Liability of Educators for the Negligence of Others (Substitutes, Aides, Student Teachers, and New Teachers)

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A student is injured due to actions by the student teacher. Is the supervising teacher liable in this case? A student helping administer a skill test inadvertently causes the injury of another student. Is the teacher of the class liable? A college student in an elementary physical education class teaches an assigned activity and a classmate is injured due to the inexperience of the student leader. Is the professor liable? A student is injured when a teacher leaves a teacher aide in charge of the class. Is the teacher liable? Is anyone else liable in any of these cases? the department head? the principal? the school system or university? Most teachers and administrators have asked these same questions. The purpose of this article is to attempt to answer these questions by examining the physical education case law relating to this issue.

Today, with an increase in the number of lawsuits, most physical educators know a little about negligence and legal liability. Most know that negligence is essentially the failure to act as a reasonable, prudent professional would under the circumstances. Many also know that the required elements for negligence to exist are 1) a duty to the injured person; 2) a violation or breach of that duty; 3) the breach of duty must be the proximate cause of the injury; and 4) there must be an injury. However, most do not know how to answer the questions in the first paragraph.

In the past, school systems were protected by governmental immunity and were not liable for negligence committed by employees. In the last 40 years, however, the trend has been toward elimination of governmental immunity in favor of state tort claims acts which allow the state to be sued. In spite of this tendency, many states continue to have immunity legislation that protects the school district or university from liability for its own negligence or the negligence of its employees. Some states have extended immunity to include state employees and many state legislatures have granted immunity to select types of volunteers in the system. Some states have also passed legislation designed to protect students learning to teach from liability for their own negligence. Barring immunity,[1] three groups are susceptible to liability in the event of negligence. These groups include 1) the program leadership personnel (*i.e.*, teachers, assistant coaches), 2) administrative or supervisory level personnel (*i.e.*, principals, department heads, head coaches, superintendents), and 3) the corporate entity (*i.e.*, the school district, the college or university).

In a typical negligence suit, the plaintiff can name any or all of these as defendants. It is with the program leadership personnel that the actual injury usually occurs and that individual is liable for any negligent act committed causing such injury. Under the doctrine of respondeat superior, the corporate entity is generally liable for the injury caused by the negligent acts committed by its agents, employees, or volun-

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[1]The reader is advised to consult with a local attorney for detail on the immunity laws within your state. Discussion of laws in individual states is not within the scope of this article.

teers. That is, the negligence of these persons is imputed to the corporate entity. Further, if a teacher is negligent, *both* the teacher and the school district are generally held liable. An important exception to this is when either the school district or the employee is granted governmental immunity by the state, in which case, those with immunity have no liability for certain types of negligent actions. The administrative or supervisory personnel are generally not liable for the negligent acts of those persons working for them. However, the supervisor or administrator is liable for his or her own "negligent acts", that is, if the administrator or supervisor has done something of an administrative or supervisory nature that has enhanced the likelihood of the injury occurring.

Five types of actions by the administrator or supervisor are considered to enhance the likelihood of injury. These acts are if the administrator fails to: 1) employ competent personnel and fails to discharge employees found to be unfit; 2) provide proper supervison or a supervisory plan; 3) direct services in the appropriate manner; 4) establish and enforce safety rules and regulations; and 5) correct dangerous conditions and defective conditions (van der Smissen, 1990).

The liability of the teacher, the administrator, and the school system will be examined as it relates to actions by four additional categories of persons who often are serving within the school system. The four categories are 1) substitute teachers, 2) teacher aides and other non-professionals, 3) student teachers or assistants, and 4) new or inexperienced teachers. Most teachers and practically all administrators and school systems are involved with persons in one or more of these categories. The big question is: who is responsible if an individual in one of these categories is negligent?

Substitute Teachers

In a Michigan case an elementary school student was injured playing "kill" at recess under the supervision of a substitute teacher. It was common practice in the school for the game to be played and the principal was aware of its use. The student filed suit naming the absent teacher, the principal and the school district as defendants. The court felt that the use of the game was inappropriate and constituted negligence. (*Cook v. Bennett,* 1979)

The question is "who is liable?" It is interesting that, although it is the substitute who committed the negligent act leading to the injury, the substitute is not named as a defendant in the case. Had the substitute been named, indications are that the court would have ruled that she was negligent.

