor Publishers, 1952), p. 23.

tention. Recovery was permitted from a school district for injuries sustained in a tumbling exercise because the exercise was classified as not acceptable for young ladies of the age of the injured student.³⁶

Corporal punishment is another possible source of liability in physical education. It is advisable for teachers and coaches to know the legal implications of corporal punishment in their state. A statement by Williams and Brownell³⁷ clearly illustrates this point of view:

Prosecution rests largely upon whether the teacher has exceeded the limits fixed by law or regulation. Permission granted by the parent to chastise a child does not absolve a teacher from liability if the punishment results in disfigurement or permanent injury. This statement is based upon the principle of law that a parent cannot delegate a greater authority than he himself possesses. Athletic coaches who obtain written permission from parents for sons to engage in interschool competition, with such permission expected to absolve the school or coach from blame in case of injury, have reason to consult legal advice in this matter. If an injury causes permanent disfigurement or death, the municipality or coach may be liable for negligence.

³⁶Bellman v. San Francisco High School District, op. cit.

³⁷Williams and Brownell, op. cit., pp. 392-393.

VI. RECOMMENDATIONS

From the point of view of liability, there are certain procedures that should, or could, be followed that will help to reduce or avoid accidents and injuries. The following recommendations can be beneficial to any physical educator as means of avoiding possible liability.

ACCIDENT REPORTS. A carefully organized accident reporting system is priceless to the physical education program. Accident reports are means by which a constructive analysis of causes of accidents can be made, with results being applied to a systematic development of extirpating the causes.³⁸ If properly organized and supervised, the system should prove to be a very effective means of preventing accidents.

In order for an accident reporting system to be effective, the reports have to be accurate and complete. An accurate report of the accident is often the best defense and frequently the only one available.³⁹ Therefore, it is important to compile the report at or about the time of the accident to eliminate errors in reporting. Errors in the report could possibly lead to judgments ruled against the teacher.

Certain information is vital to any accident report. Many authorities believe that the following information should be included in an accident report in order for it to be accurate:

³⁸Rosenfield, op. cit., p. 130.

³⁹Stack and Siebrecht, op. cit., p. 344.

1. The name and address of the injured person
2. The activity in which the injury occurred
3. The exact time and date when the injury occurred
4. The place of the accident
5. The person in charge when the accident occurred
6. The medical attention provided including the name of the physician called, if any was summoned
7. The circumstances causing the accident

In addition to the information just mentioned, an attempt should be made to obtain signed statements from any witnesses that happened to be present. If the witnesses declare they know nothing about the accident, it is desirable to obtain their written statements to that effect.⁴⁰ Any information that is relevant to your defense is valuable evidence.

For protection against typical accidents happening in the future, the report should have descriptions of the physical and structural defects of the place of the accident so that immediate action can be taken to correct those defects.⁴¹ However, if periodic safety checks were made by the person in charge, defects of such nature could be detected and thereby probably avoid any accidents.

Filling out the accident report form is by no means the final step in the accident reporting system. The handling of the report is an important stage in the system. Stack and Siebrecht⁴² list the following steps as essential in the handling of the report:

1. The report should be forwarded to the agency designated in advance to receive such reports, the board's legal department, the superintendent of schools, the business manager or other stated official. Obviously the board or superintendent must know what has happened.

⁴⁰Voltmer and Esslinger, op. cit., p. 206.

⁴¹Rosenfield, op. cit., p. 130.

⁴²Stack and Siebrecht, op. cit., p. 349.

2. Copies of the report should be sent to all departmental heads. This practice may require sending copies to officials such as the superintendent, principal, safety supervisor, all teachers of groups similar to that in which the accident took place, custodians, curriculum directors, business managers, and others of like responsibilities, including the police for certain types of accidents.
3. A routine should be provided for rectifying defects disclosed in the report, whether they are matters of personnel administration, equipment, or buildings and grounds. Inaccurate and unsafe practices should be modified, and structural defects should be corrected by the responsible officials concerned.
4. Efforts must be made to prepare materials for legal defense in case of accident. Volunteer efforts along this line may be disastrous; hence, this step should be undertaken only after consultation with the lawyer for the defense, since such questions are involved as photographs, affidavits, procuring expert witnesses, statistical studies of past experience, and the like.
5. Periodic summaries of the accident reports should be made to isolate recurrent types of accidents and accident trends. Intelligent handling of carefully prepared accident reports, coupled with a continuous analysis of accident causes and a systematic attempt to eradicate them, is a most efficacious weapon in the hands of safety educators and school board officials.

