

SPORTS COACH & PHYSICAL ACTIVITY INSTRUCTORS
LEGAL DUTIES OF CARE IN REVIEW

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The following description of reported court decisions illustrates the general legal duties of care which those responsible for conducting various physical activity programs owe participants. For the most part, these reported court opinions involve sports coaches and physical education instructors. However, the reasoning of the courts in these cases illustrates the risk factors which must be addressed by those responsible for supervising all types of physical activity programs. As a general rule, individuals responsible for conducting sport, recreation, and physical fitness programs owe the following legal duties to the participant:

- (1) give adequate instruction in the activity;
- (2) supply proper and necessary protective equipment;
- (3) make a reasonable selection or matching participants;
- (4) provide non-negligent supervision of the particular activity; and
- (5) in the event of injury, take proper post-injury procedures to protect against aggravation of the injury.

As described in the following paragraphs, these duties are not mutually exclusive. On the contrary, these general duties tend to be interrelated. As illustrated by the *Leahy* case described below, a reasonably safe program may require the responsible supervisor to provide safety instructions regarding necessary protective equipment and the risks associated with a particular activity. In addition, those responsible for the activity must supervise the activity to ensure that safety rules and instructions are followed by the program participants. The degree of supervision and instruction will vary according to the age and awareness of the program participants.

NO SAFETY EQUIPMENT & INSTRUCTIONS

In the case of *Leahy v. School Board of Hernando County*, 450 So.2d 883 (Fla.App. 1984), a freshman football player was injured in what was described as a "non-aggressive" agility drill. Due to the lack of available equipment, plaintiff was not issued a helmet. No special precautionary instructions were given to players who had no helmets or mouth guards relative to those players who had such equipment regarding limitations on their participation in practice. Although this was referred to by the coaches as a "no contact drill," by the very nature of it, some physical contact between the players was required. After the drill started, the coaches let it continue on its own and they watched from the sidelines.

Although other participants preceded him, plaintiff was the first player without a helmet who attempted the drill. There was testimony that at this point, the players had become more aggressive (they were "hitting harder," "getting rowdy," "knocking the people that were down back" and "digging in and getting a better hold"). Leahy came up to the first lineman on the row and when he started down to hit the lineman's shoulder pads as instructed, the lineman straightened his arms or raised his head and plaintiff's face collided with the lineman's helmet. Leahy suffered facial injuries and his front teeth were shattered.

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Under the circumstances of this case, the court found the injury to Leahy was "a foreseeable consequence": (1) of the failure to provide plaintiff with a helmet and mouth guard; (2) of the failure to give cautionary instructions regarding contact (especially regarding the fact that some players had helmets while others did not) and (3) of the failure to limit the progressive intensity of the drill under the circumstances.

Because football helmets with their attached faceguards and mouthpieces are used for safety or protective devices, calculated to protect the player against head or facial injuries, the evidence that plaintiff was permitted to participate without a helmet was sufficient basis upon which a jury could conclude that the school (through its employees) failed to exercise reasonable care under the circumstances for the protection of plaintiff.

In addition, the court found that the alleged negligence of the other participant was a foreseeable consequence of the coaches' initial failure to provide precautionary instructions and properly supervise the activity. Further, the court found that plaintiff's assumption of risk as a participant in a contact sport was limited to the risk of injury "inherent in ordinary play" and did not include "the risk of participating in a training drill which was improperly supervised and for which he had improper and insufficient equipment."

DANGER FACTORS: INSTRUCTION

In the case of *Green v. Orleans Parish School Board*, La.App., 365 So.2d 834 (1978), plaintiff broke his neck and was paralyzed while performing a wrestler's "bridge" during a 30 second "free" wrestling drill in a physical education class in which the participants were well-conditioned football players. The injury occurred during the fourth of fifth class involving wrestling. According to the court, physical activity instructors owe a legal duty not to expose participants to an unreasonable risk of injury. In addition, the court noted that physical education classes may involve dangerous activities. When the program involves such dangerous activities, the court found instructors must exercise due care in instructing, preparing, and supervising participants to minimize the risk of injury. Specifically, the court found instructors should not allow participants to attempt a dangerous activity without first providing the following:

When an activity is potentially dangerous, a student should not be required to attempt such activity without first receiving proper instruction and preparation, including an explanation of basic rules and procedures, suggestions for proper performance, and identification of risks. Considerations in determining whether instructions are proper and sufficient include the difficulty and inherent dangerousness of the activity and the age and experience of the students.

