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A LEGAL ANALYSIS OF APPELLATE TORT NEGLIGENCE CASES IN PUBLIC SCHOOL PHYSICAL EDUCATION K-12 FROM 1963-1983

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by

Robert John Dailey

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

Greensboro
1985

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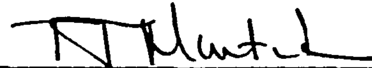

Dissertation Adviser

APPROVAL PAGE

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The purpose of the study was to describe the importance of court level and certain key factors on the judgments and settlements of negligence cases in physical education. This case law study of tort liability pertains to only those negligence cases involving public school physical education, kindergarten through 12th grade, in the United States from January 1, 1963 to December 31, 1983.

The following three questions to be answered in the study:

1. What factors or combinations of factors do cases decided in favor of either the plaintiff or the defendant have in common?

2. What, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level?

3. What implications can be ascertained from the analysis of the findings of this study?

Based on an analysis of cases in tort negligence in public school physical education, the following conclusions are summarized:

1. The findings of this study are consistent with the research that has been conducted in recent years concerning the implications and trends of tort negligence in physical education.

2. The decision of a case is not usually influenced by gender of the plaintiff or severity of injury; however, the court region where a case is heard does seem to make a difference.

3. When cases go to a higher court level, the courts have revealed that a higher standard of care is expected when young children are involved or gymnastics is being taught.

4. The courts expect that in order to instruct a physical education class properly, adequate safety instruction must be given, the correct performance of a skill must be demonstrated or made clear, and the progression children use in learning a skill or activity must be prudent. Improper, inadequate, or lack of supervision are not defined well by the courts.

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TABLE OF CONTENTS

Page

APPROVAL PAGE. ii

ACKNOWLEDGMENTS. iii

LIST OF TABLES vi

CHAPTER

I. INTRODUCTION. 1

Statement of the Problem 5
Scope. 6
Significance 7

II. REVIEW OF LITERATURE. 10

Important Tort Law Concepts and Factors. 11
Court Systems and Trial Procedures 20

III. METHOD. 26

Preliminary Procedure. 26
Identification of Data 27
Organization of Data 29
Analysis of Data 31
Presentation of Data 33
Interpretation of Data 38

IV. RESULTS AND DISCUSSION. 40
Question 1 41
Results 42
Discussion. 49
Question 2 52
Results 52
Discussion. 53
Results 55
Discussion: Teachers 61
Results 64
Discussion: Supervisors and Administrators 68
Question 3 71

Page

V. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS 76

Summary. 76
Conclusion 79
Recommendations for Further Study. 80

CITATIONS 82

BIBLIOGRAPHY 85

LEGAL BIBLIOGRAPHICAL AIDES. 88

APPENDIX A. Case Studies. 91

APPENDIX B. A Brief Description of The Factors Studied for Each Individual Case 143

APPENDIX C. Judgments Determined in Favor of the Plaintiff or the Defendant Based on Each Individual Factor 152

APPENDIX D. Judgments Determined in Favor of the Plaintiff or Defendant. 190

APPENDIX E. Judgments Determined in Favor of the Plaintiff or the Defendant Based on Each Individual Classification. 194

APPENDIX F. Classification of Cases as Determined by Category and Classification 207

APPENDIX G. Number in Party Being Sued. 210

LIST OF TABLES

Page

Table 1 Number of Judgments Determined in Favor of the Plaintiff or the Defendant Based on Each Individual Factor 46

Table 2 Number of Judgments Determined in Favor of the Plaintiff or the Defendant 54

Table 3 Number of Judgments Determined in Favor of the Plaintiff or the Defendant Based on Specific Categories and Classifications of Negligence 57

Table 4 Number of Judgments Determined in Favor of the Plaintiff or the Defendant Based on Specific Categories of Negligence. 66

CHAPTER I

INTRODUCTION

Studies concerning tort negligence in public school physical education are important and necessary. School districts, their agents, and employees can ill afford to be unaware of current implications of negligence torts in physical education. According to National Safety Council statistics, physical education as a profession, in comparison with other professions and enterprises, holds the current national record for allowing personal injury (Marcum, 1981). The National Safety Council estimated an excess of 300,000 pupil accidental injuries in United States public school physical education classes during the 1968-69 academic year (Bird, 1970). In 1971 there were approximately 52,000 interschool accidents. Each year one out of every 33 children attending school will be injured and physical educators will be involved in well over 50 of the injuries occurring to students (Chambliss & Mangin, 1973).

An understanding of current implications in tort liability can act both in a prescriptive and proscriptive manner. The importance of this point was made by Nolte (1963) when he commented, "Hundreds of cases involving teachers could have been avoided had teachers known their rights and responsibilities before the law." Teachers, according to Shroyer (1964), receive little information on school law, and a majority of the teachers have no formal education in school law. Martin (1983)

maintained that prospective physical education teachers are not knowledgeable of school law and its impact on their careers. This does not mean, as Nolte and Linn (1963) indicated, that teachers need to become experts in school law, but rather that they should have an understanding of the historical and legal development of public schools.

Research has been conducted in recent years concerning the implications and trends of tort negligence in physical education. Findings from these studies have aided those individuals involved with the instruction, supervision, and administration of a physical education program to better determine their rights and responsibilities according to the law. Hopkins (1978), Koehler (1967), and Oraze (1982) completed studies that developed specific guidelines for the practitioner that have been based on implications and trends. There has been little research, however, that has attempted to ascertain if there is a difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level, the first court to consider litigation, compared with the appellate court level which has the jurisdiction of appeal and review. Nor has there been research conducted that assesses which factors and combinations of factors in a case, such as plaintiff's characteristics, are important in the determination of the outcomes of negligence cases. Certain factors may be important in the determination of judgments and settlements of tort negligence cases in physical education. Furthermore, a study that addresses these issues may have far-reaching implications.

A study seeking to determine the difference of the judgments and settlements of negligent tort cases in physical education is a worthy endeavor because the study could have a significant effect on several aspects of school policies and procedures including curriculum, hiring practices, certification of teachers, and the supervision and instruction of children. If, for example, differences in judgments and settlements exist when cases are heard at the trial court level as opposed to the appellate court level, then the implications and guidelines expressed in current research in negligence tort in physical education would need to be reassessed and possible changes made. For if the rights and responsibilities, as defined by the judgments and settlements of one court level are different compared to another, then the rights and responsibilities of the physical education teacher, supervisor and administrator would be different, too. This is because their rights and responsibilities parallel any changes in the implications.

The teachers, supervisors, and administrators of physical education programs have certain rights and certain responsibilities which need to be protected. However, the rights of the children must be protected, too. The current tort law and the processes and procedures of how the law is carried out are meant to keep a balance between the rights and responsibilities of those directly involved with physical education in the public schools. As well intended as the laws are, there can and may be problems.

Cases should not be determined consistently in favor of the plaintiff or the defendant. Rather, each case should be judged according to the facts of that specific case. Both the settlement and judgment should be determined by and based on these facts.

For instance, if judgments and settlements of tort negligence cases in physical education were determined to be judged more consistently in favor of the plaintiff, there would be several complications. Teachers, supervisors, and administrators would be stifled in the curriculum they offered. Many sport and physical education activities would not be included in the curriculum because of fear that injuries would result. Who could or would teach the classes? The standard of care expected of the teacher would be so high that the teacher would have to be a master of the master teacher. And who could afford to take a job where the pay is low and the chance of financial ruin is high?

On the other hand, if judgments and settlements were determined to be consistently in favor of the defendant, then there would also be problems. Teachers could possibly have the impression that they could offer any type of activity in the curriculum regardless of the risks involved. There might also be the feeling on the part of the teacher that they could afford to be somewhat lax concerning the instruction and supervision of the students under their care. An apathetic approach of this sort could be disastrous to the safety of the children. Supervisors and administrators might develop the attitude that there is not a need to be highly selective in the hiring and training of teachers for there would not be as high a standard of care expected of them.

A lack of consistency in judgments and settlements does not allow professional teachers, supervisors, or administrators to have a clear understanding of what their rights and responsibilities are under the law. Without a clear understanding of one's rights and responsibilities, it is difficult, if not impossible, to form guidelines to follow. Also, without established guidelines one may easily falter in the busy and demanding schedule of the public school setting.

Tort law as it relates to physical education may have some inherent weaknesses. There is a need for the enactment of or changes in present tort laws. Changes in court procedures or standardization of the manner in which tort cases are heard and judgments and settlements determined are needed. The laws are intended to protect the student from injury due to negligence on the part of the school, but the school can not and should not be held responsible for every injury that occurs. Injuries are inevitable.

Statement of the Problem

The purpose of the study was to describe the importance of court level and certain key factors on the judgments and settlements of negligence cases in physical education. This case law study of tort liability pertains only to those negligence cases involving public school physical education, kindergarten through 12th grade (K-12), in the United States from January 1, 1963 to December 31, 1983. The study attempted to analyze and interpret the effect of key factors in determining the judgments and settlements of negligence tort cases in physical education and to ascertain the effect of differences of cases

heard at the appellate court level compared with the trial court level.

Questions

1. What factors or combinations of factors (i.e., age of plaintiff, gender of plaintiff, injury to plaintiff, dates of cases, activity or sport of participant, defenses, court district, number of parties being sued, or party being sued) do cases decided in favor of either the plaintiff or the defendant have in common?

2. What, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level?

3. What implications can be ascertained from the analysis of the findings of this study?

Scope

This study was begun with a preliminary procedure and then delimited to the identification, organization, analysis, presentation, and interpretation of legal data on tort liability that pertains to public school physical education, K-12, in the United States from January 1, 1963, to December 31, 1983. One of the main reasons that this study involves cases from 1963 to 1983 is that there has been an increase in negligence tort cases in physical education since 1962. In 1962, Stanley Miller was severely injured in a physical education class and he received a sum of $1,216,000 from a court decision. Since that important case, not only has the number of cases increased, but the

concern for implications of the high negligence award is now at the forefront (Appenzeller, 1966). Only tort negligence cases that involved an injury to a participant in a public school physical education class were included in the study. Key numbers 89.1 to 89.9 and 89.10 to 89.19 were searched to locate the cases that were relevant to this study. The study, therefore, deals with a universal sample and not a partial sampling of the reported cases.

Significance

Damages sought in tort liability cases are currently spiraling upward toward the millions (Grieve, 1978). According to the National Safety Council statistics in 1980, accidents of all types in the United States cost $83.2 billion. One can readily appreciate Parsons' (1979) concern regarding the existence of a "sue syndrome" in today's schools.

Van der Smissen (1980) believes that people are more apt to sue today because of difficult financial times. There is more of a concern for money and people realize that organizations will often prefer to pay a claim outside of court thinking that this is economically more sound. This realization coupled with the hard economic times may, in part, contribute to the lawsuits which appear to be a way of life in America (Van der Smissen, 1980).

"The 'sue syndrome' is nowhere more obvious today than in the area of product liability" (Grieve, 1978, p.17). Capital losses rose 135% in four years and 54% of the cases were decided against the manufacturer. In 1960, the average award was $11,000 and, in 1975, the average award

was $338,000. There were one million cases in 1975 and it is estimated there have been approximately two million cases a year since 1980 (Grieve, 1978).

The expected standard of care of a physical education teacher is high because of the potential injury which can befall a student in vigorous physical activity (Alexander, 1982, p.68). Also, because of the nature of the role a physical educator and coach plays, there is a higher standard of care expected (Carpenter and Acosta, 1982). "Professional personnel are held legally to a standard of care commensurate with their professional training" (Grimsley, 1969, p.105).

Not only do physical educators have a higher standard of care expected of them, but the duty to protect students from harm may have a greater distinction in one situation than another. The instructor not only is expected to consider the risk of the activity, but also the safety and supervisory requirements for the grade level involved (Mallios, 1975). The standard of care varies with the maturity of the child (Grimsley, 1969). The standard of care also varies with the type of activity. Certain activities, such as gymnastics, rugby, and football, are considered by Martin (1982) to be high risk activities. Activities like line soccer, gymnastics, and wrestling are described by Drowatzky (1978) as "inherently dangerous". Furthermore, the care experienced by the teacher is increased when the activity is compulsory. For example, an increased amount of care is expected when a course is required in the curriculum, a course needs to be completed for a grade, or when an instructor insists upon a student performing a certain skill

or aspect of a class (Drowatzky, 1978).

Considering that the damages in tort liability cases are escalating, the settlements of these cases are often astronomical; considering that physical educators are often involved, there is little surprise that there is a growing concern for negligence tort studies in physical education. Physical education teachers, supervisors and administrators realize that they are held to a high standard of care and that this standard of care varies with different situations and under varying conditions. Therefore, it is necessary to provide these individuals with an understanding of the current implications of negligence tort in their field.

CHAPTER II

REVIEW OF LITERATURE

This investigation necessitated the presentation of certain ideas which bear upon the study and its strategies. The review of literature covers a discussion of important law concepts and factors which were explored through the use of law encyclopedias such as the _Corpus Juris Secundrum_ and the _American Juris Prudence_. Current periodical articles and other secondary sources were used to supplement information found in the law encyclopedias. Also, when necessary, attorneys, law consultants, and sport law specialists were contacted for their insight concerning law concepts.

The review of literature comprises three main sections. The first section discusses important tort law concepts and factors including the definition and categories of tort and the definition and main elements of negligence. Section two is concerned with the defenses of negligence. Contributory negligence, comparative negligence, assumption of risk, sovereign immunity, governmental immunity, and "act of God" are all discussed in this section. The third section briefly describes the court systems of the United States and the trial procedures of the courts.

Important Tort Law Concepts and Factors

Definition and Categories of Tort

Torts are usually defined as civil wrongs. Tort law, therefore, involves the branch of the law concerning civil suits which pertain to the rights of citizens. More specifically, except for a breach of contract, the principles of tort law offer remedies by which injured persons may be compensated when the damages are caused by unreasonable conduct of a wrongdoer (McCarthy & Cambron, 1981).

The three main categories of tort are (1) intentional torts, (2) strict liability, and (3) negligent torts. Intentional torts are committed with the desire to inflict harm and may involve both civil and criminal law. Examples of intentional torts are assault, battery, or trespass (Gee & Sperry, 1978). Strict liability occurs when an injury results from the creation of an unusual hazard. The injured party does not have to establish that the injury was knowingly or negligently caused (McCarthy & Cambron, 1981). The courts have generally maintained that individuals who maintain dangerous apparatuses or undertake unusual activities are thought to be aware of the risks and consequently are thought to be better able to shoulder the burden of loss than innocent victims (Gee & Sperry, 1978). Usually strict tort produces liability for the provider or the manufacturer. Although this has not been used in education, some suggest that if teachers know of a defect or a danger in the product and select the product, they can be liable under strict liability (Drowatzky, 1980).