An adequate system of reporting must be administered in such a manner as to produce all the facts related to any accident, no matter how unimportant they might seem to be. The courts are going to base their decisions upon the facts presented. The system must be organized to follow certain elementary steps. These include the following:

1. All injuries, no matter how slight, and no matter who the victim, are to be reported, provided the accident occurred on property over which the school has jurisdiction, or occurred in connection with any school activity, or affected any right of the school. Frequently, what may seem to be a minor injury develops into something of major proportions.

2. Every employee, regardless of rank, should be required to submit a report of every accident to which he was a witness, or of which he was immediately cognizant. Multiple reports are not necessarily always required if there be many witnesses of an accident, but if there be but one witness who is a school board employee, a report should be required from him.
3. Reports should be submitted only to the reporting employee's superior, unless other officers are specifically designated by the superintendent or the school board. The regular channels open to the reporting employee are generally the best guarantee that the report will receive proper attention. Such reports should be delivered to no other persons, except upon specific permission of the superintendent, and then only upon proper identification.
4. Reports should be prepared and submitted immediately; under ordinary circumstances a reasonable period of time should not extend beyond twenty-four hours.
5. All legal papers served upon school officials or employees in connection with school matters should be forwarded immediately to the proper officials who should be designated in advance for the receipt of all such legal documents.
6. Copies of accident report blanks should be strategically distributed in key points throughout the school system, and employees should be appraised of their availability.
7. All pupils should be thoroughly informed of a definite procedure to be followed in the event of any accident. This is necessary in case an injury occurs when no teacher or school employee is present. Part of an assembly program early in the term may well be devoted to a short discussion of this pupil responsibility. And a few words in the student handbook might go a long way.
8. If no nurse or doctor is assigned regularly to the school, at least one person on the faculty should be trained and qualified to render first aid treatment. The principal should be responsible for selecting some member for special training, if there is no one on the faculty already qualified to render such service.
9. Advance arrangements should be made with hospitals or clinics or other medical dispensaries to handle emergency cases. If this is impossible, arrangements should be made in advance for emergency use of neighborhood doctors.

10. Parents or guardians of an injured pupil should be notified in case of serious injury. The principal should have on file the parental home and business address and telephone number of every student in the school, as well as the address and telephone number of the personal or family physician of every student in the school. Such lists must be kept up to date.⁴³

RELEASES AND WAIVERS. Releases and waivers is another protective device used to help prevent liability. Most school systems require all participants in sports to bring from their parents signed statements releasing any claim accruing to his child for personal injury. However, these signed statements have no value in court because a parent has no authority to waive such a claim. Rosenfield⁴⁴ states that this results from the fact that all a parent can waive by signing a release or waiver slip is his own right to suit for medical costs or other expenses to which he was put as a result of the accident, and for the loss of the child's services.

Even though releases and waivers have no value in court, they can possibly be used to help reduce the chances of liability occurring. This will result mainly because most parents think they have waived their legal right to bring suit.⁴⁵

ACCIDENT BENEFIT PLANS. There is a definite trend toward the assumption of moral or social responsibility on the part of the schools by establishment of athletic accident benefit and protection plans.⁴⁶

⁴³Ibid., p. 345.

⁴⁴Rosenfield, op. cit., p. 130.

⁴⁵Ibid., p. 131.

⁴⁶Charles E. Forsythe, Administration of High School Athletics (New York: Prentice-Hall, Inc., 1958), p. 337.

This indicates that the schools are fully aware of the necessity on their part of meeting at least some of the expenses resulting from athletic injuries.