Furthermore, potentially dangerous activities require supervision reasonably calculated to prevent injury. The reasonableness of supervision is determined largely by the same factors used to determine reasonableness of instruction and preparation.

In this particular instance, there were no national or local guidelines or procedures for conducting wrestling instruction in a physical education program. There was, however, general agreement among the expert witnesses in this case that "conditioning is the first step in the teaching of wrestling and that the

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simpler moves must be taught first, building up to more complex moves." On the other hand, the court noted disagreement among these experts "on the central issue of the instruction, conditioning and supervision necessary to prepare a beginning student for a 30-second hard wrestling drill with unlimited moves."

In this particular instance, the court dismissed plaintiff's case. Specifically, the court found insufficient evidence to indicate that "the teacher's instruction and preparation for and supervision of the drill in which plaintiff was injured fell below any locally or nationally accepted reasonable standard of care for teachers under similar circumstances."

CUSTOMARY RULES FOLLOWED

In the case of *Herring v. Bossier Parish School District*, 632 So.2d 920 (La.App. 1994), a 15-year-old high school baseball player died after he was struck in the head by a ball during batting practice. According to the court, the coaches had a legal duty to protect players "from foreseeable harm from the conduct of things or persons under that coach's or teacher's supervision." On the other hand, the court noted that a coach is "not held to impossible standard of exercising constant supervision over each student involved in a group activity."

In this particular instance, the court found that "the coach had procedures and routines for orderly batting practice that were designed to allow him reasonable supervision and to provide for the reasonable safety of his players." Further, the court found that the coach's players knew these rules and procedures. In addition, expert testimony indicated that these rules and procedures met "the standard customarily used by coaches of high school baseball players."

Despite such knowledge of the applicable safety rules and procedures, the court found plaintiff had not heeded the coach's warning that the batter was "hitting." Specifically, the court found that plaintiff did not keep an eye on the ball or assume a defensive posture when leaving the safe area behind the batting practice screen. The court, therefore, affirmed the judgment for the coach.

AGE & PRESUMED AWARENESS OF PARTICIPANTS

In the case of *Beckett v. Clinton Prairie School Corp.*, 504 N.E. 2d 552 (Ind. 1987), plaintiff, age 18, was injured during baseball practice when he collided head-on with another player during a fly ball drill. According to the court, the appropriate standard is "whether a defendant exercised his duty with the level of care of an ordinary prudent person under the same or similar circumstances." Further, the court noted that the reasonable duty of care and supervision varies depending upon the age of the participants. Accordingly, the court found that reasonable conduct will vary depending upon the presumed awareness of participants to specific risks of injury: "Obviously, the conduct which is reasonable in the classroom or playground supervision of seven-year-olds is quite different from that which is reasonable when coaching eighteen-year-old varsity athletes."

In this particular instance, the court found plaintiff had actual knowledge and appreciation of the specific risk, colliding with another player in pursuit of a fly ball. Specifically, the court found that the coach had warned his players of the risk of collision if there was no communication between players during the fly ball drill. As a result, given plaintiff's appreciation of the danger, the court found that plaintiff had

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assumed the risk of injury under the circumstances of this case.

PROTECTIVE EQUIPMENT INSTRUCTION & SUPERVISION

In the case of *Parisi v. Harpursville Central School District*, 553 N.Y.S.2d 566 (A.D. 1990), plaintiff, age 13, was struck in the face by a softball. Parisi was normally a second baseman, but she volunteered to catch pitchers during a practice session. At the time of the injury, she was not wearing a catcher's mask. In her lawsuit, plaintiff alleged that those responsible for conducting the practice were negligent in their supervision of the activity and negligent in not providing the proper protective equipment.

According to the court, the coach supervisors had a legal duty to exercise reasonable care to protect plaintiff from "unassumed, concealed, or unreasonably increased risks during practice." In this particular instance, the court found that there were two catcher masks available in the gym, but the defendants did not instruct anyone, including plaintiff, to use this protective equipment. Further, the court found a handbook issued by the State Public High School Athletic Association governing interscholastic modified sports programs stated that "catchers playing modified softball are to wear a helmet and mask" and that "any player warming up a pitcher, on or off the field, shall wear protective equipment." Accordingly, plaintiff's expert witness had testified that the defendant's failure to provide plaintiff with a protective mask and instruct her in the proper use of the equipment violated "sound coaching principles."