Definition and Elements of Negligence

The most prevalant type of civil suit brought against school personnel and school districts is negligence torts. The presence of negligence and the historical development of the law of negligence has resulted in the development of a group of elements necessary to the successful maintenance of a suit based on negligence (Leibee, 1965). These elements are the following:

1. Duty to conform to a standard of behavior which will not subject others to an unreasonable risk of injury.

2. Breach of that duty or failure to exercise due care.

3. A sufficiently close causal connection between the conduct or behavior and the resulting injury.

4. Damage or injury resulting to the rights or interests of another (Leibee, 1965, p. 8).

The duty of school teachers, coaches, and administrators to protect participants originates from three factors: (1) it is inherent in the situation; (2) there is a voluntary assumption; (3) it is required by statute.

Duty of a Teacher. The duty of a teacher is defined differently than the duty of a nonprofessional. According to Restatement of the Law (Second) Torts 2d.:

> Section 284 - Negligent conduct: Act or Failure to Act. Negligent conduct may be either: (a) an act which the actor as a reasonable man should recognize as involving as unreasonable risk or causing an invasion of an interest of another, or (b) a failure to do an act which is necessary for the protection or assistance of another and which the actor is under duty to do.
>
> Section 299A - Undertaking in Profession or Trade. Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities (Drowatzky, 1978, pp. 17-18).

The major difference in a teacher's responsibility as defined by the forementioned statement is that as a professional he or she will be judged by the standards of that profession. A teacher, therefore, is judged according to a higher standard of care than an untrained individual.

Individuals involved in activities or utilizing facilities may be classified into three categories: 1) invitees, 2) licensees, and 3) trespassers. Physical education students and athletes are invitees because they are invited or required to participate in school activities. Those who use a school facility with authorization or knowledge of the school officials are licensees. Trespassers are individuals who use the school premises without invitation. If trespassers are not exposed to hidden traps or the like they are owed no responsibility (Grieve, 1978). Each of these categories has a different level of duty owed them by school officials.

<u>Breach of Duty</u>. The second element of a negligence case involves breach of duty. A negligence suit may be the result of actions or the lack of actions. There are three general categories of negligent acts:

> (1) Misfeasance is performing an act which is within your scope of work but it is done incorrectly.
>
> (2) Malfeasance is performing an illegal act or one which was not within the scope of your responsibility.
>
> (3) Non-feasance is failure to perform an act which should have been performed (Grieve, 1978, pp. 5-6).

An analysis of the major elements concerned with negligence reveals that the law is not based only on carelessness. Ignorance, forgetfulness, or stupidity may be involved in a negligence case.

A defendant's conduct is measured against a legal standard of the reasonable prudent person. This reasonable prudent person is what the jury makes him up to be. An important concept to identify when considering a teacher or administrator's duty to care and a failure to perform that duty is "*in loco parentis*."

> "While parents as the natural guardians of their children have the right to and responsibility for the care, control, and education of their children generally, this right and responsibility shifts in large measure during school hours to school officials. The teacher stands *in loco parentis* (in place of the parents) during these hours" (Hammes, 1979, p. 107).

This concept requires a high standard of care. Reasonable conduct of a school official is based on criteria such as the teacher's experience level, teacher's training level, age of the child, type of activity, and the type of equipment being used (Gee & Sperry, 1978).

Causal Connection. Another element of a negligence action is "causation". The concept of proximate cause is used by courts to put parameters around what constitutes an individual's negligent actions. Otherwise, the ensuing liability could be limitless. Prosser depicted this problem in his statement, "legal responsibility must be limited to those cases which are so closely connected with the result and of such significance that the law is justified in imposing liability." (Gee & Sperry, 1978, p. 32)

Causation is governed by equities, public policy, and precedent and can usually be divided into legal cause and cause in fact. The jury under instruction from the court attempts to determine if the defendant's conduct was the cause of the plaintiff's loss or injury. The courts use a "but for" test to determine this. The test simply states if the injury would not have resulted "but for" the defendant's negligence, then the defendant is negligent. However, if the injury would have occurred without the defendant's act or omission, then the defendant is not guilty (Leibee, 1965).

Many times proximate cause will be judged based on answers to specific questions that analyze the particular circumstances or facts of the case such as the following:

(1) Did the action in question actually cause the injury?

(2) Would the injury have occurred but for the negligent conduct (proximate cause)?

(3) Was there an independent intervening cause?

(4) Could the negligent party have possibly foreseen the intervening act? (Gee & Sperry, 1978, p. 33).

Another approach to determine cause in law is to determine if the cause was direct or indirect.

> The Majority Rule is that if the intervening force is foreseeable, then the defendant is liable for all the consequences, regardless of the number of subsequent events in the causal chain. Another view holds that if the injury is produced by indirect causation, the defendant is liable only if he ought to have foreseen the injury in the light of the attending circumstances. (Leibee, 1965, p. 16)

Injury. The last element of negligence is that there be damage or injury. This does not need to be physical or monetary loss only. Most courts require that mental distress be accompanied by physical injury for an award to be given. However, tort claims have been attempted in the past few years for verbal chastisement by a school employee (Hammes, 1979).

Defenses of Negligence

The best defense in a negligence case is to prove that one of the four elements required for negligence is not present. When all four elements are present then there are certain defenses to negligence that may be used. Among these defenses are _contributory negligence_, _comparative negligence_, _assumption of risk_, an _act of God_, and _immunity_.

Contributory Negligence. Contributory negligence is one of two approaches that states have taken in viewing the sharing of negligence. Contributory negligence means that the conduct of the plaintiff contributed to his or her own injury. The conduct of the plaintiff was therefore below the standard of care that a reasonable man in a similar situation would have conformed (Gee & Sperry, 1978).

When the plaintiff is found in any way or degree to be responsible for or to have contributed to the negligent act which led to injury, then no liability is assessed and no compensation will be awarded. If both parties are at fault, the law requires that neither the plaintiff nor defendant may recover. Therefore, the standard of care to which the plaintiff is held is the same as that imposed upon the defendant. The plaintiff need only be slightly negligent in conduct for his or her age, physical capabilities, sex, and training to be barred from recovering funds (Leibee, 1965).

There are two considerations that may weaken the defense of contributory negligence. One factor to consider is the age of the student. A young child is not to be expected to react in the same manner as an adult. A young child does not have the same level of maturity or decision-making ability as that of an adult. A second factor to consider is the directives of the teacher. Courts have consistently held that when teachers direct students to act in a certain way and an injury occurs to the student, then the teacher is liable (Hammes, 1979).

<u>Comparative Negligence</u>. Comparative negligence is another approach that states have taken to view the sharing of negligence. In this approach a person is only liable for the percentage of the injury that his or her act or omission caused. The fault for a given circumstance is prorated. More states are moving from the concept of contributory negligence to comparative negligence. This approach provides less defense for teachers, coaches, and administrators in negligence suits

(Appenzeller, 1978).

Assumption of Risk. Another commonly used defense to negligence is assumption of risk. This defense is premised on the notion that individuals assume responsibility for their own safety when they volunteer to place themselves in an activity where risk and danger are known and understood prior to beginning the activity. The concept is based on the legal theory of *volenti non fit injuria*, which means no harm is done to one who consents (Leibee, 1965).

There are a few complicated questions to be considered within the usage of this defense in a school setting. One question to consider is whether students are required to assume risks by involvement in certain school activities. When physical education courses are required, courts have been reluctant to uphold this defense. However, in an elective physical education program, this defense may be applicable. In athletics, where participation is voluntary, the assumption of risk defense is often used (Gee & Sperry, 1979).

A second question in this defense is whether the students actually comprehend the risk involved in various school functions. Essential in this doctrine is that the plaintiff has knowledge of the risks. If the defendant can not prove the plaintiff was aware, and capable of awareness, of the dangers in a certain activity then the doctrine of assumption of risk will not be useful as a defense (Appenzeller, 1980).

Act of God. An act of God is another defense that can be used. The Act of God doctrine may be used when something occurs which is beyond the ability of a person to control. The injury is caused by factors that are both unforeseen and unexpected (Appenzeller & Appenzeller, 1980). A sudden lightning storm could be thought of as an example of an unforeseen and unexpected event that was beyond human control.

Governmental and Sovereign Immunity. A nationwide growth in concern for individual rights and a lessening of the strength of sovereign immunity places teachers, coaches, and administrators in a position of concern toward the risks involved in their programs for students (Parsons, 1979). The eroding of immunity laws from the municipal, county, and now state laws, is most evident in California, a leader in this move. There are 100 liability cases arising from trampoline liability in the state of California alone (Kurtzman, 1967).

More than 3/4th of the states have abrogated the governmental immunity doctrine. School personnel do not have protection from this doctrine. In states where "save harmless" laws have been enacted, school districts are required or permitted to reimburse any employee for financial loss from a suit. Eleven states have enacted these laws. Many states leave the responsibility to the employee and this responsibility includes purchasing liability insurance (Marsh, 1982).

Court Systems and Trial Procedures

United States Judicial System

Historically, education has been a state responsibility since the federal constitution says nothing about education directly. Therefore, state laws regulate most public and nonpublic education in the United States. Only a few institutions are regulated by the federal government (Drowatzky, 1980).

The American judicial system is made up of federal and state courts. The United States Supreme Court is the final arbiter when federal or state action is challenged and when there may be a violation of some provision of the federal Constitution. In general, there are two levels of federal courts below the Supreme Court. There are 88 federal district courts which are essentially trial courts. The trial courts are the courts of original jurisdiction, and therefore, they are the first court to consider litigation. Also, there are 11 federal courts of appeal, one in each of the 10 federal judicial circuits plus one in the District of Columbia. These courts hear most of the appeals from the district courts. The appellate level courts have jurisdiction of appeal and review.

Most litigation begins at the state trial courts of general jurisdiction. Many large cities establish their own courts of limited jurisdiction. The state's highest court is the state supreme court. A few states refer to the state supreme court as the court of appeals. These courts are not to be confused with the intermediate courts also

called courts of appeal that are used in states that have a state supreme court.

Obligations

Over the years, through a whole series of court decisions in England and the United States, common law has evolved. The courts look at an individual's relationships to others, and the obligations or duties that have been determined based on these relationships and tries to keep others from injury caused by negligence (Drowatzky, 1980).

Obligations arise from contractual obligations, too. When a contract is signed, certain obligations are specified and are binding (Drowatzky, 1980). State laws include a series of obligations. For school personnel, each state has somewhat different duties. Educators are also responsible for knowing federal legislation published in the Federal Register (Drowatzky, 1980).

Trial Procedures

Both federal and state jurisdictions have very specific procedures called Rules of Civil Procedure, which are often technical in nature and must be followed in a trial. (Appenzeller, 1980)

Complaint. The pretrial process in a lawsuit is begun by the plaintiff filing a complaint. The complaint sets down the facts which the plaintiff alleges gave rise to his or her injury and the amount of damages demanded. The defendant is entitled to get notice of the lawsuit and have an opportunity to respond. This responsive pleading or

rebut of the allegations is called an answer which states the defenses against the charges. The defendant may make counterclaims in the answer (Appenzeller, 1980).

Discovery Period. A discovery period follows once the pleadings are filed from both the defendant and plaintiff. The purpose of this period is to discover facts and hear testimony that pertain to the case. The defendant is asked to be physically present with attorneys for both parties. This period of the litigation is helpful in organizing and clarifying complaints and details. All the statements the defendant and witnesses make are copied down by a court official.

Once the discovery is over, a summary judgment may be given by the judge. This judgment may only be given if the facts of the case are not in dispute and it is a matter of deciding which law is relevant to this particular case. If the judge were to make a summary judgment, the case would not go to trial or consequently have a jury (Appenzeller, 1980). However, if a defendant fails to (1) file a formal answer to the plaintiff's complaint, (2) appear in court, or (3) comply with a court order, a finding for the plaintiff, called a default judgment results. (Thomas and Albert, 1982)

There are several tools that may be used during the discovery period. A deposition is one of those tools. A witness to the case may be asked to give sworn testimony, which is transcribed and signed. Depositions can be helpful because they aid in obtaining testimony of individuals who can not be subpoenaed or to verify statements of hostile witnesses (Thomas and Albert, 1982). Unfortunately, however, using a

deposition usually is not feasible because of the cost.

A deposition upon written questions is a second tool of discovery. The major difference in this type of deposition is that neither attorneys nor witnesses need to be in the same location during the questioning. Those who testify respond to prepared question before a court reporter (Thomas and Albert, 1982).

Interrogatories are also used in the discovery process. Parties, except witnesses, answer questions under oath. The questions, for example, may pertain to teachers' past records. Because this type of evidence is hearsay, interrogatories are seldom used. The production of documents is usually used instead. The documents may include lessons, accident reports, or other written information, for which a subpoena is sometimes needed (Thomas & Albert, 1982).

Physical and mental examinations are another form of discovery. Proof must be established as to why an examination must be required. Often a student plaintiff will be asked by the defendant to have an individual examination to determine the severity of an injury or to verify an injury (Thomas & Albert, 1982).

To identify key disputes, a request for admissions is used. The defendant and his or her lawyer receives a series of questions or statements to answer. These statements, written by the defense lawyer, may be answered by the defendant as an admission of guilt, a denial, or an abstention. The abstention must be based on insufficient information. If the defendant does not answer a statement, then the

issue is admitted (Thomas & Albert, 1982).

Courtroom Procedures. If the case does go to court, the lawyers for both the plaintiff and defendant draft a trial brief to state their client's legal position as favorably as they can to the judge. A jury of six or twelve is chosen. The jurors are to be disinterested and impartial people. Once the jurors are selected and the trial begins, the lawyer for each side will have an opening statement. After the opening statement and after the plaintiff has had a chance to present his or her case, the judge can grant a direct verdict if one party is clearly entitled to a verdict. If a direct verdict is given, the jury decides according to the facts presented. A directed verdict would be used if the plaintiff could not establish that the four elements of negligence were present or if the defendant failed to present a necessary defense.

Verdict. Before the jury convenes to decide on the verdict, each party is allowed to make a closing statement. The verdict is then delivered after deliberation and a verdict given. A general special, or general verdict with interrogatories may be reached by a jury. When the judge instructs the jury on the law and the jury is responsible for applying the law to the facts of the case and determining any relief if it is to be rewarded, the verdict is a general verdict. If the jury simply makes a finding of fact with a subsequent application of the law by the judge, the verdict is a special verdict. This method is more scientific and objective because the likelihood of bias is lessened. The general verdict with interrogatories, which is similar to a general

verdict, requires that specific questions are answered to assure that the verdict is consistent with the facts (Thomas & Albert, 1982).

The losing party then has the right to appeal the judgment to an appellate court. If the case goes to the appellate level, the case is bound by the facts as determined in the trial court. The determination is made on the correctness of the trial court's application of the law.

CHAPTER III

METHOD

The research method used in this study is known as legal analysis research (Good & Scates, 1954). This research method has been used in several similar studies where the purpose of the study was to investigate the legal implications for negligence torts in a certain profession. This method includes identifying key concepts and principles, identifying relevant words and topics, locating pertinent cases, and interpreting the data (Hanson, 1977). A partial list of researchers using this method includes Appenzeller (1978), Hales (1968), and Hanson (1977). These researchers have shown the viability of this technique as being appropriate for the study of law.

The procedures of this study were divided into six main sections: 1) preliminary procedure, 2) identification of data, 3) organization of data, 4) analysis of data, 5) presentation of data, and 6) interpretation of data.