In determining the liability of the regular classroom teacher, the court noted that the "threshold element of a negligence case is that there must exist a duty. . . ." (*Cook v. Bennett,* at 610) Although the teacher owed a duty to exercise reasonable care over students in his charge, this duty "is coterminus with the teacher's presence at school. Supervision implies oversight. In order to oversee student activity, a teacher must be present to observe and control." (*Cook v. Bennett,* at 610) The court found that the regular teacher, by not being present at the school owed no duty to supervise his pupils and was therefore, not liable.

The school district, though normally liable for the negligence of its employees, was protected by governmental immunity by Michigan law. In contrast, the court ruled that the supervisory function of the principal was ministerial in nature and not protected by immunity. The principal enhanced the likelihood of the injury by failing to properly supervise the teacher and by failing to establish rules and guidelines for the safety of the pupils. Thus she was found negligent.

It is not uncommon to combine two physical education classes under the supervision of one teacher. In a Missouri case, two teachers had physical education classes of eighth and ninth grade boys at the same period. (*Kersey v. Harbin,* 1979) When one teacher was absent, in lieu of hiring a substitute, the principal assigned the other teacher to "cover" both classes. An inci-

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

In another case involving an injury while a substitute teacher was placed in charge of two classes, the court found the school district negligent in failing to provide for adequate supervision. (*Rollins v. Concordia Parish School Board,* 1985) In this instance, combining two classes for recess was a common practice in order to give one of the teachers a free period. The court deemed the supervision inadequate, "especially in light of the fact that another teacher was available but not used to help supervise. . . ." (*Rollins v. Concordia Parish School Board* at 219)

In summary, the following principles seem to apply in situations involving the use of substitute teachers: 1) The substitute is held to the same standard of care as the regular teacher and may be held personally liable for his or her negligent acts. 2) When absent from school, the regular teacher has no supervisory duty toward the students and thus no liability. 3) When a substitute is present, the principal has the same supervisory duties to the students in his or her charge as when the regular teacher is present. These duties may entail more direction and closer supervision of a substitute than of a regular teacher. 4) The school district is liable for the negligent acts of a substitute to the same extent as it is liable for those of a regular teacher.

Aides and Non-professional Employees

In a New York case, a seventh grade boy was injured while being supervised in the gymnasium by a janitor. The janitor was without training, skill, or experience in supervisory duties, but was assigned to supervise the gymnasium during the lunch hour. The janitor joined the boys in the game and his adult strength was the direct cause of the accident. (*Garber v. Central School District,* 1937)

The injured boy sued the board of education claiming failure of the board to provide adequate supervision while the plaintiff was in their care and failure to formulate rules and regulations to establish order and discipline. The court stated that "this was palpable failure to meet the requirements of the common-law rule, as well as an evident neglect of the duty imposed by the statute." (*Garber v. Central School District* at 219) The court emphasized that the janitor was the "representative of the board, and the board was responsible for his acts to the extent that they were chargeable to his incompetence." (*Garber v. Central School District* at 221)

In a Louisiana case involving a teacher aide, a boy was injured during physical education class playing a makeshift football game when he was supposed to be walking around the track. (*Marcantel v. Allen Parish School Board,* 1986) The trial court, under the false impression that only the aide was present, ruled in favor of the plaintiff on the basis that the school district was 100% liable for failure to provide adequate supervision. The appellate court, realizing that both the teacher and aide were present at the time of the accident and that the teacher had resumed control of the class, ruled that the teacher and school district failed in their duty to supervise properly and were 5% liable. The court stated that the aide owed no duty since she no longer was in charge. It is important to note the implication of the trial court ruling when the court was under the impression that only the aide was present with the class. In that circumstance, the court held the school district 100% liable.

In another case, a principal assigned a "book clerk" to supervise a kindergarten playground whose fence was in disrepair. (*Ballard v. Polly,* 1975) A child went through a gap in the fence and was killed attempting to cross a busy street.