The first athletic benefit plan originated in Wisconsin for the purpose of meeting expenses, or part of the expenses, resulting from athletic injuries; and since their establishment in 1930, there has been a steady growth in the number of states sponsoring an accident benefit plan.⁴⁷ It is noteworthy to mention that all but three of the states belonging to the National Federation of State High School Athletic Associations have some form of accident benefit plan in effect.⁴⁸

These plans vary from state to state in their structure, but they all seem to have essentially the same requirements as physical examinations, registration with the school in advance, filing of accident reports, and a medical examination before the injured person can re-enter into athletic competition. As a general rule, the plans are split in their coverage and premium rates between the students engaged in athletics and the general student body.⁴⁹

In commenting upon this trend toward accident benefit plans, Stack and Siebrecht⁵⁰ say:

This movement represents one of the most significant advances in social thinking within the education profession; it is a real effort to meet an important gap in our legal system. To those who have observed the results have been a matter of deep satisfaction. Not least among its achievements is the reduction of certain repetitive accidents through a most intense study of their causes and of means

⁴⁷Rosenfield, op. cit., p. 137.

⁴⁸Forsythe, op. cit., p. 299.

⁴⁹Leibee, op. cit., p. 20.

⁵⁰Stack and Siebrecht, op. cit., p. 357.

of reducing their frequency. The success in accident reduction has been short of phenomenal. Here again we find additional proof of the fact that we seek to foresee what accidents may occur and design methods to prevent them, accidents are avoided.

LIABILITY INSURANCE. Liability insurance is becoming a recognized technique for protection against judgments. It is an attempt to protect oneself against the need for personally paying liability judgments growing out of negligence.⁵¹

The purchase of liability insurance by the school district is permissible only in some states. In those states where there is no statutory authorization for such purchase, insurance may not be purchased. A school district cannot insure itself against a risk to which they are not subject.⁵² However, many individuals purchase insurance from private insurance companies. For example, the American Association for Health, Physical Education, and Recreation offers its members the invaluable service of public liability coverage. For one dollar per year it provides \$10,000 protection against legal liability and the cost of defense even if the suit is without justification.⁵³

If liability insurance is going to be purchased, certain precautions should be taken as to the financial stability of the company from whom the insurance is going to be purchased, the legal authority of the company to operate in the state, and the validity of the coverage -- does it specifically cover what it is supposed to cover.⁵⁴ The purchaser

⁵¹Ibid., p. 356.

⁵²Ibid.

⁵³AAHPER, Journal of Health, Physical Education, Recreation, XXX (January, 1960), p. 45.

⁵⁴Williams and Brownell, op. cit., p. 223.

should find out if it is possible to make accident information available to the company. Stack and Siebrecht⁵⁵ mention that if this is prohibited, some provisions should be made in the policy or the by-laws of the board of education to make the insurance plan completely effective.

PHYSICAL EXAMINATIONS. Before any student is permitted to participate in any phase of the physical education program, he should have a medical examination. Also, students returning to school after an illness should have an examination.⁵⁶ When careful steps are taken to see that each student has a medical examination, the chances of injuries occurring are reduced.

⁵⁵Stack and Siebrecht, op. cit., p. 357.

⁵⁶Ibid., p. 96.

VII. SUMMARY

Physical education, as other fields of work, is characterized by its legal status as determined by the law. The law gives special protection to some individuals confronted with liability suits through the principle of immunity. Yet, this freedom from liability does not extend to other individuals when negligence is evident.

In general, the principal of law on liability is that the school district and school board (members included) are immune from liability resulting from injuries suffered by individuals under the supervision of their employees. The law contends that they are performing a governmental function and are immune from liability for either their own negligence, or their employees' negligence, unless they consent to such liability. If there is consent to liability, statutory provisions are usually set up to provide such consent.

In the field of physical education, the risks of liability are increased because of the numerous activities engaged in. These numerous activities account for the number of sources for accidents leading to liability. The physical educator has to be alert at all times to avoid accidents that might result from the facilities or equipment he uses in conducting his program. By taking precautionary measures, he can reduce the chances of accidents occurring.

Unfavorable circumstances resulting from liability due to the negligence of the physical educator can possibly be avoided by using such protective devices as accident benefit and protection plans, releases and waivers, and liability insurance. Some of these devices

also serve as means of evaluation which leads to an attempt to eradicate causes of accidents in physical education.

No matter how careful the administrator, teacher, or coach may be, accidents are probably going to happen, and someone is going to be held responsible. It is necessary then, for the physical educator to know and understand the principles of law governing the field of physical education.

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