Preliminary Procedure

A preliminary procedure was necessary to obtain the background materials and information for the study. Relevant terms and topics needed to be identified and discussed. Secondly, the preliminary procedure was needed to determine the most appropriate manner to identify, organize, analyze, present, and interpret the cases in the

study. Only by studying both the literature and a sample of tort negligence cases in physical education and sport could this be done.

Relevant terms and topics important to this study were identified through the reading and study of various law books, sport law sources, and law dictionaries and encylopedias. Also discussions were held with lawyers and sport law consultants. These terms and topics were discussed in Chapter II of this study.

A better understanding of the most appropriate manner of identifying, organizing, analyzing, presenting, and interpreting the cases of the study was gained by conducting a similar study on tort negligence regarding gymnastic injuries. The gymnastic study had a sample of 26 cases. This study resulted in the publication of two articles, "Gymnastics Safety and the Law" and "Gymnastics; Recommendations for Safety." The research involved in these publications provided valuable information necessary to develop a method for organizing and analyzing the present study.

Identification of Data

Two separate data bases are used in this study. The first data base involved collecting sources, i.e., dissertations, periodicals, secondary sources, etc., which were used in the review of literature. The second data base involved the compiling of negligence tort cases pertaining to public school physical education, kindergarten through 12th grade (K-12), in the United States from 1963 - 1983.

A DIALOG computerized literature search at the University of North Carolina at Greensboro library was conducted. This computer search of two data bases resulted in the listing of relevant dissertations, theses, books, and periodical articles. The data bases included the Education Resources Information Center (ERIC) and the Comprehensive Dissertation Abstracts.

The first step in beginning the computer search was to meet with an Assistant Reference Librarian, an experienced DIALOG data base searcher (300 or more searches completed) at the University of North Carolina at Greensboro Library, to determine a list of key words that would be relevant to the research topic. The key words, selected from the ERIC thesaurus, considered to be important were 1) athletics, 2) physical education, 3) legal responsibility, 4) legal problems, 5) educational malpractice, 6) tort, and 7) negligence. These terms and combinations of these terms were submitted to computer analysis to obtain a printout with full citations and a short description of each reference.

Additional sources were obtained at a Sport and Law Conference at Guilford College, Greensboro, North Carolina. The conference was presented by Dr. Herb Appenzeller, a well known authority on sport law, and various legal consultants such as Dr. Joseph Bryson, and several lawyers. The DIALOG-computerized literature search, once completed, gave a good base of information concerning the research topic.

The United States legal system is based upon precedent, i.e., upon decided cases. The legal research in this study was motivated by the necessity of finding what courts have decided in the past when confronted with cases concerning tort liability that pertain to public school physical education, K-12, in the United States from 1963-1983.

Cases were identified through the use of West Key Number Digests. The Dicennial Digests and the West Digests were used to find cases that pertained to negligence torts that concerned the school and school district. These digests were used because they contained the Key Number, which is a permanent or fixed number given to a specific point of case law. To determine the appropriate Key number for this study three methods were used: 1) the descriptive word method, 2) the topic method, and 3) the table of cases method. The specific digests used were the Seventh, Eighth, and Ninth Decennial and the Fifth and Sixth West General Digest. In these digests, Key Numbers 89.1 to 89.19 were searched to locate cases. The Key Number pertained to public schools under "Schools and School Districts."

Organization of Data

The study was organized for the purpose of answering two basic questions: 1) What factors or combinations of factors do cases decided in favor of the plaintiff or the defendant have in common? 2) What if any, is the difference in judgments of tort liability cases involving public school physical education that are heard at the trial court level versus the appellate level? By answering these two questions, certain implications were determined.

The first question pertained to analyzing factors or combinations of factors. There were nine factors thought to be important in affecting the outcome of negligence tort cases in physical education. These factors were determined through the analysis of the impact they had in the prior gymnastic study completed as part of the preliminary procedure. The nine factors identified included the age of plaintiff, gender of plaintiff, injury to plaintiff, dates cases were heard, the activity/sport of participant, defenses used, the court district where the case was heard, the number of parties being sued, and who was sued. Decisions for the 58 cases reviewed and analyzed in this study were determined and categorized as being in favor of either the plaintiff or the defendant, in order to illustrate what effect, if any, each of these factors may have had on the outcome of cases.

The second question pertained to taking each case, reviewing it, and then organizing the case under the specific classification of negligence claimed. The case was then classified according to the category of negligence. The instruction/supervision category was chosen because of its importance and relevance to the research topic as revealed in the articles reviewed.

Current articles written on negligence tort in physical education verify the importance of the three categories chosen for review in this study. Hilda Owens (1980) mentioned in her article, "They'll take you to court if you don't watch out", that there are three major obligations that have been upheld by the courts for instructors: 1) proper instruction, 2) adequate supervision of both in- and out-of-class

activities that are instructionally related, and 3) the maintenance of instructionally related equipment in a reasonable state of repair and the operation of the equipment in a safe manner.

Chambless and Mangin (1973) stated that the highest frequency of cases coming to court in negligence tort in physical education involved students not receiving adequate instruction in a particular activity. Also, defective equipment and unsafe facilities are believed to figure in a large majority of cases involving physical educators. Carpenter and Acosta (1982) maintained that the duty owed a student generally concerns 1) adequacy of supervision, 2) exercise of good judgment, and 3) proper instruction.

Dissertations and theses reviewed on negligence torts in physical education consistently used these categories. A partial list of studies that used these categories include Appenzeller (1966), Oraze (1982), Carley (1976), and Hopkins (1978). These studies and others helped to verify the importance of the analysis and interpretation of cases that involve these three areas.

Analysis of Data

Each case was identified through one of the West Key Number Digests and then it was shepardized. Shepardizing a case was done to ascertain whether the judgment and settlement of a case was final or whether the case was to be heard again in another court at another time. Also shepardizing a case was done to determine how a particular case was used in the argument of other cases.

Once the cases were identified and shepardized, all cases that were not pertinent to the study were not further considered. All cases that were pertinent to the study, as defined by the scope of the study, were collected from the National Reporter System, which includes the Northwestern Reporter, Pacific Reporter, Northeastern Reporter, Southern Reporter, Southeastern Reporter, Atlantic Reporter, and the Southwestern Reporter. This system was used to better ascertain the facts of each case, and the judgments and settlements of each case, as well as other important information. The National Reporter System reports in full all state appellate court decisions.

The study was delimited to 58 cases. Each of these cases was reviewed and all information that was helpful in answering any one of the three questions of the study was recorded, organized, and analyzed to determine the judgments and settlements for cases that were heard above a trial court level. These cases were determined and recorded on a chart according to the aforementioned classifications and categories, as follows:

A. Remanded
   1. plaintiff's favor
   2. defendant's favor

B. Affirmed
   1. plaintiff's favor
   2. defendant's favor

C. Reversed
   1. plaintiff's favor
   2. defendant's favor

D. Reversed and Remanded

1. plaintiff's favor

2. defendant's favor

Presentation of the Data

The presentation of data was organized to answer the three questions of the study in a concise and clear manner. The three questions and an outline for illustrating how the data were presented for each question is shown below:

Question 1: What factors or combinations of factors (i.e. age of plaintiff, gender of plaintiff, injury to plaintiff, dates of cases, activity/sport of participant, defenses, court district, number of parties being sued, or party being sued) do cases decided in favor of either the plaintiff or the defendant have in common?

Factors that were determined to be important to the study because of their proven relevance in the preliminary procedure are outlined and presented below:

A. Age of Plaintiff (actual age indicated)

1. younger than 11 years of age

2. older than 11 years of age

B. Gender of Plaintiff

1. male

2. female

C. Injury to Plaintiff

1. serious (back, head, neck, fractures, death)

2. less serious (other)

D. Dates of Cases

1. 1973 - 1983

2. 1963 - 1972

E. Activity/Sport of Participant

1. softball

2. gymnastics

3. golf

4. games

5. basketball

6. soccer

7. wrestling

8. exercise class

9. running

10. gym class

11. track and field

12. swimming

13. hockey

14. tennis

F. Defenses

1. Comparative Negligence

2. Contributory Negligence

3. Governmental Immunity

4. Incurred Risk

5. Sovereign Immunity

G. Court District

1. Pacific Region
2. Northwestern Region
3. Northeastern Region
4. Southwestern Region
5. Southeastern Region
6. Southern Region
7. Atlantic Region

H. Number of Party Being Sued

1. One party
2. Two parties
3. Three parties
4. Four parties
5. Six parties
6. Seven parties

I. Party Being Sued

1. Teacher
2. Director of Health and Physical Education
3. Principal
4. Superintendent
5. School District
6. School Board
7. Individual Member of the Board
8. School Board's insurer
9. Other

Question 2: What, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level?

The categories and classifications identified as being relevant to this study are presented below in the manner they were used:

Category: Instruction/Supervision of a Physical Education Class

A. <u>Teachers</u>

1. Failure to properly supervise
2. Failure to properly instruct
3. Failure to warn students of inherent dangers
4. Failure to listen to protestations and having students perform
5. Failure to provide rules to guide the class
6. Failure to control the class
7. Failure to watch student perform or see accident
8. Failure to account for individual abilities of students
9. Failure to assure that students were in adequate physical condition
10. Failure to provide adequate safety instruction
11. Permitting or asking students to participate in improper attire
12. Willful and wanton disregard of students
13. Failure to demonstrating
14. Failure to instruct spotters

15. Assault or assault and battery on student
16. Allowing students to return to activity after injury
17. Improper progression; too difficult an activity or movement
18. Failure to foresee injury

B. Supervisors and Administrators

1. Failure to follow state physical education syllabus, fitness manual, curriculum guide, or federation rules in the teaching of a class
2. Too many students in class
3. Failure to requir teacher to seek professional help
4. Failure to provide recently marketed spotting equipment
5. Failure to instruct teachers adequately as to matters of safety
6. Permitting an activity in the curriculum which is dangerous to students
7. Failure to provide a safe way of passage
8. Failure to hire competent instructors or staff
9. Failure to give physician needed information about student
10. Failure to provide adequate safety devices

Question 3: What implications can be ascertained from the analysis of the findings of this study?

A. Category: Judgments and Settlements of each individual classification (a-v)--Teachers

Determined effect on school districts, their agents, and

employees.

1. school districts and their agents and employees will not be held liable for injuries sustained by pupils
2. school districts, their agents and employees will be held liable for injuries sustained by pupils
3. the courts have been divided in their opinions

B. Category: Judgment and Settlements of each individual classification (a-j)--Supervisors and Administrators

Determined effect on school districts, their agents, and employees

1. school districts, their agents and employees will not be held liable for injuries sustained by pupils
2. school districts, their agents and employees will be held liable for injuries sustained by pupils
3. the courts have been divided in their opinions

Interpretation of Data

Certain nominal data were collected, compiled, and entered into various parts of the study in an attempt to comprehend better the direction of the appellate courts on the main questions of this study. The first question was, what factors or combination of factors do cases decided in favor of either the plaintiff or the defendant have in common? To determine what factors or combinations of factors were important in the decisions of cases, the number and percentage of judgments and settlements in favor of the plaintiff and defendants for each individual factor were identified.

Question two was, what, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level? This second question of the study was answered by describing the number and percentage of judgments and settlements determined in favor of the plaintiff and defendant. Those based on a specific classification and category of negligence were also identified.

The third question was to determine what implications can be ascertained from the analysis of the findings of this study. The implications of the study were drawn in two methods. First the nominal data gathered to answer the first two questions of this study were analyzed to determine whether the courts, according to each classification of negligence, were a) divided in their opinion, b) held the school districts, their agents and employees liable, or c) did not hold the school districts, their agents and employees liable. Secondly, current literature on the status of tort negligence in physical education was entered to comprehend more fully the implications of the nominal data and to safeguard against making any assumptions concerning the nominal data collected in this study.

CHAPTER IV

RESULTS AND DISCUSSION

The purpose of the study was to describe tort liability in physical education in the United States from January 1, 1963, to December 31, 1983. The study pertains to physical education teachers, supervisors, and administrators based on a case law study of 58 cases. Each of these cases involved injury to a participant in a public school K-12 physical education class. The cases were located by using the West Law Computer System. Key numbers, of the National Reporting System, used to search for the cases, included 89.1 to 89.9 and 89.10 to 89.19.

The study attempted to analyze and interpret the effect of key factors in determining the judgments and settlements of negligence tort cases in physical education and to ascertain the effect of differences of cases heard at the appellate court level compared with the trial court level. With this purpose, three questions were developed. The three proposed questions are listed below:

1. What factors or combinations of factors do cases decided in favor of the plaintiff or the defendant have in common?

2. What, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level?

3. What implications can be ascertained from the analysis of the findings of this study?

To best answer the three main questions proposed in this study, the data have been arranged in the following manner: 1) Each of the three questions is stated separately. 2) Results of the data that pertain to each individual question are then stated. 3) Tables that depict the data relevant to the proposed question are shown after the results. If there is more than one table that pertains to a question, or if the table is too lengthy to place after the results, the table is listed in the appendices. 4) After the question has been proposed, results stated, and tables shown, there is a discussion section.

Question 1

What factors or combinations of factors do cases decided in favor of the plaintiff or the defendant have in common?

Nine factors were considered relevant to this study: 1) age, 2) sex, 3) injuries, 4) dates, 5) activity/sport, 6) defenses, 7) court district, 8) the number of parties being sued, and 9) who was sued. The results of judgments and settlements of the cases in this study were reviewed as they related to these factors. Table 1 follows the results of these factors.

Results

Age. Of the 58 cases analyzed, only five cases were found where children younger than 11 were involved. Therefore, only 8.7% of the cases concerned this particular age group. Of these five cases, three cases were decided in favor of the plaintiff (60%). However, of the other two cases, one case was decided for the defendant because of governmental immunity. This case was solely determined because the defense was opposed to the specific facts and factors of the case. Therefore, 3 of 4 cases or 75% of the cases where children younger than 11 were concerned were decided in favor of the plaintiff. It is interesting to note that the defendant, in cases involving children younger than 11, won only 40% of the cases.

There were 42 cases where the plaintiff was older than 11. Of these cases, 13 were decided in favor of the plaintiff, whereas 29 were decided in favor of the defendant. The defendant won 69% of these cases, whereas the plaintiff won 31%.

Sex. A male was the plaintiff in 12 cases as compared to a female being the plaintiff in 7 cases. There were approximately twice the number of cases involving a male plaintiff as a female plaintiff. There were 25 cases that involved a male defendant and 10 cases that involved a female defendant. Therefore, more than twice the cases involved a male defendant as opposed to a female defendant. The total number of male cases was 37 and the total number of female cases was 17. There were 32.4% of the cases determined in favor of the male plaintiff and 41.1% for the female plaintiff.

In all cases, male or female, the defendant generally won. The male defendant won 67.6% of the cases and the female defendant won 58.9% of the cases.