The court also considered whether plaintiff had assumed the risk of injury under the circumstances of this case. In other words, in not using the required protective equipment, was plaintiff guilty of a voluntary encounter with a known danger which caused the injury, rather than any negligence on the part of the coaches. In this instance, defendants argued that plaintiff had the requisite knowledge of the risk because the sports programs handbook had warned plaintiff of the inherent risk in the sport.

As noted by the court, voluntary participation in any physical activity or sport, such as softball, constitutes an assumption of risk for those injuries arising out of the inherent risks in a sport or activity. However, in this particular instance, the court found that plaintiff's age and lack of experience in the activity (i.e., catching warmup for pitchers during practice) might indicate her relative lack of knowledge regarding the risk of injury associated with catching warmup without the proper protective equipment. On the other hand, the adult coaches could be expected to know more about the need to provide the proper protective equipment and supervision to ensure that it is used properly.

UNREASONABLE MISMATCH IN PRACTICE & PROCEDURES

In the case of *Tepper v. New Rochelle School District*, 531 N.Y.S.2d 367 (A.D. 1988), plaintiff was injured in lacrosse practice. At the time of the injury, plaintiff weighed 130 lbs. and had one month experience playing lacrosse. During a ground ball drill, plaintiff was injured in a collision with a 230 lb senior with three years of lacrosse experience. In going for the ball, the 260-1b. senior appeared to use an advanced "checking" technique to subdue plaintiff. The specific issue before the court was, therefore, whether the coach was negligent "in permitting a player of slight build and very limited experience to go head-to-head with the 260 lb. senior varsity member, a player possessing substantially greater experience."

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For interscholastic league play, the coach had testified that he segregated varsity players from junior varsity players. He did so because he "believed the superior varsity skill level of play would be too advanced for inexperienced players." Accordingly, the coach did not permit seniors to play on the junior varsity team. He did indicate, however, that he would have permitted anyone with sufficient skill and physical prowess to play on the varsity team. Further, the coach testified that he routinely warned the smaller players about going head to head with a larger player.

Under the circumstances of this case, the court found that plaintiff had not necessarily assumed the risk of injury he sustained, or that he comprehended the true nature of the risk when he opted to join the team. Like any participant, plaintiff assumed the risk of injury associated with the obvious, unavoidable, and inherent risks in a sport, or any physical activity. However, plaintiff's youth and relative lack of experience would indicate his lack of awareness and inability to appreciate the risk of injury associated with this particular practice drill.

On the other hand, the coach admittedly appreciated the risk of injury associated with matching participants who are "too advanced for inexperienced players." Specifically, the coach's own rules for competitive league play segregated participants by experience and physical prowess. In this particular instance, the coach was aware of the risk of matching inexperienced with advanced players in the contact sport of lacrosse. Given the perceived risk of injury, the coach took a corresponding precaution; he segregated varsity players from junior varsity players for league play.

As a general rule, sometimes referred to as the "risk/duty analysis," the risk reasonably to be perceived defines the duty to be obeyed. Under the risk/duty analysis, if the risk remains the same, the corresponding duty or precautions taken to address the perceived risk of injury should similarly remain proportionately the same.

Applying this risk/duty analysis to the facts of the case, the risk of injury associated with ground ball drill in practice is similar, if not identical, to those collisions encountered in lacrosse during competitive league play. Yet, the coach in this instance, adopted an unreasonable "double standard" for practice drills versus league play. Specifically, he had adopted his own rules and procedures to segregate players and, thus, avoid unreasonable mismatches among participants for league play, but he ignored these precautionary measures when matching participants in practice drills. The coach's practice drill in this case, therefore, ignored the duty of care he himself had assumed to avoid an unreasonable mismatch between participants under conditions wherein the perceived risk was quite similar. In so doing, a strong case could be made that the coach was negligent in creating an unreasonable mismatch which caused the plaintiff's injury.

WEIGHT MISMATCH PERHAPS NEGLIGENT

In *Toller v. Plainfield School District 202*, 211 Ill.App.3d 554; 582 N.E.2d 237 (1991), plaintiff's son was injured while wrestling a heavier opponent in defendant's sixth grade physical education class. At the time of the injury, plaintiff's son weighed 83 pounds and was matched with a boy who was about the same height, but was heavier weighing about 100 pounds. The trial court granted summary judgment in favor defendant. In the opinion of the trial court, the alleged weight mismatch, while perhaps negligent, did not constitute willful or wanton misconduct as required by statute to impose liability on school activities.