The court deemed the school district liable for 1) failure to take special precautions in spite of a dangerous condition; 2) failure to give special instruction to the supervisor; 3) failure to restrict supervision to regular teachers; and 4) failure to repair the fence or close the playground. In this case the negligence of the principal resulted in liability for the school district.

A girl lost an eye in a bombardment game under the direction of an assistant who held no teacher's license. The appellate court reversed the trial court dismissal of the complaint and remanded the case for a new trial to determine if the board of education was negligent. Among other things, the plaintiff charged the board of education with the failure to provide proper supervision. (*Rivera v. Board of Education of the City of New York,* 1960)

In a Texas case, a mentally handicapped aide working in a school for the mentally retarded was instructed to take the children outside to recess and was allowed to determine the activities to be played. After suffering injury while high jumping a stick, the plaintiff sued the classroom teacher alleging negligence in failing to supervise the class. The appellate court held that the teacher was protected by Texas immunity statutes. (*Schumate v. Thompson,* 1979)

In another case involving aides, a boy was injured when his class was kept inside during recess. (*Tomlinson v. Board of Education of City of Elmira,* 1992) One aide was assigned to supervise two classrooms but was not present when one child caused the injury by pulling the chair out as the plaintiff sat down. The plaintiff sued for failure to supervise. The court ruled that the accident was due to a sudden and unexpected prank that could not have been anticipated or prevented even if the aide had been in the classroom. Therefore, the lack of adequate supervision was not the proximate cause of the accident and thus no negligence was found. The judge stated that "there is no convincing evidence that defendants were negligent or acted improperly in having only one classrom aide monitoring two different classes. . . ." (*Tomlinson v. Board of Education of City of Elmira* at 665) This would imply that the presence of an aide could constitute adequate general supervision, whereas in the Louisiana case, the court indicated that an aide alone was not adequate in an instructional situation.

In summary, the following principles seem to apply in situations involving aides and other non-professional personnel: 1) The aide or other non-professional can be held personally liable for his or her negligent actions. 2) When both the teacher and aide are present, the primary duty of supervision rests with the teacher. 3) To minimize the possibility of injury, the supervisory duty of the principal may entail more direction and closer supervision of an aide or non-professional than of a regular teacher. 4) The school district has a duty to ensure that trained and competent teaching or supervisory personnel are provided.

Student Teachers and Assistants

As part of a required course, "Physical Education for Elementary School Teachers," each student was assigned to lead or teach an activity while the professor observed. A student leader directed a sack race activity during which Yarborough was injured. The student leader gave little instruction regarding technique and used plastic garbage bags as the sacks for the indoor event. In spite of the obvious hazard of hopping in a plastic bag on a wooden floor, the professor failed to intervene. (*Yarborough v. City University of New York,* 1987)

The practice of assigning students to lead or teach activities within their class is a common one in professional preparation programs. In this case, the court ruled that the professor and university failed in their duty to exercise reasonable care. The court stated that reasonable care included the obligation not to direct a student to do that which is unreasonably dangerous and to see that equipment is reasonably safe for its intended use, It further stated that the teacher has a duty to provide as much instruction and supervision as is reasonably required to safely

perform the directed tasks. In another case involving the use of a class member as a referee in a wrestling match, the court, while refusing to decree that a fellow student cannot properly referee an eighth grade wrestling match, nevertheless upheld the jury verdict which found a lack of reasonable care on the part of the defendant and held the school legally liable. (*Stehn v. Bernarr MacFadden Foundations, Inc.*, 1970)

Students often are required to assist in teaching other classes or in administering tests to other groups. Brittan, a high school student seeking admission to a college physical education program, was injured while undergoing a required physical fitness test. (*Brittan v. State,* 1951) The test was administered by senior physical education majors under the direction of a professor in charge. It was shown that the minimal training and inexperience of the student administrator resulted in the injury to Brittan. The professor in charge of the administration of the fitness tests rotated from station-to-station supervising the student assistants. He was not present at the station at the time of the accident. In this case, the court ruled that the school and the professor owed a duty of reasonable care to Brittan. The duty owed included the proper administration and supervision of the tests. The court further stated that if the leg lift test had been administered by or under the direct supervision of a qualified and experienced tester, the accident would not have occurred.