Injuries. There were 30 cases involving severe injuries and 24 cases involving less severe injuries. Of the 30 cases involving severe injuries, 7 were determined in favor of the plaintiff, and 23 were determined in favor of the defendant. Of the 24 cases concerned with less severe injuries, 14 were determined in favor of the plaintiff and 10 in favor of the defendant. It is interesting to note that with severe injuries the defendant won the case approximately 76.7% of the time. The plaintiff, involved in severe injuries, only won 23.3% of the time. However with less severe injuries, the plaintiff won the case approximately 58.3% of the time. The defendant, involved in less severe injuries, won 41.7% of the cases. Of the cases studied, 56% of the injuries were severe where as 44% of the injuries were less severe.

Dates. Of the cases studied 69% or 37 cases occurred between 1973 and 1983, and 31% or 17 cases occurred between 1963 and 1972. The rise in the number of cases heard in the second 10-year period has increased more than two times the number of cases previously heard at a higher court level. During both times, the defendant won the case approximately 60% of the time. In the 1973 to 1983 period, the defendant won 65% of the cases, in the 1963 to 1972 period, the defendant won 58.9% of the time. The plaintiff only won 35% of the cases during the 1973 to 1983 period and 41.1% of the cases during the 1963 to 1972 period.

Activity/Sport. In the cases reviewed the plaintiff was injured in one of 14 sports or various activities. There were 15 cases involving gymnastics, 8 cases termed as a "gym" class, 5 cases involved running, 4 cases involved with basketball, and 4 cases involved an exercise class. In every activity or sport where there was more than one case reviewed, at least 50% or more of the cases were decided in favor of the defendant. Cases involving injuries to students in gymnastics (53%) and basketball (50%) had a lower percentage of cases decided in favor of the defendant. In those cases where there was a gymnastic injury, the defendant won only 53%, and in cases where there was an injury in a basketball activity, the defendant won only 50% of the time. Compared to injuries in sports like wrestling, the defendant won these cases 100% of the time.

Defenses. There were basically five defenses that were used in the cases reviewed in this study. These defenses included comparative negligence, contributory negligence, governmental immunity, sovereign immunity, and incurred risk. With the exception of comparative negligence, which only involved one case and therefore can not be used in the study, no specific defense was shown to be superior. For the most part, the defendant won more than the plaintiff when each of these defenses were used, i.e., 66.7% in favor of the defendant for contributory negligence and governmental immunity.

Court Districts. Cases in this study were reviewed in seven different court regions--the Pacific, Northwestern, Northeastern, Southwestern, Southeastern, Southern, and Atlantic Regions. Only in one region did the plaintiff win a higher percentage of cases than the defendant. In the Pacific Region the plaintiff won 5 out of 8 cases or 62.5% of the time. The Southwestern Region, on the other hand, had all 5 of its cases determined in favor of the defendant. The Northwestern Region also highly favored the defendant who won 77.8% or 7 out of 9 cases.

Parties Sued. There were nine different parties sued. Two of the defendants, the Director of Health and Physical Education and Individual School Board members, won the cases they were involved in 100% of the time. Eighty-three percent of the cases showed both the the superintendent and the principal winning the case. Other defendants who won over 50% of the time included the Board (70%), Teacher (65.5%), and School District (51.7%). The School Board Insurers only won 33.3% of the cases.

Table 1

Number of Judgments Determined in Favor of the Plaintiff or the Defendent Based on each Individual Factor

	Plaintiff N	Defendant N	Total N	Plaintiff %	Defendant %
Age					
Younger than eleven	3	2	5	60%	40%
Eleven and older	13	29	42	31%	69%
Unknown	3	4	7	43%	57%
Sex					
Male	12	25	37	32.4%	67.6%
Female	7	10	17	41.1%	58.9%
Injuries					
Severe	7	23	30	23.3%	76.7%
Less Severe	14	10	24	58.3%	41.7%
Dates					
1973-1983	13	24	37	35%	65%
1963-1972	7	10	17	41.1%	58.9%

table continues

	Plaintiff N	Defendant N	Total N	Plaintiff %	Defendant %
Activity/Sport					
Gymnastics	7	8	15	47%	53%
Exercise class	1	3	4	25%	75%
Gym class	3	5	8	37.5%	62.5%
Running	2	3	5	40%	60%
Softball	1	2	3	33.3%	66.7%
Basketball	2	2	4	50%	50%
Wrestling	0	3	3	0%	100%
Track and Field	0	1	1	0%	100%
Hockey	1	0	1	100%	0%
Swimming	0	3	3	0%	100%
Golf	1	0	1	100%	0%
Soccer	1	0	1	100%	0%
Tennis	0	1	1	0%	100%
Games	2	2	4	50%	50%
Defenses					
Comparative negligence	1	0	1	100%	0%
Contributory negligence	2	4	6	33.3%	66.7%
Governmental immunity	4	8	12	33.3%	66.7%
Incurred risk	0	1	1	0%	100%
Sovereign immunity	0	1	1	0%	100%

table continues

	Plaintiff N	Defendant N	Total N	Plaintiff %	Defendant %
Court Districts					
Pacific	5	3	8	62.5%	35.5
Northwestern	2	7	9	22.2%	77.8%
Northeastern	8	12	20	40%	60%
Southwestern	0	5	5	0%	100%
Southeastern	0	0	0	0%	0%
Southern	4	5	9	44.4%	55.6%
Atlantic	1	2	3	33.3%	66.7%
Party Sued					
Teacher	11	19	30	36.7%	63.3%
Director of H.P.E.	0	2	2	0%	100%
Principal	1	5	6	17%	83%
Superintendent	1	5	6	16.7%	83.3%
School District	14	15	29	48.3%	51.7%
Board	7	16	23	30%	70%
Individual Members of Board	0	4	4	0%	100%
Board Insurers	2	1	3	66.7%	33.3%
Other	4	8	12	33.3%	66.7%
All Cases	20	34	54*	37%	63%

Note. Two cases were split decisions; in one case the defendant joined additional defendants; in one case there was a motion to counter-claim against defendant (Total: 4 cases).

Discussion

Although very few cases heard involved children younger than 11 years of age, a higher percentage of those cases were decided in favor of the plaintiff. One can only hypothesize that more cases are not heard at this age level because the defense realizes that the percentages are highly in favor of the plaintiff, and the defense attempts to settle outside of court or not take the case to a higher court level.

The study illustrates that younger children are considered to need more supervision in their classes. However, the study also shows that older students with higher experience and skill levels are possibly allowed more freedom and with this freedom comes responsibility for their actions. This may have implications for class size. To supervise children of a younger age more closely there is possibly a need for a smaller class size.

The gender of the plaintiff or injured party is usually male. Almost twice the number of males were involved in the cases reviewed in this study. Females, however, had a slight advantage in winning their cases than the males. Therefore, one can not make a case that gender is an important factor in deciding a tort negligence case in physical education.

A larger number of cases involved severe injuries to individuals such as profuse bleeding, fractures, injuries to the head, neck, back, or even death. However, the cases involving less severe injuries were the ones where the plaintiff had a distinct advantage. More than half the cases were decided in favor of the plaintiff when the injury was of a less severe nature, whereas almost 3/4 were in favor of the defendant when the case involved a plaintiff with a severe injury.

The apparent advantage the defense has had in a case that involved severe injury to the plaintiff may be perplexing. It would seem that if someone were severely injured that some sort of negligence might be more probable. Also one might expect a certain amount of emotion on the part of the jury and judge. On the other hand, there is a good chance that such a case is going to be tried very strictly according to the letter of the law, for high stakes are involved--not only large sums of money, but also the emotional load of possibly being guilty that an individual will be impaired the rest of his or her life. Consequently, the emotionality of the injury may not work in the plaintiff's favor as much as it does for the defendant.

Twice the number of cases were heard past the trial level from 1973 to 1983 as were heard from 1963 to 1972. The literature suggests that in recent years there were more tort liability cases heard, but it is interesting to note that there were also more cases that went beyond the trial court level. One reason for this may have been that in both periods the advantage had been with the defendant rather than the plaintiff. This was even more evident during the past ten years.

Gymnastics, more than any other sport or activity, has had more cases heard above the trial court level. In fact, there were twice as many gymnastics cases heard at a higher court level, but the percentage of cases decided in favor of the defendant was high, too.

There appeared to be a higher standard of care expected of gymnastic instruction than in other areas. This was most probably because of the number of catastrophic injuries in the sport and the apparent dangers of using equipment and moving in all directions, planes, and axes. The implications of this may be that the hiring of a gymnastic teacher must be done with great care. The teacher must have good credentials. Furthermore, the equipment used must meet high standards, or else there should be no program.

The defenses that have been used to win a case in a higher court have mainly been comparative negligence, contributory negligence, governmental immunity, and sovereign immunity. All of these defenses have been, for the most part, unsuccessful. This may simply illustrate that the facts of the case and a few important factors outweigh any specific defense one may use.

Of the various court regions, as defined by the National Reporter System of West Law, it is apparent that the Pacific Region is more likely to decide in favor of the plaintiff. The Northeastern, Southern, and Atlantic regions are also somewhat likely to decide in favor of the plaintiff. Therefore, one may presume that determining the past history of cases heard in a region may be important to a better understanding of the possible outcome of a pending case.

The individuals or parties most sued are the teacher, the board, and the school district. Of these three parties, all are likely to have a good chance to win. Board insurers, however, are not likely to win. The courts do not seem to protect one group more than another.

Question 2

What, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level?

Results

Table 2 indicates the number of judgments determined in favor of the plaintiff and the defendant. The figures in Table 2 are ascertained from the analysis of 58 cases, In the final analysis, 54 cases were used because two cases were split decisions, one case joined additional defendants, and the other case involved a motion to counter claim against the defendant. The total number of cases determined in favor of the defendant was 34, whereas there were 20 cases determined in favor of the plaintiff. Only 37% of the cases that were heard above the trial court level were decided in favor of the plaintiff, whereas 63% of the cases were decided in favor of the defendant.

Originally there were, at the trial court level, 12 cases that were decided in favor of the plaintiff and 42 in favor of the defendant. Of the 42 cases where the plaintiff took action against the defendant in a case taken to a higher court level, 10 cases were remanded and reversed in favor of the plaintiff, 2 cases were reversed in favor of the

plaintiff, and 30 cases were affirmed in favor of the defendant. Therefore 12 cases (35%) were decided in favor of the plaintiff as opposed to 30 cases for the defendant. Of the 12 cases where the defendant took action against the plaintiff in a case taken to a higher court level, 2 cases were remanded and reversed in favor of the defendant, 2 cases were reversed in favor of the defendant, and 8 cases were affirmed in favor of the plaintiff. Therefore, 4 cases (30%) were decided in favor of the defendant as opposed to 8 cases for the plaintiff.

Discussion

The initial totals shown in Table 2 reveal that 34 cases were determined in favor of the defendant as opposed to 20 for the plaintiff. This suggests that the defendant has a better chance than the plaintiff to win a negligence case in physical education when the case goes to a higher court level. However, most cases that go to a higher court level retain the same judgment. When the plaintiff initiated action at a defendant, the plaintiff won only 29% of the time. When the defendant initiated action at a higher court level against a plaintiff, the defendant won only 33% of the time. Therefore, it is apparent that both parties, plaintiff and defendant, have much difficulty in overturning a court decision.

Table 2

Number of Judgments Determined in Favor of the Plaintiff or the Defendent

Plaintiff		Defendant	
Cases affirmed in favor of plaintiff (D)	8	Cases affirmed in favor of defendant (P)	30
Cases reversed in favor of plaintiff (P)	2	Cases reversed in favor of defendant (D)	2
Cases remanded and reversed in favor of the plaintiff (P)	10	Cases remanded and reversed in favor of the defendant (D)	2
Total number of cases determined in favor of the plaintiff	20	Total number of cases determined in favor of the defendant	34

Note. The plaintiff appealed 42 cases to the higher court level and won 12 times (29%). The defendant appealed 12 cases to the higher court level and won 4 times (33%). (D) signifies that the defendant appealed, (P) signifies that the plaintiff appealed.
Total number of cases with split decision: 2
Total number of cases with the defendant joining additional defendants or where there was a motion to counter claim against defendant: 2

The plaintiff initiates the higher percentage of cases that are heard at the higher court level. For instance, the plaintiff initiated action on 42 cases as opposed to 12 times for the defendant. It could be that certain immunity defenses were being challenged. Conversely, the defendant may have thought that taking a case to a higher court level may not be to any advantage.

Results

In Table 3, the number of judgments determined in favor of the plaintiff or the defendant based on the specific category of Instruction/Supervision for teachers and classifications of negligence are determined. The two main classifications of negligence under the Instruction/Supervision category were failure to properly supervise and failure to properly instruct. There were 20 cases where the allegation of failure to properly supervise was made and 13 cases where the allegation of failure to properly instruct was made.

The classifications of negligence concerning instruction that resulted in the defendant's winning the judgment included 1) failure to supervise (70%), 2) failure to properly instruct (61.5%), 3) failure to warn students of inherent dangers (60%), 5) teacher absent from class (66.7%), 6) failure to account for individual abilities of students (75%), 7) failure to assure that students were in adequate physical condition (100%), 8) willful and wanton disregard of students (66.7%), and 9) allowing students to return to activity after injury (100%).

Classifications of negligence involving instruction that resulted in the plaintiff's winning the judgment included 1) failure to provide adequate safety instruction (100%), 2) failure to demonstrate (100%), and 3) improper progression; too difficult an activity or movement (100%).

Classifications that were equally divided in outcomes included 1) failure to listen to protestations and having students perform, 2) failure to provide rules to guide the class, 3) failure to watch students perform or see accident, 4) permitting or asking students to participate in improper attire, 5) assault or assault and battery on a student, and 6) failure to foresee an injury.

