

YOU AND THE LAW

What Types of Risks Cannot Be Waived by the School?

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In American society today, it has become common for an individual to think about suing then trying to negotiate a peaceful settlement without lawyers, courts, and judges. Over the past 20 years, the field of personal injury litigation has grown rapidly and expanded into physical activity and sport. Private entities have been hit hard with lawsuits that have most often focused on negligence issues and product liability. Governmental agencies, such as schools, have often been protected by governmental immunity. However, there are certain types of risks that cannot be waived because they are considered to be a crucial part of a school's duty to keep students safe from harm. This article discusses a few of those types that should be considered nonwaivable.

Known Defects in Equipment and Facilities

If a student is injured because a piece of equipment or part of a facility is defective or broken, and the school or a school employee knew of that defect, the school could be held liable for the injuries and resulting damages from the injury.

Examples

A weight machine breaks and the coach keeps forgetting to put a sign on it that it is out of order or to remove it from the area entirely. A student athlete uses the machine to work out. A pulley breaks and

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drops weights on the student, whose arm breaks. The school may be liable because the coach was aware of the issue and did nothing about it.

The pool operator is aware and does not tell the instructors before the class begins that a chlorination pump is releasing too much chlorine into the pool. The students begin complaining about eyes burning and itchy skin to the instructors.

Even unknown exercise and sporting equipment may allow parents to file a product liability lawsuit. Product manufacturers, distributors, and retailers are strictly liable for any injuries caused by product defects. Product liability lawsuits include defects in

- manufacturing,
- design,
- installation, and
- warning signage.

The swim team has new diving boards installed. A swimmer gets up to dive off the board, which breaks on the first bounce. The swimmer falls and is cut severely on the edge of the broken board. The diving board manufacturer and/or company that sold the diving board may be liable for damages. The company and/or persons who installed the diving board may be liable, too.

Improper Inspection and/or Maintenance of Indoor Facilities or Outdoor Facilities such as Fields, Courts, Courses, or Track

If the school knows of a dangerous condition on one of its indoor or outdoor facilities, it may be liable.

Examples

There is no fence in front of the baseball or softball dugouts as highly recommended by the rule book in each sport. A player on the visiting baseball team is hit by a line drive foul ball in the dugout. Every other school in the conference has an 8-foot fence in front of its dugouts. The player who was hit was accustomed to having a fence for protection.

The stair treads on the wooden bleachers for the track need repaired but have not been inspected prior to the first home meet. Mrs. James, an older mother of a track player, climbs up the old stairs and falls through the rotted stair halfway up to the top row. The bleachers were scheduled to be inspected the following week and new bleachers installed over the summer.

There had been heavy rain for 2 days prior to the soccer match. Water had pooled on the sideline near the corner of the field. Because of the heavy rain, a hole had been created by heavy traffic. A player from the visiting team ran down the sideline while chasing a ball and fell in the hole and broke his ankle. If the groundskeeper or coach or official had inspected the field prior to the game and filled the hole with a clay-sand mixture and warned both teams of the hazard, this would not have happened.

Inadequate Supervision and Inspection of the Playing Area

If a coach or other instructor fails to properly oversee the students under their care and oversight would have prevented that injury, the school may be held liable for the student's injuries. The level of supervision required depends on the dangerousness of the activity and the age of the students involved.

Examples

To work on her shoulder strength for wrestling, Susan is told to use the new weight machine the school recently purchased. The new weight machine has an extensive training manual on how to safely use the machine. Susan is not instructed how to use it and not told to review the manual, and the coach does not supervise her at any time while she is using it.

Susan damages her rotator cuff because she attempted too much weight when using the unfamiliar machine. If she had been supervised and instructed on the proper use of the machine, she would not likely have been hurt. The school could be liable because she was not adequately instructed and was left unsupervised.