In this particular instance, the instructor "was aware that weight classifications existed for extracurricular junior high school wrestling and that the purposes of the classifications were safety and fair competition." Accordingly, the instructor had divided the class by estimating size, height, weight, body structure, and ability. In providing a wrestling partner for plaintiff's son, the instructor recognized that the other boy might have been a little stockier and stronger than plaintiff's son. The instructor explained, however, that he placed them in the same group because if he had placed the other boy in a different group, he would have been with boys much larger.

On appeal, plaintiff argued that the defendant's conduct was willful and wanton "because established weight guidelines existed" yet Blaylock [the instructor] ignored those guidelines and the school district refused to implement them as part of its curriculum." The appeals court, however, found that defendant's conduct in failing to implement strict weight classifications was not willful or wanton negligence."

Blaylock instructed the students on the rules of wrestling, incorporated the objectives of the curriculum in his lesson guide, demonstrated various wrestling maneuvers, and warned the students not to engage in illegal moves such as the body slam. He then matched students according to an estimation of their height, weight, size, body structure, and ability. During the matches, he closely supervised the competition and was refereeing only ten feet away from Matthew when he was injured. Following the accident, Blaylock called for help and applied ice to the injury.

It would, therefore, appear that this particular instructor had satisfied the applicable legal duties owed under the circumstances, i.e., adequate instruction; a reasonable selection or matching participants; non-negligent supervision of the particular activity; and proper post-injury procedures to protect against aggravation of the injury.

MISMATCH NOT UNREASONABLE IF RISK KNOWN

In the case of *Benitez v. New York City Board of Education*, 73 N.Y.2d 650, 541 N.E.2d 29 (1989), the 19 year old plaintiff a 19-year-old high school senior star athlete suffered a broken neck during a varsity football game against another Division A team. Plaintiff's high school had been placed in Division A because the public school athletic league had determined it was better suited for Division A competition than the less competitive Division B league where it had been dominant the three previous seasons. Plaintiff's high school argued unsuccessfully that Division A competition was "potentially dangerous to the safety and welfare of the team" and that players might "suffer serious injuries"

Prior to the game in which plaintiff was injured, the coach and the assistant principal in charge of physical education and health advised the school's principal that the game was a mismatch and should not be played because of the high risk of injury. The coach testified, despite the principal's decision to play the season and the game, he viewed it as the coach's responsibility to pull a team off the field in the face of unsafe competition. He felt at the time it was unsafe for his team to be playing; he knew his players were fatigued; he did not have the personnel to rest plaintiff; and he was aware that injuries are most likely to occur when players are tired. Despite his concern, the coach did not unilaterally cancel the game because he feared it might cost him his job.

According to the state supreme court, the defendant school board and its coaches had a legal duty to exercise ordinary reasonable care to protect participants from "unassumed, concealed or unreasonably increased risks." In this particular instance, the state supreme court found no evidence indicating plaintiff's lack of awareness and inability to appreciate the risk of injury associated with the alleged dangerous mismatch, i.e., the unreasonably heightened risk of competition. On the contrary, the court found that plaintiff was an excellent athlete who, at the time of his injury, was playing voluntarily in the same manner as he had for the previous year and one half against Division A competition and had not requested rest or complained to the coach.

While Benitez testified he was tired, he acknowledged that he was participating voluntarily, that he did not inform his coach of his fatigue, and that he was playing without complaint under the same conditions as he had for the previous season and one half. In sum, Benitez failed to present any evidence that he had no choice but to follow the coach's direction to play despite his concern over enhanced risk factors known by or communicated to the coach...

Fatigue and, unfortunately, injury are inherent in team competitive sports, especially football. Benitez was concededly an excellent athlete, properly equipped and well-trained... Within the breadth and scope of his consent and participation, Benitez put himself at risk in the circumstances of this case for the injuries he ultimately suffered..

As a result, the state supreme court concluded that plaintiff's injury was not the result of an unreasonably dangerous mismatch. Rather, the court characterized plaintiff's injury as "a luckless accident arising from the vigorous voluntary participation in competitive interscholastic athletics." The state supreme court, therefore, dismissed plaintiff's negligence claims against defendant.