Table 3

Number of Judgments Determined in Favor of the Plaintiff or the Defendent Based on Specific Categories and Classifications of Negligence

	Cases Appealed to a Higher Court Level	Cases Won by Appealing Party	Percentage of Cases Won by Appealing Party	Total Cases Won	Total Percentage Won
Instruction/Supervision (Teachers)					
Classification: Failure to properly supervise					
Plaintiff	16	4	25%	6	30%
Defendant	4	2	50%	14	70%
Classification: Failure to properly instruct					
Plaintiff	9	3	33%	5	38.5%
Defendant	2	2	100%	8	61.5%
Classification: Failure to warn students of inherent dangers					
Plaintiff	5	2	40%	2	40%
Defendant	0	0	0%	3	60%
Classification: Failure to listen to protestations and having student perform					
Plaintiff	4	2	50%	2	40%
Defendant	1	1	100%	3	60%

table continues

	Cases Appealed to a Higher Court Level	Cases Won by Appealing Party	Percentage of Cases Won by Appealing Party	Total Cases Won	Total Percentage Won
Classification: Failure to provide rules to guide the class					
Plaintiff	2	1	50%	1	50%
Defendant	0	0	0%	1	50%
Classification: Failure to control the class					
Plaintiff	5	2	40%	2	40%
Defendant	0	0	0%	3	60%
Classification: Failure to watch students perform or see accident					
Plaintiff	2	0	0%	2	50%
Defendant	2	0	0%	2	50%
Classification: Failure to account for individual abilities of students					
Plaintiff	3	0	0%	1	25%
Defendant	1	0	0%	3	75%
Classification: Failure to assure students were in adequate physical condition					
Plaintiff	2	0	0%	0	0%
Defendant	0	0	0%	2	100%

table continues

	Cases Appealed to a Higher Court Level	Cases Won by Appealing Party	Percentage of Cases Won by Appealing Party	Total Cases Won	Total Percentage Won
Classification: Inadequate safety instruction					
Plaintiff	2	2	100%	3	100%
Defendant	1	0	0%	0	0%
Classification: Permitting or asking students to participate in improper attire					
Plaintiff	0	0	0%	1	50%
Defendant	2	1	50%	1	50%
Classification: Willful and wanton disregard of student					
Plaintiff	5	1	20%	2	33.3%
Defendant	1	0	0%	4	66.7%
Classification: Failure to demonstrate					
Plaintiff	2	2	100%	3	100%
Defendant	1	0	0%	0	0%
Classification: Assault or assault and battery on student					
Plaintiff	2	0	0%	2	50%
Defendant	2	0	0%	2	50%

table continues

	Cases Appealed to a Higher Court Level	Cases Won by Appealing Party	Percentage of Cases Won by Appealing Party	Total Cases Won	Total Percentage Won
Classification: Allowing student to return to activity after injury					
Plaintiff	1	0	0%	0	0%
Defendant	0	0	0%	1	100%
Classification: Improper progression; too difficult an activity or movement					
Plaintiff	1	1	100%	2	100%
Defendant	0	0	0%	0	0%
Classification: Failure to foresee injury					
Plaintiff	2	1	50%	1	50%
Defendant	0	0	0%	1	50%

Discussion: Teachers

From the data collected in this study, it is apparent that there are certain alleged charges that are made by plaintiffs that, if substantiated in a court of law, make for a very strong case. The charges made that were consistently won by plaintiffs were inadequate safety instruction, failure to demonstrate, and improper progressions. All three of these classifications resulted in the plaintiff winning 100% of the cases appealed to a higher court level.

The data of the cases concerned with teachers responsibilities concerning instruction and supervision revealed that the courts have certain responsibilities which are viewed as being most important and necessary. Specifically, a teacher must instruct and proper safety must be a part of that instruction. For example, in case #5, a boy was killed in a golf class being held indoors. The boy, "who had no understanding of golf, had not received any instruction by any teacher prior to his attempted use of club, and who received his only instruction from the classmate who struck the fatal blow." In this case, where no instruction or safety instruction was given, the defendants were found guilty.

The defendants were also found guilty in case #13 where the students were playing line soccer. The teacher did not give a demonstration or explanation of the game. Students did not know what to do when they met the ball at the same time.

In case #2 and case #16, the safety instruction was also determined to be inadequate. Both of these cases involved gymnastic classes. In case #2, the spotters were not instructed in how to properly spot. Case #16 involved a boy who had minimal experience on the trampoline being forced to do a "flip," when he had minimal acrobatic instruction.

The importance of a teacher's demonstrating became apparent when all four cases where it was alleged that the teacher did not demonstrate were determined in favor of the plaintiff. In case #2, an 11-year-old girl was injured when she fell from the still rings. The judge, in his decision commented that "the teacher never demonstrated any stunts." The judge in case #13 also pointed to "expert testimony that reasonable care required demonstration and explanation of game and gym. Teacher's admission that he did not instruct boys what they should do when two players met ball at the same time," in a game of line soccer, was an important factor in the case being reversed in favor of the plaintiff. Importance of not "demonstrating," the exercise nor warning the class of inherent dangers, and testimony that the teacher did not consult any textbook in preparation for the class led, at least in part, to the decision in case #15 for the teacher to be found negligent.

Improper progression and appropriate activities for the student must be considered. In case #40, a tumbling class, a girl injured her right leg while performing a skill that was beyond her capability and the teacher was found negligent. In another case involving gymnastics, case #47, a decision was made in favor of the plaintiff when a pupil had a back injury. In this particular case, the pupil's doctor had

requested a list of exercises from the school to determine whether this was an appropriate activity for the student. The list was never received by the physician and the physician testified in court, after the pupil's injury, that he would recommend against the activity which caused the pupil's injury.

The courts are not tolerant of physical abuse of students by teachers when disciplining students. In case #22, the teacher lifted, shook, and dropped a boy on the gymnasium floor. The teacher in this case was 34 years old, stood 5 feet 8 inches, and weighed 230 pounds. Reginald, the boy being disciplined, was 4 feet 9 inches and weighed 101 pounds. The courts felt that the force used was in excess of physical force needed to properly discipline or for the teacher to protect himself.

Case #36 was also decided in favor of the student. The student in this case has an eye swollen shut and a bloody nose as the result of a disciplinary action taken by his teacher. According to in loco parentis, a teacher may properly administer reasonable corporal punishment, but the teacher is subject to the same standard of reasonableness which is applicable to parents in disciplining their children. The defendant, in disciplining the student, went beyond the reasonable force allowed. In case #37, where governmental immunity protected a teacher who allegedly intentionally threw a basketball into the face of a student and in case #27 where the teacher pushed a pupil against a chicken-wire backstop, the defendants won.

Six cases concerning teachers did not follow certain guidelines. The defense won the case when the plaintiff, who had the burden of proving negligence on the part of the instructor, could not prove the instructor violated a standard recognized in teaching (#4). Case #44 was won for the defense because of the doctrine of sovereign immunity. The plaintiff won when the teacher did not follow a state fitness test guideline (#19), not following the school's written rules of instruction (#5), or not following the P.E. Syllabus. Case #33 was the only case where specific guidelines were not followed and the defendant won. In case #33, the National Association of Federation Rules were not followed by the student, but the student "failed to state cause of action."

Using the charge of too many students in a class as a reason for injury to a pupil does not carry too much power (#3, #4, #7, #10, #18, #24). Not requiring teachers to seek professional training (#4), failure to adequately instruct teachers (#4, #8), failure to provide safe passage (#20, #39), failure to hire competent instructors (#44, #56), and permitting a dangerous activity in the classroom (#14, #15, #21, #57) are all charges that could be determined for or against the plaintiff. There were not enough cases to show a pattern.

Results

In Table 4, the number of judgments determined in favor of the plaintiff or defendant based on the specific category Instruction/ Supervision for supervisors and administrators and classifications of negligence were determined. The two main classifications of negligence in Table 4 were 1) that there were too many students in class, and 2)

failure to follow the state physical education syllabus, fitness manual, curriculum guide, or federation rules in teaching a class. There were allegations of too many students in class 8 times and allegations of not following specific rules, guidelines, or syllabus 6 times.

The classifications of negligence concerning supervision that resulted in the defendant winning the judgment included 1) too many students in class (62.5%), 2) not requiring teacher to seek professional training (100%), 3) failure to provide recently marketed spotting equipment (100%), 4) failure to adequately instruct teachers as to matters of safety (100%), and 5) permitting an activity in the curriculum which is dangerous to students (75%). Classifications that were equally divided included: 1) failure to follow the state physical education syllabus, fitness manual, curriculum guide, or federation rules in teaching a class, 2) failure to provide a safe passage way, and 3) failure to hire competent instructors or staff.

Table 4

Number of Judgments Determined in Favor of the Plaintiff or the Defendent Based on Specific Categories and Classifications of Negligence

	Cases Appealed to a Higher Court Level	Cases Won by Appealing Party	Percentage of Cases Won by Appealing Party	Total Cases Won	Total Percentage Won
Instruction/Supervision (Supervisors and Administrators)					
Classification: Failure to follow state physical education syllabus, fitness manual, curriculum guide, or Federation rules in the teaching of a class					
Plaintiff	4	1	25%	3	50%
Defendant	2	0	0%	3	50%
Classification: Too many students in class					
Plaintiff	8	3	37.5%	3	37.5%
Defendant	0	0	0%	5	62.5%
Classification: Not requiring teacher to seek professional training					
Plaintiff	1	0	0%	0	0%
Defendant	0	0	0%	1	100%

table continues

	Cases Appealed to a Higher Court Level	Cases Won by Appealing Party	Percentage of Cases Won by Appealing Party	Total Cases Won	Total Percentage Won
Classification: Failure to provide recently marketed spotting equipment					
Plaintiff	1	0	0%	0	0%
Defendant	0	0	0%	1	100%
Classification: Failure to adequately instruct teachers as to matters of safety					
Plaintiff	2	0	0%	0	0%
Defendant	0	0	0%	2	100%
Classification: Permitting an activity in the curriculum which is dangerous to students					
Plaintiff	4	1	25%	1	25%
Defendant	0	0	0%	3	75%
Classification: Failure to provide a safe way of passage					
Plaintiff	2	1	50%	1	50%
Defendant	0	0	0%	1	50%
Classification: Failure to hire competent instructors or staff					
Plaintiff	2	0	0%	1	50%
Defendant	0	0	0%	1	50%

Discussion: Supervisors and Administrators

Failure to properly supervise or to properly instruct are two of the most common complaints of negligence. Thirty-three of the 58 cases in this study contained this complaint. This may not be surprising when one considers that although governmental immunity may protect the school district, the individual teacher is not so protected (Carley, 1976; Soich, 1964).

Courts have been found to be divided in determining what is improper, inadequate, or lack of supervision (Soich, 1964). This study substantiates that statement. There were 20 cases where failure to properly instruct was a complaint, and of those cases 6 were determined in favor of the plaintiff, and 14 in favor of the defendant. When the charge was failure to properly instruct, 5 cases were found to be in favor of the plaintiff and 8 cases in favor of the defendant. Very rarely did any of the classifications result in the plaintiff or defendant winning a case when the case was appealed to a higher court level. Furthermore, as evident in Table 4, the supervisors and administrators were less likely than the teachers to have a judgment or settlement changed when a case was appealed to a higher court level.

As Dr. Appenzeller stated, "Supervision is to be furnished when dangerous activities or dangerous equipment is available to pupils." Drowatzky, 1977, further explained that while general supervision is all that is expected of teachers, one must realize that specific supervision is expected during the conduct of a class.

> The majority of suits allege inadequate supervision as a cause of injury. The supervision referred to is that of supervising the participants in an activity. There are two types, general and specific. The distinction between these is important in determining the nature of the care that must be given. In general supervision, one is in a given area overseeing the activity; in specific supervision, one is at the side of the participant specifically watching/instructing. There are principles to which one must adhere for each. (Van Der Smissen, 1978, p. 240)

<u>General</u>

A plan of supervision is essential. The plan should include the following basic elements:

1. The supervisor should be present.
2. The student-teacher ratio must be adequate.
3. A supervisor must be competent.
4. The supervisor must have control of the class.
5. Any dangerous equipment or facilities must be identified and corrected.
6. Supervisors must have emergency medical training.

(Van Der Smissen, 1978)

<u>Specific</u>

Specific supervision is necessary until the individual realizes his capabilities with respect to the activity and understands and follows set safety procedures. In fact, assumption of risk will not be upheld

as a defense unless one appreciates and knows the risks involved (Van Der Smissen, 1978).

To better determine what "specific supervision" may consist of, one must consider the charges of negligence in the area of instruction and supervision. The various claims of negligence included failure to warn students of inherent dangers, failure to listen to protestations and having students perform, failure to provide rules to guide the class, failure to control the class, failure to watch students perform or see the accident, absence from class, failure to account for individual abilities of students, failure to assure students were in adequate physical condition, inadequate safety instruction, permitting or asking students to participate in improper attire, willful or wanton disregard of students, failure to demonstrate, assault or assault and battery on students, allowing a student to return to activity after an injury, improper progression or too difficult an activity or move, or failure to forsee an injury.

There were six cases concerning teachers not following certain guidelines. The defense won the case when the plaintiff, who had the burden of proving negligence on the part of the instructor, could not prove the instructor violated a standard recognized in teaching (#4). Case #44 was won for the defense because of the doctrine of sovereign immunity. The plaintiff won when the teacher did not follow a state fitness test guideline (#19), did not following the school's written rules of instruction (#5), or did not follow the P.E. Syllabus. Case #33 was the only case where specific guidelines were not followed and

the defendant won. In case #33, the National Association of Federation Rules were not followed by the student, but the student "failed to state cause of action."

Using the charge that there were too many students in a class as a reason for injury to a pupil does not carry too much power (#3, #4, #7, #10, #18, #24). Not requiring teachers to seek professional training (#4), failure to adequately instruct teachers (#4, #8), failure to provide safe passage (#20, #39), failure to hire competent instructors (#44, #56), and permitting a dangerous activity in the classroom (#14, #15, #21, #57) are all charges that could be determined for or against the plaintiff. There were not enough cases to show a pattern.

Question 3

What implications can be ascertained from the analysis of the findings of this study?

Considering just the number and percentages of cases that were determined for or against the plaintiff or the defendent in this study, to determine implications would be risky. However, by considering the judgments and settlements of cases, i.e., outcomes, one can ascertain a general view of what the courts are perceiving as important. The differences evidenced from the judgments and settlements of cases heard above a trial court level were recorded and analyzed according to the appropriate category and classification to determine their effect on the school districts, their agents, and employees, or equipment manufacturers. The results of these nominal data are recorded below.

The following listing of various classifications of negligence are based on nominal data collected from the analysis and interpretation of cases in this study.

Teachers

School districts, their agents and employees are likely to be liable for injuries sustained by pupils under the following conditions or circumstances:

Inadequate safety instruction

Failure to demonstrate

Improper progression; too difficult an activity or movement

The courts have been undecided in their opinion under the following conditions or circumstances:

Failure to properly supervise

Failure to properly instruct

Failure to warn students of inherent dangers

Failure to listen to protestations and having students perform

Failure to provide rules to guide the class

Failure to control the class

Failure to watch students perform or see accident

Absence from class

Failure to account for individual abilities of students

Permitting or asking students to participate in improper attire

Willful and wanton disregard of students

Assault or assault and battery on student

Allowing students to return to activity after injury

Failure to foresee injury

School districts, their agents and employees are not likely to be held liable for injuries sustained by pupils under the following

circumstances:

Failure to assure students were in adequate physical condition

Supervisors/Administrators:

School districts, their agents, and employees are not likely to be held liable for injuries sustained by pupils under the following conditions or circumstances:

None

School districts, their agents, or employees are likely to be held liable for injuries sustained by pupils under the following conditions or circumstances:

Failure to follow state physical education syllabus, fitness manual curriculum guide, or Federation rules in the teaching of a class

The courts have been divided in the opinions under the following conditions and circumstances:

Too many students in class

Not requiring teacher to seek professional training

Failure to provide recently marketed spotting equipment

Failure to adequately instruct teachers as to matters of safety

Permitting an activity in the curriculum which is dangerous to students

Failure to provide a safe way of passage

Failure to hire competent instructors or staff

However, to understand more fully what the courts are saying, the decisions of cases in this study must be viewed as they relate to the current literature, which gives added insight into the findings of this study. The area of tort was discussed in the literature cited, as follows:

Teachers are expected to give proper instructions (Arnold, 1971). Instructions must include safety guidelines (Oraze, 1982). Teachers must be careful when deviating from the syllabus (Appenzeller, 1970). Teachers should not leave the class unsupervised (Oraze 1972, Appenzeller 1970). Students should be warned of high risk activities (Arnold, 1971). Students are not to be coerced into participation (Appenzeller, 1970).