John went into the weight room to use the free weights. He was lifting alone. He did not inspect the area where he was working or

the apparatus/machines he would be using. Even though there are signs that instruct users to rack the weights after each use and put on collars while lifting, very few do. He began lifting and doing a bench press without collars secured. His right arm was unable to keep up with his left and the weights slid off the right side, then the bar flew to the left and the weights fell off the left side with the bar and collar hitting John in the head, knocking him unconscious. Luckily, an attendant was able to come to his assistance. If he had followed the signs, this could have been avoided.

Learn-to-Swim by 10 Classes was being held by the local school district in the school district's central pool that services the schools in the district. During the 9 o'clock session with the first-grade classes from XYZ Elementary School, the students were broken down into eight subsections of 10 students, with one instructor and one lifeguard watching all the students. In one subsection, a 6-year-old female slipped off the instruction pad behind the instructor and the lifeguard watching the area of the pool was distracted and did not see the student in distress. The student went under the water for a third time and did not come back up. When the instructor took head count, the little girl was not to be found on the surface. The supervision plan had failed. She had drowned.

Coach and Staff Negligence

Negligence on the part of a coach or other staff can be a basis for filing a personal injury lawsuit to recover damages on a student's behalf. This could result from lack of certification, improper training techniques, overstretching or overexerting a student, or other conduct outside the scope of the staff member's training and experience which causes injury.

Examples

Coach Jensen forces his football team to run wind sprints nonstop for 1 hour. It is 95 degrees outside. Students have asked for water, but the coach tells them not until they're done with the workout. Two students collapse from heat exhaustion and possible heat stroke, requiring medical treatment. The coach's extreme training measures and failure to ensure proper hydration subjects the school to liability.

Athletic Director Smith has a contract with XYZ University to provide athletic training services for all home contests for football but not for away contests. A football player at an away game received a serious head injury and was knocked unconscious. The coaching staff was unable to perform the state-required concussion protocol and the team did not have an athletic trainer with them. The player was taken to a local hospital for observation and returned home on the team bus with a head trauma and no medical assistance.

A background check was not required for the recently hired girls' gymnastics coach. Later, two of the gymnasts complained of sexual assaults by the newly hired coach. During the investigation, it was found he was released from his former position as gymnastics coach in another state because of accusations of sexual harassment.

Intentional Harm

If a coach, teacher, or supervisor hits a student or throws something at a student, that individual may be liable for intentional harm caused by assault or battery.

Examples

Coach Smiley coaches the school soccer team. None of the students are doing the drills he assigned and are just playing around. Coach Smiley is frustrated and kicks a ball hard at a student. The ball hits the student in the face, breaking the student's tooth. Coach Smiley could be liable for assault and battery for intentionally putting the student in harm's way and causing an injury.

Coach George, a high school wrestling coach, who is a former high school and college wrestler, likes to demonstrate moves on his wrestlers. He is skilled, experienced, and strong. He likes to wrestle with them as well. He has a big ego and challenges them often. One day at practice, one of his wrestlers challenges him to a 6-minute match. Coach George is 20 pounds heavier than the student wrestler. Three minutes into the match, the student athlete screams and a loud snap is heard in the room. Everything goes silent. Coach yells, "Go get the trainer now!" The student athlete is crying and holding his shoulder and arm. He has a dislocated shoulder and broken arm.

This is a perfect example of a “mismatch” and how not to protect student athletes.

Swim Coach Rabbit forces one of his sprinters to jump off the 3-meter diving board because the sprinter was not making his times consistently in practice. The sprinter who is afraid of heights suffers a broken arm because he does not know how to enter the water from that height.

Closing Remarks

The areas and examples in this article make it easy for the reader to see how a school district, which is generally shielded by governmental immunity as a governmental agency, can be held liable for negligence in a personal injury case. The district may attempt to plead governmental immunity, but in these specific areas they most often will fail to prevail. As an athletic administrator and/or coach, you need to be very aware of your liability related to negligence in these areas and understand that you may not be shielded by governmental immunity.