Two other cases involved physical education majors assigned to assist in a class. In a tumbling class each assistant was assigned to instruct a small group of students while the supervising teacher moved from group-to-group. (*Gardner v. State of New York,* 1939) a young female student sued after being injured while performing a head stand. While the court did not specifically state that allowing a physical education class to be conducted by a student instructor in the absence of a qualified instructor constituted negligence by the school, the court ruled that "failure to instruct the infant claimant pursuant to the customary method was the proximate cause of her injuries." (*Gardner v. State of New York,* at 345) In a golf class the inexperience of a student assistant contributed to the injury of a female student. (*DeMauro v. Tusculum College, Inc.,* 1980) The judge, in remanding the case for trial indicated that the professor and the college might be negligent in placing an inexperienced person in a "position of sole responsibility." (*DeMauro v. Tusculum College, Inc.* at 118)

In an older case (*Isom v. California Junior Republic,* 1939), a student athletic leader elected by the other students pushed a classmate into an empty swimming pool causing injury. The plaintiff filed suit against Smylie (the student athletic leader) and alleged that the coach and the school did not exercise due care in selecting Smylie. The court ruled that since Smylie was not an employee or agent, the corporation was not liable for his conduct. Likewise, no negligence was found on the part of the coach. The court did affirm that Smylie was liable for his negligent act.

Two cases resulted from accidents with students driving university-owned vehicles. A university soccer player, injured while driving a university-owned vehicle involved in an accident, sued the coach and the university alleging that they allowed him to overload the vehicle thereby causing the accident. (*Adams v. Kline,* 1968) The court held that if a teacher allows a pupil to use equipment in such a way that it could foreseeably cause harm, the teacher is liable for such harm. Feeling that the dangers caused by overloading the vehicle might have been foreseeable, the court reversed the summary judgement and remanded the case for trial to determine if the coach and university were negligent. The second case, *Whittington v. Sowela Technical Institute* (1983), involved the death of student on a field trip in a student-driven van. The student driver and the nursing school were named in the suit. The court found that the student driver was negligent and liable. Further, she was acting as an agent of the school and consequently, liability for the negligence of the student was imputed to the school. In addi-

tion, the school was found negligent for failure to provide a qualified driver.

Two cases involved student athletic trainers. In *O'Brien v. Township High School Dist. 214* (1980), an untrained student trainer under the supervision of an athletic trainer improperly treated an abrasion resulting in serious complications. The Illinois Supreme Court held that the student trainer, the coach, the athletic trainer, and the school district were not protected by immunity since administering medical treatment is not a class function. The case was remanded for trial to determine if the parties were guilty of negligence. Alleged improper "icing" by a student trainer caused a loss of part of the foot and resulted in a suit against the college in *Gillespie v. Southern Utah State College* (1983). The court ruled for the college finding no negligence on the part of the student trainer or the college.

A common practice in the preparation of physical education majors is the requirement of a supervised teaching experience referred to as student teaching. Included in this experience is the opportunity for the student teacher to teach one or more classes without the regular teacher present. This situation creates a question of liability. In the only physical education case identified involving a student teacher, two regular teachers, one male and one female, were responsible for providing supervision and instruction to a 9th grade golf class. (*Brahatcek v. Millard School District,* 1979) On the second day of the unit, the male teacher was absent and was replaced by Haley, a student teacher who had assisted in golf classes the previous day. Haley was in his fifth week of student teaching. Neither of the two teachers had instructed Haley regarding teaching procedures prior to the commencement of class. During class, contrary to the syllabus, Haley was working with an individual rather than supervising his group as a whole, when a member of Haley's group was struck and killed by a golf club swung by a fellow student.