It is important to establish and enforce rules for the maintenance of discipline (Lowell, 1979). Teachers are not expected to supervise or instruct in such a manner that every spot or that every piece of equipment is directly supervised in a continuous manner (Appenzeller, 1966). A teacher must consider the age and experience level of a participant (Drowatzky, 1977). Furthermore, teachers should assign students according to their abilities (Arnold, 1971; Carley, 1976). The health status of students should be known (Carley, 1976; Drowatzky, 1977). Logical teaching methods should be used (Arnold, 1971). It may be important to determine whether an activity is suitable for a particular grade, level, or sex (Carley, 1976), for liability may result if an activity is thought to be beyond the skill or ability level of the child (Drowatzky, 1977).

The courts, as found by the study, expect that students have adequate safety instruction, that they understand what is expected of them (demonstrated), that the progression within the activity is logical, and that the activity is not too difficult.

The simple fact that there were several alleged charges of negligence on the above-mentioned list illustrates that a teacher must consider these factors when teaching a class or supervising. This study did not strongly support the notion that a teacher who did not do these acts would be held liable, but neither did it find a teacher not liable. Therefore, it would be in the best interests of teachers to consider these acts as important and integral to their programs.

Chapter V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The purpose of the study was to describe the importance of court level and certain key factors on the judgments and settlements of negligence cases in physical education. This case law study of tort liability pertains only to those negligence cases involving public school physical education, K-12, in the United States from January 1, 1963 to December 31, 1983. The study attempted to analyze and interpret the effect of key factors in determining the judgments and settlements of negligence tort cases in physical education and to ascertain the effect of differences of cases heard at the appellate court level compared with the trial court level.

Summary

Question 1: What factors or combinations of factors (i.e., age of plaintiff, gender of plaintiff, severity of injury to plaintiff, dates of cases, activity or sport of participant, defenses, court district, number of parties being sued, or party being sued) do cases decided in favor of either the plaintiff or the defendant have in common?

Through the analysis of selected individual factors there does not seem, for the most part, to be any one factor that is a significant indicator of how a case will be determined. However, the plaintiff appears to have a better chance of winning a case when the age of the child is young, the gender of the plaintiff is female, the injury is

more severe, and the court region of the court case is heard in the Pacific, Northeastern, or Southern region. Conversely, the defendant seems to have a better chance of winning when the plaintiff is older, the gender of the plaintiff is male, the injury is severe, and the case is heard in the Southwestern court district.

Question 2: What, if any, is the difference in judgments and settlements of tort liability cases involving public school physical education that are heard at the trial court level as opposed to the appellate level?

The following information was determined from the analysis judgments and settlements of cases dealing with instruction and supervision. The plaintiff was better able to win a case when there was absence of instruction, when there was failure to follow up on instructions given, when safety instruction was inadequate, when the teacher failed to demonstrate, or when there was evidence of improper progressions. The teacher was expected to follow prescribed guidelines, to determine appropriate activity for the age, experience, and skill level of the students, and to warn students of inherent dangers. Teachers are not expected to leave a class unattended, to force students to participate, to allow students to participate in improper attire, or to use excessive force to discipline. Teachers are better able to protect themselves by determining that an activity is appropriate for the age, sex, and skill level of the student, and by following specific guidelines. Governmental immunity, contributory negligence, _in loco parentis_, sovereign immunity, and incurred risk appear to be successful

defenses.

Supervisors or administrators of public schools, K-12, had a better chance of winning their case when there was an expert witness that came to their defense, or where governmental immunity, or sovereign immunity could be used. The courts were not in favor of supervisors or administrators who did not determine that the teachers under their supervision were demonstrating properly or that they were following proper guidelines.

Question 3: What implications can be ascertained from the analysis of the findings of this study?

No one involved with the instruction, supervision, or administration of a physical education program is free from a lawsuit. However, the rights and responsibilities of teachers, supervisors, and administrators of a physical education program are in balance with the rights and responsibilities of children involved with physical education programs.

School policies and procedures concerning curriculum, hiring practices, certification of teachers, and the supervision and instruction of children should be carried out in a professional manner, but the public schools should feel neither overburdened nor that they will be unfairly treated by the courts. Teachers, supervisors, and administrators are, among other responsibilities, to see that students receive adequate safety instruction, that a skill being taught is either demonstrated or clearly understood before the skill is attempted, and to

use proper progression when teaching an activity or skill. Also, a higher standard of care is expected when younger children participate in public school education or when gymnastics is involved.

Conclusions

Based on an analysis of 58 cases in tort negligence in public school physical education, the following conclusions have been reached:

1. The findings of this study are consistent with the research that has been conducted in recent years concerning the implications and trends of tort negligence in physical education.

2. There is a clearer understanding of the rights and responsibilities of teachers, supervisors, and administrators of a physical education program concerning the instruction of a physical education class as compared to general supervision of physical education activities. The courts have been divided in their opinion of what constitutes improper, inadequate, or lack of supervision.

3. There is a higher standard of care expected of cases that involve younger children and instruction, supervision, and administration of gymnastics in the public school program.

4. The court region in which a case is heard does appear to have an influence on the judgment and settlements of cases heard at a higher court level.

5. In recent years, there is a trend toward more cases being heard at the higher court level and to a higher number of parties being sued.

6. No one involved with the instruction, supervision, or administration of a public school physical education program is free from suit.

7. The courts have not appeared to be swayed by the severity of injury nor the gender of the injured party in the determination of cases involving negligence torts in physical education.

8. The courts, at a higher level, appear to expect that for proper instruction and supervision of a physical education activity or sport, adequate safety instruction must be given or demonstrated, the correct made clear, and the progressions children use in learning a skill or activity be prudent.

9. There is a trend for the plaintiff to take cases to the higher court level more than the defendant.

10. The higher courts have normally retained the decisions of the lower courts concerning negligence tort cases in physical education, whether the plaintiff or the defendant took the case to a higher court level.

Recommendations for Further Study

Based on analysis and reflection of this study, the following recommendations are made:

1. A study on negligence tort in public school physical education should be conducted to determine the outcome of cases that are settled outside of court. This study would be of particular interest if it were delimited to cases involving children younger than 11.

2. A product liability study of cases that pertain to injuries that occur in sport or physical education would be most useful, as it would not only have important implications for manufacturers of sport equipment and apparel, but also for coaches, teachers, and sport enthusiasts.

3. A study should be conducted to determine better what constitutes improper, inadequate, and a lack of supervision of a public school physical education program or athletic program.

4. A study to determine the reason for a possible imbalance in judgments and settlements of negligence tort in public school physical education and athletics in different court regions would be beneficial. The study would attempt to make recommendations for developing a more standard set of guidelines for the determination of negligence tort cases involving sport and sport activities in the public schools.

Citations

Case Number

1 Ardoin v. Evangeline Parish School Board, 376 So.2d 372 (Louisiana Appellate, 1979).

2 Armlin v. Board of Education, 320 N.Y.S.2d 402 (1971).

3 Banks v. Terrebonne Parish School Board, 339 So.2d 1295 (1976).

4 Berg v. Merricks, 318 A.2d 220 (Maryland, 1976).

5 Brahatcek v. Millard School District, School District No.17, 237 N.W.2d 680 (Supreme Court of Nebraska, 1979).

6 Brod v. Central School District, 386 N.Y.S.2d 125 (1976).

7 Brown by Brown v. Calhoun County Board of Education, 432 So.2d 1230 (Alabama, 1983).

8 Calhoun v. Pasadena Independent School District, 496 S.W.2d 131 (Texas, 1973).

9 Cherney v. Board of Education, 297 N.Y.S.2d 668 (1969).

10 Cirillio v. City of Milwaukee, 150 N.W.2d 460 (Supreme Court of Wisconsin, 1967).

11 Clark v. Forch, 567 S.W.2d 457, 459 (Missouri Appellate, 1978).

12 Cody v. Southfield-Lathrup School District, 181 N.W.2d 81 (1970).

13 Darrow v. West Genesee Central School District, 342 N.Y.S.2d 611 (1973).

14 Deaner v. Utica Community School District, 297 N.W.2d 625 (Michigan Appellate, 1980).

15 Dibortolo v. Metropolitan School District of Washington Township, 440 N.E.2d 506 (Indiana Appellate, 1982).

16 District School Board of Lake County v. Talmadge, 381 So.2d 698 (Florida, 1980).

17 Dobbins v. Board of Education of Henry Hudson Regional High School, 335. A.2d 58 (1975).

18 Driscol v. Delphi Community School Corp., 290 N.E.2d 769 (1973).

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The Federal Supplement. Covers from 1932 the U.S. District Courts,

Court of Claims to 1960, U.S. Customs Court since Vol. 135 (1949). Covers Special Court, Regional Rail Reorganization Act since 1974. Covers Judicial Panel on Multidistrict Litigation since 1969.

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The California Reporter. Covers from 1959 California Supreme Court, District Courts of Appeal and Appellate Department Superior Court.

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APPENDICES

APPENDIX A

Case Studies

Case Number: 1

Ardoin v. Evangeline Parish School Board, 376 So.2d 372 (Louisiana Appellate, 1979).

Facts:

David Ardoin injured his right knee when he tripped or fell onto a piece of concrete while playing softball. The piece of concrete was positioned between second and third base and was protruding from the ground.

Judgment and Settlement:

Amended and affirmed in favor of plaintiff

Before Guidry, Foret, and Swift, J. J.

> The 13th Judicial Court, Evangeline Parish, Joseph E. Coreil, J., rendered judgment against the board, and it appealed.
>
> The Court of Appeal, Swift, J., held that the piece of concrete on which the boy tripped or fell, which was variously estimated at 12 inches by 12 inches to about 30 inches in diameter, which was about eight inches thick, which was imbedded in the ground directly on the path, or very near it, between the two bases, and which protruded from one-half to one inch above the ground, constituted such a hazardous condition that it was a breach of the required standard of care on the part of the school board to allow it to exist on the playground.

Case Number: 2

Armlin v. Board of Education, 320 N.Y.S.2d 402 (1971).

Facts:

Kathy Lynn Armlin, an 11-year-old girl, sustained a back injury in a gymnastics class. Kathy stood up in the rings and in jumping out fell backwards landing on her back. She had two spotters who were assigned to spot her.

There were 35 girls in the class. Six pieces of apparatus were being used and girls were divided into groups of five. The teacher never demonstrated the move and spotters were not instructed on how to spot. However, Kathy had seen other students perform the move on the rings and had performed the same move on other occasions.

Judgment and Settlement:

Affirmed in favor of plaintiff (affirmed with costs)

Before Herlihy, P. J., and Reynolds, Greenblott, Cooke and Simons, J. J.; Herlihy, P. J., and Greenblott, Cooke and Simons, J. J., concur.

> The Supreme Court, Trial term, Scholaire County, entered judgment in favor of plaintiffs, and defendants appealed.
>
> Reynolds, J., dissents and votes to reverse and dismiss the complaint in the following memorandum: I vote to reverse the verdict of the jury and dismiss the complaint. In my opinion there is no evidence of any negligence on the part of the Board of Education and the evidence does not support a finding that Nancy G. Mahoney, the teacher, was negligent in the performance of her duties.

Case Number: 3

Banks v. Terrebonne Parish School Board, 339 So.2d 1295 (1976).

Facts:

Kevin Banks, a 15-year-old, was injured when he landed on his head while attempting a dive roll over stacked chairs onto a landing mat. Kevin was performing the stunt with other students while his teacher was at the other end of the gymnasium collecting valuables from participants in the class. The injury occurred without the supervision or knowledge of the teacher. Coach Dillard had properly instructed students in tumbling.

Judgment and Settlement:

Affirmed in favor of defendants at the appellant's cost

Before Sartain, Covington and Lottinger, J. J.

> The Thirty-Second Judicial Court, Parish of Terrebonne, William J. Broussard, Jr., J., dismissed action, and plaintiff appealed.
>
> The Court of Appeal, Covington, J., held that evidence sustained finding that, at time of student's injury in school gymnasium, student was performing tumbling activity of his own accord prior to physical education class actually commencing, without supervision or knowledge of instructor, that student had been properly instructed in tumbling by physical education instructor, and that neither physical education instructor nor school board was negligent.

Case Number: 4

Berg v. Merricks, 318 A.2d 220 (Maryland, 1976).

Facts:

Michael Allen Berg, a 19-year-old high school senior, fractured his neck while performing a stunt on the trampoline during gymnastics class. Due to the injury, he has been a paraplegic since the accident.

The class consisted of 36 students divided into two groups of 18. The teacher stood between the two trampolines located 26 feet apart. The students waiting to perform the move stood around the trampolines as "spotters," ready to assist the performer if necessary. Prior to this class, the teacher warned his class of the inherent dangers of the trampoline.

Judgment and Settlement:

Affirmed in favor of defendants

Before Thompson, Davidson, and Lowe, J. J.

> The Circuit Court, Prince George's County, William B. Bowie, J., sustained preliminary objections raised by county and board of education and demurrers of individual board members, granted superintendent's motion for summary judgment, and granted motions for directed verdict against principal and instructor, and parents appealed.
>
> The Court of Special Appeals, Lowe, J., held that instructor was not negligent in manner in which he supervised the physical education class or in which he instructed the students to perform particular stunt; that high school principal was not negligent in view of fact that physical education department was responsible to county supervisor of physical education; that superintendent was not immune from suit, but was not negligent, and that county and board of education were immune from suit.

Case Number: 5

Brahatcek v. Millard School District, School District No. 17, 237 N.W.2d 680 (Supreme Court of Nebraska, 1979).

Facts:

David was accidently hit in the head with a golf club which resulted in his death. The golf club was swung by Mark Kreie, another student. Mark was swinging the club when David moved towards him.

The golf class was held inside the gymnasium due to inclement weather. There were thirty-four boys and twenty-three girls in the class. Two teachers were responsible for the instruction of the class.

The boys were on one side of the gymnasium and the girls on the other side. Students were divided into groups of four to five. Each group shared a mat with the girls hitting wiffle balls to the north side of gymnasium and the boys to the south side. Students, when not participating, were seated in the middle of the gymnasium. On the signal of the instructor, a student from each group would go to the assigned mat, tee up a ball, and wait for the signal to begin. After hitting the ball the club was to be layed on the mat and the student was to return to the center of the gymnasium.

David had never received instruction because he was absent from the first class day. No review was held the second class day when he was injured. A substitute teacher was teaching the day of the accident.

Judgment and Settlement:

Affirmed in favor of plaintiff

Before Colwell, District Judge, dissented and filed opinion in which McCown, J., joined

> The District Court, Douglas County, Richling, J., entered judgment for plaintiff and defendant appealed.
>
> The Supreme Court, Spencer, C. J., Pro Tem., held that 1. record established that lack of supervision was proximate cause of death of the student; 2. evidence supported implied finding that the student, who had no understanding of golf, had not received any instruction on it by any teacher prior to his attempted use of club and who received his only instruction from the classmate who struck the fatal blow, was not contributorily negligent, and 3. award of $50,000 general damages was not excessive.

Case Number: 6

Brod vs. Central School District, 386 N.Y.S.2d 125 (1976).

Facts:

William Brod injured his mouth when he fell to the gymnasium floor during a game which involved bouncing a ball. William was participating in class without sneakers. He had forgotten his shoes and was instructed by his teacher that he could participate if he went barefooted. When he participated, his bare feet stuck to the floor causing him to fall.

Judgment and Settlement:

Affirmed in favor of plaintiff and modified

Before Koreman, P. J., and Greenblott, Mahoney, Herlihy, and Reynolds, J. J.

The Supreme Court, Rensselaer County, entered judgment upon verdict rendered at Trial Term in favor of plaintiffs, and school district, et al., appealed.

The Supreme Court, Appellate Division, held that evidence was sufficient to support jury's finding of teacher's negligence as proximate cause of injuries; but that trial court was in error in instructing jury that lawyers' fees are customarily paid from jury verdicts; and that verdicts of $15,000 awarded to infant plaintiff and of $3,800 awarded to his father were excessive.

Judgment modified, on the law and the facts, and a new trial ordered, limited to the issue of damages, unless plaintiffs shall, within 20 days after service of a copy of the order to be entered hereon, stipulate to reduce the verdicts to $8,000 plus interest in action of the infant William Brod, and to $750 plus interest in the action of the father, in which event the judgment, as so reduced, is affirmed, without costs.

Case Number: 7

Brown by Brown v. Calhoun County Board of Education, 432 So.2d 1230 (Alabama, 1983).

Facts:

Robert Brown was playing softball when another student allegedly hit him in the head with a baseball bat. Robert suffered a concussion and permanent hearing loss in his right ear.

At the time of the injury the physical education teacher was in charge of 50-60 students on the playground area.

The father of Robert had met with the assistant principal and principal to explain to them about alleged acts of "picking on"

Robert.

Judgment and Settlement:

Affirmed in favor of defendant

Before Torbert, C. J.; and Faulkner, Alman, and Adams, J. J., concur

The Circuit Court, Calhowin County, Malcolm Street, Jr., J., entered judgment in favor of board of education, and appeal was taken.

The Supreme Court held that board of education was not under an express or implied contractual obligation to maintain safe atmosphere for the students under its supervision during school hours.

Case Number: 8

Calhoun v. Pasadena Independent School District, 496 S.W.2d 131 (Texas, 1973).

Facts:

David Ross Calhoun was injured during a physical education class.

Judgment and Settlement:

Affirmed in favor of defendant

Before Curtiss Brown

The District Court, Harris County, Lewis Dickson, J., dismissed the suit and plaintiffs appealed.

The Court of Civil Appeals, Curtiss Brown, J., held that rule of tort immunity of school districts did not effect unconstitutional invidious discrimination although private

schools are not immune.

Case Number: 9

Cherney v. Board of Education, 297 N.Y.S. 2d 668 (1969).

Facts:

Sara Cherney injured herself when she participated in a gymnastic activity called "jumping the buck". While vaulting her wrist collapsed and she fell forward injuring herself. The girl claimed that she warned the teacher of her weak wrists and the teacher directed her to vault anyway.

Judgment and Settlement:

Reversed in favor of defendant and new trial granted.

Case Number: 10

Cirillio v. City of Milwaukee, 150 N.W.2d 460 (Supreme Court of Wisconsin, 1967).

Facts:

Donald E. Cirillo, a 14-year-old, was injured due to rowdyism in a basketball game. After the teacher checked the roll and told the students to "shoot around", he left the class for 25 minutes. The class consisted of 48 male students between the ages of 14 and 16.

Judgment and Settlement:

Reversed in favor of plaintiff

Before Wilkie, J.

The Circuit Court for Milwaukee County, Robert C. Cannon, J., rendered summary judgment for defendants, and plaintiffs appealed.

The Supreme Court, Wilkie, J., held that trial court erred in finding as matter of law that teacher breached no duty to student and that student's negligence was at least 50of the total negligence.

Case Number: 11

Clark vs. Forch, 567 S.W.2d 457, 459 (Missouri Appellate, 1978).

Facts:

James Christian Clark fractured his arm after attempting to swing from a rope he had tied to a jungle gym. There were 22 students in the class and the teacher allowed free play for the last part of the 20-minute period. There was no evidence that the teacher was inattentive or that he saw the boy on the jungle gym with a rope in his hand.

Judgment and Settlement:

Affirmed in favor of defendant

Before Smith, J.

The Circuit Court, St. Louis County, George W. Cloyd, J., entered judgment in favor of teacher on jury verdict, and child appealed.

The Court of Appeals, Smith, J., held that there was no evidence of negligence on part of teacher.

Case Number: 12

Cody v. Southfield-Lathrup School District, 181 N.W.2d 81 (1970).

Facts:

Nancy Marie Cody, a high school student, fractured both arms while performing a move on the mini-trampoline during gymnastics class. The teacher not only allegedly compelled Nancy to participate in this activity against her will, but also allegedly failed to provide her with immediate medical care.

Judgment and Settlement:

Affirmed in favor of defendant

Before Lesinski, C. J., and Danhof and Snow, J. J.

> Circuit Court, Oakland County, Arthur E. Moore, J., gave judgment (summary judgment) for school district and plaintiffs appealed.
>
> The Court of Appeals, Snow, J., held that injury to student, in connection with her use in school building of "mini-trampoline," during physical education class, was not the result of a dangerous or defective condition of a public building so as to constitute an exception to doctrine of governmental immunity, and that purchase by school district of liability insurance would not preclude its asserting the defense of governmental immunity.

Case Number: 13

Darrow v. West Genessee Central School District, 342 N.Y.S.2d 611 (1973).

Facts:

Thomas Darrow, a 10-year-old boy, was injured when he collided with another student while playing line soccer. The teacher did not instruct students as to what to do when two players met the ball simultaneously.

Judgment and Settlement:

Reversed in favor of the plaintiff and set for new trial

Before Gelman, P. J., Witmer, Moule, Simons, and Henry, J. J.

> The Onondoga Trial Term, Francis R. Moran, J., dismissed complaint and plaintiff appealed.
>
> The Supreme Court, Appellate Division, held that evidence in action against school district for injuries sustained by 10-year-old boy while playing soccer in gym class, including expert testimony that reasonable care required demonstration and explanation of game and gym teacher's admission that he did not instruct boys as to what they should do when two players met ball at the same time, presented jury question on negligence issue.

Case Number: 14

Deaner v. Utica Community School District, 297 N.W.2d 625 (Michigan Appellate, 1980).

Facts:

Chester C. Deaner, Jr., a high school student, was injured while wrestling. He suffered subluxation of two vertebrae which resulted in quadriplegia. The student's physical condition was approved for taking wrestlying prior to the injury.

Judgment and Settlement:

Affirmed in favor of defendant and reversed in part

Before Holbrook, P. J., and Maher, and Cynar, J. J.

The Circuit Court, Macomb County, Edward J. Gallagher, J., granted summary judgment for individual defendant who examined plaintiff and approved his physical condition for wrestling, and for school district, and plaintiffs appealed.

The Court of Appeals held that fact issues existed as to course followed by individual defendant, precluding summary judgment, and school district was immune from tort liability.

Case Number: 15

Dibortolo v. Metropolitan School District of Washington Township, 440 N.E.2d 506 (Indiana Appellate, 1982).

Facts:

Mary Ann Dibortolo, a sixth grade student, broke a permanent tooth after hitting the wall as she attempted a vertical jump. The teacher testified that she did not refer to a textbook in preparation for this exercise, but she did consider "safety aspects". The exercise was not demonstrated by the teacher nor did she warn students of possible dangers associated with the exercise.

Judgment and Settlement:

Reversed in favor of plaintiff and remanded

Before Sullivan, J.

The Marion Municipal Court, Joseph N. Myers, J., entered judgment for the district on the evidence, and pupil appealed.

The Court of Appeals, Sullivan, J., held that 1. instructor

had agreed to conform her conduct as a physical education teacher to a certain standard not only for plaintiff's but also for the other pupils benefit; 2. dispute whether teacher had instructed students and run toward the wall raised jury issue; and 3. evidence on issues of incurred risk and contributory negligence.

Case Number: 16

District School Board of Lake County v. Talmadge, 381 So.2d 698 (Florida, 1980).

Facts:

Robert Talmadge, a middle school student, injured his knee and teeth while attempting a flip on a trampoline during a gymnastics class. The complaint alleged that the teacher picked up the student and placed him on the trampoline ordering him for the third time to perform. Talmadge had had minimal acrobatic instruction before this class.

Judgment and Settlement:

Reversed in favor of plaintiff

Before England, C. J.

The Circuit Court, Lake County, Ernest C. Aulls, Jr., J., dismissed the complaint against the instructor, and student appealed.

The District Court of Appeals, Ryder, J., 355 So.2d 502, reversed and remanded, and certiorari was brought.

The Supreme Court, England, C. J., held that school employee may be made party defendant in action for personal injury allegedly occasioned by the employee's negligence while acting in the scope of his employment.

Case Number: 17

Dobbins v. Board of Education of Henry Hudson Regional High School, 335 A.2d 58 (1975).

Facts:

Charlene Dobbins, a 16-year-old girl, sustained serious knee injuries when she fell to the pavement while participating in a running activity.

Judgment and Settlement:

Affirmed in favor of defendant

Before Fritz, Lynch, and Trautwein, J.

> The Superior Court, Law Division, entered judgment in favor of gym teacher, and against school board, and school board appealed.
>
> The Superior Court, Appellate Division, held that statute providing that "No school district shall be liable for injury to the person from the use of public grounds, buildings or structures, any law to the contrary not withstanding," barred recovery against school board, in that injuries were caused by defect in maintenance of parking lot.

Case Number: 18

Driscol v. Delphi Community School Corp., 290 N.E.2d 769 (1973).

Facts:

Denise Driscol, a high school student, fractured her left femur and cracked her right elbow when she fell on the gym floor while

running to the dressing room. The class consisted of 45 girls.

Judgment and Settlement:

Affirmed in favor of defendant

Before White, J.

> The Howard Circuit Court, Robert J. Kinsey, J., granted judgment for defendants on their motion at conclusion of plaintiffs' evidence, and plaintiffs appealed.
>
> The Court of Appeals, White, J., held that where boys' gym class was in session in area between girls' class and their dressing room, and where no showing was made on whether girls' gym class teacher dismissed the girls' class immediately after end of boys' class and on whether boys' class teacher could have dismissed his class earlier so as to eliminate earlier the danger of injurious collisions if girls were sent to dressing room before end of boys' class, defendants were not liable for alleged negligent failure to provide sufficient time for girls to shower.

Case Number: 19

Ehlinger v. Board of Education of New Hartford Central School District, 465 N.Y.S.2d 378 (New York A.D. 4 Dept., 1983).

Facts:

Carol Ehlinger, a 14-year-old girl, dislocated her elbow when she hit the gymnasium wall while running the speed test portion of a physical fitness test developed by New York State. The manual distributed by the State advises leaving a minimum of 14 feet of unobstructed space beyond the start and finish lines so students will be able to run at top speed past the finish line. According to testimony, the cones placed at the finish line were only eight

feet from the wall.

Judgment and Settlement:

Reversed in favor of plaintiff, motion denied and new trial granted

Before Dillon, P. J., and Doerr, Denman, Boomer and Schnepp. J. J.

The Supreme Court, Oneida County, Balio, J., dismissed complaint, and plaintiff appealed.

The Supreme Court, Appellate Division, held that there was sufficient proof from which injury could conclude that school was negligent with respect both to design of speed course and failure to provide adequate instructions for students performing test and that such negligence was proximate cause of injury of student.

Case Number: 20

Flournoy v. School District No. One in City and County of Denver, 482 P.2d 966 (Colorado, 1971).

Facts:

David Flournoy was hit by an automobile while crossing Colorado Boulevard with his physical education class. His death resulted from this accident.

Judgment and Settlement:

Reversed in favor of plaintiff and remanded with instructions

Before Groves, J.

The District Court, City and County of Denver, Robert W. Steele, J., granted summary judgment in favor of school district on ground of governmental immunity and dismissed

amended complaint as to it and plaintiffs brought error.

The Supreme Court, Groves, J., held that doctrine of governmental immunity did not apply to the school district.

Case Number: 21

Fosselman v. Waterloo Community School District, 299 N.W.2d 280 (1975).

Facts:

Stephen A. Fosselman, a 14-year-old, sustained four fractures of facial bones, a depressed sinus and bruises to the left eye and surrounding area while participating in a game of "bombardment". The class consisted of 40-65 boys. The teacher did not observe the accident.

Judgment and Settlement:

Affirmed in favor of defendant

Before Moore, C. J. and Mason, LeGrand, Rees, and McCormick, J. J.

The Black Hawk District Court, Carroll E. Engelkes, J., entered judgment for defendants, and plaintiffs appealed.

The Supreme Court, Moore, C. J., held that doctrine of res ipsa loquiter was not applicable, that evidence was insufficient to require submission of negligent supervision issue to jury, and that jury verdicts for defendants were not contrary to the evidence.

Case Number: 22

Frank v. Orleans Parish School, 195 S.2d 451 (1967).

Facts:

Reginald L. Frank, a junior high school student, sustained a fractured arm as a result of being assaulted by his teacher during a basketball class. Reginald did not participate in the activity in conformity with the teacher's instructions and therefore, was asked to sit on the sidelines. The teacher was required to discipline the boy again for not following instructions. Finally, for the third time, the teacher escorted him off the court.

The teacher was 34-years-old, stood 5 feet 8 inches and weighed about 230 pounds. Reginald, on the other hand, was 4 feet 9 inches and weighed 101 pounds.

Judgment and Settlement:

Affirmed in favor of plaintiff

Before Regan, Samuel, and Barnette, J. J.

The Civil District Court for the Parish of Orleans, Division "E", No. 427-504, Howard J. Taylor, J., entered judgment for plaintiff and both defendants appealed.

The Court of Appeals, Regan, J., held that physical education teacher's actions in lifting, shaking and dropping boy were in excess of physical force necessary to either discipline boy or to protect himself against alleged assault of boy, and subjected teacher and school board to liability for injuries sustained as a result thereof.

Case Number: 23

Grant v. Lake Oswego School District No. 7, 15 Ore. App. 325, 515 P.2d 947 (1973).

Facts:

Carol Grant, a 12-year-old girl, struck her head on a low doorway beam after jumping off a springboard. After the gymnastics class was over, the teacher instructed Carol and two other students to put the springboard away and to tip it up on its side against the wall in the alcove area. However, the teacher had turned her attention elsewhere in the room and did not see Carol jump off the springboard.

Judgment and Settlement:

Reversed in favor of plaintiff and remanded with instructions

Before Schwab, C. J., and Langtry and Fort, J. J.