The court found the school system was negligent for failure to provide adequate supervision. While the court didn't explicitly assign negligence to the individuals involved, evidence indicated that the supervisiing teacher might be guilty of failure to supervise and instruct Haley, the student teacher. In addition, comments by the judge indicated that the student teacher might be guilty of "ineffective observation and attention . . . when ordinary care or supervision, would have prevented . . ." the occurrence. (*Brahatcek v. Millard School District* at 687)

In summary, the following principles seem to apply in situations involving student teachers and student assistants: 1) The student teacher or student assistant can be held personally liable for his or her negligent actions. 2) The teacher retains the duty to the class regardless of who is offering the instruction. When both the teacher and student are present, the primary duty of supervision rests with the teacher. The teacher should be present, attentive, and ready to intervene should intervention be called for. Further, the teacher should make certain that all students assisting in instruction are well prepared to carry out the duties of instruction and supervision. 3) Although the principal and department head are not named as defendants in these cases, the cases discussed in the preceeding two sections indicate that they would be liable if their actions enhanced the likelihood of injury. 4) The school district or college is liable for the negligent acts of a student assistant or student teacher to the same extent it is liable for those of the regular teacher.

New or Inexperienced Teachers

Lundquist, a first year teacher with a certificate in physical education, took a job in mid-year at a junior-senior high school in Minnesota. The principal had Lundquist meet with the outgoing physical educator for 30 minutes and Lundquist reported to the principal the subjects he planned to teach, but gave no specifics on the activities or methods he would use. He began teaching a gymnastics unit and on his ninth day of class an eighth grade boy was paralyzed while doing a required advanced activity.

Lundquist had failed to teach all of the recommended activities leading up to the activity. (*Larson v. Independent School District No. 314,* 1979)

What liability concerns are involved when schools employ first-year, inexperienced teachers? The injured student in this case sued Lundquist, the principal, the superintendent, and the school district. Lundquist was found to have acted negligently and was held liable in spite of his lack of experience. The principal was found negligent in his supervision of both the new teacher and the curriculum. The court noted that because of Lundquist's inexperience, the principal enhanced the likelihood of injury by failure to exercise close supervision over planning and administering the physical education curriculum and by failure to closely supervise the transition. The superintendent was found not liable because he was too far removed from the situation. While he was in an administrative position, he had done nothing to enhance the likelihood of injury. The school district, based on the doctrine of respondeat superior, was vicariously liable, but were liable only to the extent of their insurance due to state immunity laws.

Another case involved the drowning of a non-swimmer under the direction of one experienced teacher and two inexperienced assistant instructors. (*Morehouse College v. Russell,* 1964) When the experienced instructor left the two assistant instructors in charge of the group, a student drowned in the deep end of the pool. Negligence was charged on the part of the actions of the two assistant instructors, the experienced teacher for failing to direct and supervise properly, and the college for failure to provide an adequate number of properly trained employees and for failure to prescribe appropriate procedures to be followed. The court stated that immunity would not protect the defendants and remanded the case for trial to determine negligence.

Two new teachers directing a physical education class were sued for breach of supervisory duty when a student stepped in a puddle of water on the gym floor and was injured. (*Best v. Houtz,* 1989) Testimony indicated that neither teacher knew of the puddle or had reason to know of it and thus had breached no duty.

Another case involved a girl injured in a powderpuff football game. (*Lynch v. Board of Education of Collinsville,* 1979) The plaintiff sued the Board of Education alleging failure to supervise adequately. A Spanish teacher was coaching the plaintiff's team. The school claimed that no duty was owed since the school did not sponsor the game and because the parents of the plaintiff were present at the game. The appellate court ruled that the school did owe a duty relative to the conduct of the school including that of adequate supervision and affirmed the trial court verdict against the school district.

In summary, the following principles seem to apply in situations involving new or inexperienced teachers: 1) A new or inexperienced teacher is held to the same standard of care as that of an experienced teacher. 2) The principal or supervisor owes a duty to supervise and direct an inexperienced teacher more closely than he or she would an experienced teacher. 3) The school district owes a duty to provide competent instruction and supervision and will be held liable for the negligent actions of the inexperienced teacher.

Conclusion

The following principles may be drawn from the holdings of the preceding cases. In states where there are no applicable immunity statutes, these principles would generally apply. First, there is one standard of care required for any given situation and regardless of the qualifications of the person teaching or supervising the activity, reasonable care is required. Second, regardless of who is actually directing or supervising the activity, the regular teacher, unless absent from school, retains the duty of care for the safety of the students. Third, the administrator in charge is liable for the negligent acts of subordinates only if the actions of the administrator enhance the likelihood of injury. Fourth,

the school district is liable for the actions of its employees.

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