> The Circuit Court, Clackamas County, P. K. Hammond, J., granted judgment notwithstanding the verdict and also granted motion in the alternative for a new trial and the plaintiff appealed.
>
> The Court of Appeals, Langtry, J., held that evidence warranted submission to the jury of the issues of whether the student was contributorily negligent, whether the school district and the teachere were negligent in placing the springboard under a low ceiling and doorway, in failing to turn the springboard on its side or otherwise making it harmless, in failing to supervise the classes, in failing to warn the students of the danger and whether proper supervision could have prevented the accident.

Case Number: 24

Green v. Orleans Parish School Board, 365 So.2d 834, 836 (Louisiana Appellate, 1978).

Facts:

Nathaniel Green, a 16-year-old high school student, was permanently paralyzed by injuries sustained while wrestling. Nathaniel decided to go out for spring football training earlier in the year. However, after his physical examination, it was determined that his vision was below the School Board's standard. Thus, he was not allowed to engage in contact activities, but could participate in non-contact drills and exercises.

Judgment and Settlement:

Affirmed in favor of defendant

Before Lemmon, Gulatta, and Schott, J. J.

> The Civil District Court for the Parish of Orleans, S. Sanford Levy, J., dismissed student's claim after trial on the merits, and student appealed.
>
> The Court of Appeal, Lemmon, J., held that evidence supported conclusion that physical education teacher's instruction and preparation for and supervision of drill in which student was injured did not fall below locally or nationally accepted reasonable standard of care for teachers under similar circumstances.

Case Number: 25

Kersey v. Harbin, 531 S.W.2d 76 (1975).

Facts:

Daniel Keith, a 13-year-old, received a head injury when he was thrown to the floor during a physical education class. After the serious head injury, Daniel was allowed to return to and participate in the class. Several hours later he died.

The injury occurred at a time when the decedent's class was unsupervised. Two physical education classes consisting of 45 male students were being supervised by one teacher as opposed to two.

Judgment and Settlement:

Affirmed in favor of defendant and remanded with directions

Before Billings, C. J., and Hogan and Flanigan, J. J.

The Circuit Court, Scott County, Marshall Craig, J., sustained defendants' motions to dismiss action, and parents appealed.

The Court of Appeals, Springfield District, Hogan, J., held that petition did not state claim on which relief could be granted, that merits of defendants' claim of immunity based on assertion that they had been performing a governmental function could not be resolved and that parents would be permitted to amend petition.

Case Number: 26

Kobylanski v. Chicago Board of Education, 317 N.E.2d 714, 22 Ill. App. 3d 511 (Illinois Appellate, 1974).

Facts:

Barbara Kobylanski, a seventh grade student, suffered spinal injuries while attempting a "knee hang" on the still rings. Prior to the accident, the teacher demonstrated this exercise to the class.

Judgment and Settlement:

Affirmed in favor of defendants

Before Lorenz, J.

The Circuit Court, Cook County, George Schaller, J., directed verdict in favor of defendants and denied plaintiff's posttrial motion for new trial and plaintiff appealed.

The Appellate Court, Lorenz, J., held that section of school code providing that, in all matters relating to conduct of school children, teachers stand in relationship of parents and guardians to the pupils was applicable in the case; thus, teacher and board were not liable for child's injuries, in absence of proof of willful and wanton conduct; and that board procurement of liability insurance did not constitute waiver of the statute.

Case Number: 27

LaFrentz v. Gallagher, 462 P.2d 804 (Supreme Court of Arizona, 1969).

Facts:

Joseph LaFrentz, a seventh grade student, brought action against a teacher for alleged assault and battery.

Joseph was five feet tall and weighed about 80 pounds. The coach pushed the boy against a chicken-wire backstop after a dispute between the two.

Judgment and Settlement:

Affirmed in favor of defendant

Before McFarland, J.

The Superior Court of Maricopa County, Charles L. Hardy, J., dismissed the case against principal and school board members and, after jury verdict in their favor, entered judgment in favor of teacher and school district, and the pupil appealed.

The Supreme Court, McFarland, J., held that evidence of prior

acts of alleged assault upon other pupils at other times and under different circumstances was not admissible for purpose of showing whether or not teacher's pushing pupil during softball class was a permissible disciplinary measure or to show malice toward the pupil, and that, as jury found plaintiff was not entitled to actual damages, even if evidence of prior acts was admissible to prove exemplary damages, pupil was not prejudiced by its exclusion.

Case Number: 28

Landers v. School District No. 203, O'Gallon, 66 Ill.App.3d 78, 383 N.E.2d 645 (1978).

Facts:

Michelle Valentine Landers, a 15-year-old student, received serious injuries (subluxation) to her neck while attempting a backward roll during a gymnastics class. There were 40 students in the physical education class. Michelle, at the time, was five feet six inches and weighed around 180 pounds. Michelle told the teacher, the day prior to her injury, that she was afraid to do the move.

Judgment and Settlement:

Affirmed in favor of plaintiff

Before Jones, J.

The Circuit Court, St. Clair county, Kenneth J. Juen, J., entered judgment on the verdict in favor of the student and school district appealed.

The Appellate Court, Jones, J., held that evidence that the physical education teacher was aware of dangers presented to student by the backward somersault maneuver because of the student's fear of attempting the maneuver and because of the student's obesity, and evidence that the teacher nonetheless

the student to practice the maneuver without personal supervision sustained a finding that the teacher's actions amounted to willful and wanton misconduct.

Case Number: 29

Larson v. Independent School District No. 314, Braham, 289 N.W.2d 112 (Minnesota, 1982).

Facts:

Steven Larson was severely injured while attempting the gymnastic move commonly called "headspring over a rolled mat". While performing this required and highly advanced gymnastic pass, Steven broke his neck and the result was quadraplegic paralysis. The teacher in charge was fairly new and the accident occurred during his ninth session with that class. Also, during the exercise, the teacher spotted the approach and a couple of students in the class spotted the landing. No one spotted the move over the rolled mat.

Judgment and Settlement:

Affirmed in favor of plaintiff; however, Wahl, J., dissented in part and concurred in part with opinion; Otis, J., dissented with opinion.

The superintendant was not found negligent. The principal and physical education teacher were found negligent.

Before Peterson, Wahl, and Otis

The District Court, Isanti County, Thomas G. Forsbert, J.,

awarded to minor judgment against teacher and principal and found school district was jointly and severally liable in certain sum and entered directed verdict in favor of superintendent, and parties appealed and cross-appealed.

The Supreme Court, Peterson, J., held that: 1. jury's finding that injury of student in physical education class was due in part to negligence of principal of school was not manifestly and palpably contrary to evidence as a whole; 2. superintendent was not sufficiently involved in actions or inactions to be found negligent; 3. judgment utilized by physical education instructor in determining how to spot and teach an advanced gymnastic exercise was not decision making entitled to protection under doctrine of discretionary immunity and, therefore, instructor was liable for his negligent spotting and teaching of the exercise; 4. principal who abdicated his responsibility for developing and administering teaching of physical education curriculum was not engaged in decision making at planning level and, therefore, his liability for negligent discharge of that responsibility was not precluded by doctrine of discretionary immunity; and 5. principal was not entitled to indemnity from school district and his liability was not limited to amount of insurance coverage the school district was required to carry.

Case Number: 30

Lueck v. Janesville, 204 N.W.2d 6 (1973).

Facts:

Seventeen-year-old Terry Lueck sustained injuries while attempting a gymnastic move on the still rings. According to an eye witness, Terry appeared to be doing a forward roll on the still rings when his feet began to fall, one arm twisted and his body dropped. He then fell and was still hanging from one ring by one arm. A couple of seconds later, he fell to the floor. He did not have a spotter, although he had been instructed to use a spotter when in doubt of a particular move. On that same day, Terry had completed the move

five to ten times without difficulty prior to the fall.

Judgment and Settlement:

Affirmed in favor of defendant

Before Beilfuss, J.

> From a judgment of the Circuit Court, Rock County, W. L. Jackman of the Ninth Judicial Circuit, J., the plaintiffs appealed.
>
> The Supreme Court, Beilfuss, J., held that evidence would not support finding that either the city or the teacher failed to use ordinary care in furnishing of adequate equipment or in the instruction, supervision and assistance given to the student before and at the time of his fall and injury.

Case Number: 31

Montague School Board of the Thornton Fractional Township v. North High School District 215 15 Ill. 373, 373 N.E.2d 719 (1978).

Facts:

Michael Montague fell and fractured his arm when he attempted a front vault on the horse. It is believed that Michael's lower leg hit the horse and caused him to fall. Michael had successfully completed the front vault approximately 30 times during class prior to the date of the accident. He had, also, completed the vault four to five times on the day of the accident. Michael had been instructed on the use of the horse and had been told to be careful.

Judgment and Settlement:

Affirmed in favor of defendant

Before McNamara, J.

The Circuit Court, Cook County, Daniel P. Coman, J., allowed defendants' motion for summary judgment and plaintiff appealed.

The Appellate Court, McNamara, J., held that, even if "spotters" had not been used during vaulting horse exercises on day plaintiff student was injured and if the vaulting horse was positioned too high for the student, such would not constitute willful and wanton misconduct such as would make instructor who supervised the gym class liable for the student's injury.

Case Number: 32

Ostrowski v. Board of Education, 294 N.Y.S.2d 871 (1968).

Facts:

Barbara P. Ostrowski sustained an injury to her left knee while doing bodily exercises. She noticed an aching and tiredness in her left knee while performing a knee walk. The class continued to exercise and began to do the inch worm. During this exercise Barbara felt a pain in her left side and fell to the floor.

Judgment and Settlement:

Modified and, as so modified, affirmed in favor of defendants

Before Gibson, P. J., and Herlihy, Reynolds, Staley and Gabrielli, J. J.

The Supreme Court set aside jury verdict in favor of plaintiffs against defendant Board of Education and granted new trial, denied Board of Education's motions for entry of

judgment in its favor, set aside verdict in favor of physical education teacher and granted new trial and appeals were taken.

The Supreme Court, Appellate Division, Herlihy, J., held that evidence supported jury verdict of no cause of action against physical education teacher and that evidence was insufficient to show breach of duty by board.

Case Number: 33

Oswald v. Township High School District No. 214, 406 N.E.2d 157 (Illinois Appellate, 1980).

Facts:

John Oswald suffered injuries when he was kicked during a basketball game.

Judgment and Settlement:

Affirmed in favor of defendant

Before Sullivan, P. J.

Entered in the Circuit Court, Cook County, Myron Gomberg, J., dismissing count of plaintiff's complaint in personal injury action that charged another student with ordinary negligence.

The Appellate Court, Sullivan, P. J., held that complaint that alleged that defendant, another student, was negligent in violating National Federation of High School Association rules when defendant kicked and injured plaintiff in course of physical education class basketball game failed to state cause of action.

Case Number: 34

Passafaro v. Board of Education of the City of New York, 353 N.Y.S.2d

178 (1974).

Facts:

Stanley Passafaro fell and injured his arm during tumbling class. He did not have his sneakers, but, nevertheless, intended to participate in his socks. He was running towards the mat area when he slipped and fell on his arm. It is a question of fact whether or not he was told to participate in his socks.

Judgment and Settlement:

Reversed in favor of defendant and new trial granted

Before Nunez, J. P., and Kupferman, Murphy, and Tilzer, J. J.

> The Supreme Court, New York County, Drohan, J., entered judgment for plaintiff and defendant appealed.
>
> The Supreme Court, Appellate Division, held that where jury was instructed that recovery against school board could be predicated on theory of improper instruction to exercise in stocking feet or theory of failure to provide sufficient supervision for students and evidence could not support conclusion that accident occurred because of failure to provide supervision, judgment must be reversed, in absence of showing which theory was basis of recovery allowed, and that where plaintiff attributed accident to affirmative direction to participate in activity when instructor knew that it was hazardous, recovery could not properly be based on failure to provide enough supervision.

Case Number: 35

Peck v. Board of Education of the City of Mt. Vernon, 317 N.Y.S.2d 921 (1971).

Facts:

Edwin Peck suffered a skull fracture when he was accidentally kicked during physical education class. He did not lose consciousness, but symptoms included pain and dizziness. Approximately 30 minutes after the incident he and another student visited a physician. The doctor testified that the symptoms were only minor ones and there was no need for panic. Two hours later the student was admitted to a hospital. He died of what was determined to be a skull fracture that same day.

Judgment and Settlement:

Reversed in favor of defendant, complaint dismissed

Before Rabin, Acting P.J., and Hopkins, Munder, Latham and Benjamin, J. J.

> The Supreme Court, Westchester County, entered judgment for plaintiff, and defendants appealed.
>
> The Supreme Court, Appellate Division, held that evidence was insufficient to support finding that defendants unreasonably delayed administration and medical treatment or that the delay that occurred was causally related to son's death.

Case Number: 36

People of the State of Illinois v. Smith, 335 N.E.2d 125 (1975).

Facts:

It is believed that Edward Smith was being disciplined by his physical education teacher when the teacher used force and caused the student to have to seek medical attention. The mother

testified that when she arrived at the school, the student's eye was swollen shut and his nose was bleeding.

Judgment and Settlement:

Affirmed in favor of the plaintiff

Before Poltrock, L. A.

The Cook County Circuit Court, Jack Arnold Welfeld, J., found defendant, a school physical education teacher, guilty of committing a battery on one of his students, and defendant appealed.

The Appellate Court held that 1. the positive and credible testimony of the student and his mother, including the latter's testimony that, when she arrived at school, her son's eye was swollen shut and he had blood coming from his nose, precipitating a trip to the hospital where he remained for several hours, was sufficient to establish that the force used by defendant in disciplining the student went far beyond the reasonable force allowed under Illinois law, and 2. the trial judge, who in a bench trial was presented with two completely contradictory versions of what had occurred, did not abuse his discretion in concluding that the defendant was not acting in self-defense at the time he struck the student.

Case Number: 37

Picard v. Greisinger, 38 N.W.2d 508 (Michigan, 1965).

Facts:

Mel Picard sustained personal injuries when he was struck in the head with a basketball while he was watching gym class. The ball was thrown by the instructor. Alledgedly, the instructor intentionally threw the ball at Mel. Also, the instructor would not allow the student to seek medical attention. The student was made to stay in class.

Judgment and Settlement:

Affirmed in favor of defendant

Before Lesinski, C. J., and Quinn and Watts, J. J.

> The Wayne County Circuit Court, Victor J. Baum, J., granted defendant's motion for summary judgment and plaintiffs appealed.
>
> The Court of Appeals, Quinn, J., held that parents of student who suffered personal injuries when struck by basketball thrown by gym instructor could not recover damages from school district or board of education in face of defense of governmental immunity.

Case Number: 38

Quigley v. School District, No. 45J3, (1968).

Facts:

Robert D. Quigley sustained injuries when a piece of gymnasium equipment, the stall bars, fell on him. The stall bars that fell

on Robert were about nine feet high and were composed of metal bars. They had been delivered the day before the accident and had not been properly fastened to the wall.

Judgment and Settlement:

Affirmed in favor of defendant

Before Perry, C. J., and McAllister, O'Connell, Denecke and xxxxxxx

The Circuit Court, Lane County, Loren D. Hicks, J., entered judgment on jury verdict for the defendants and plaintiff appealed.

The Supreme Court, Mengler, J. pro tem., held that in minor's action to recover for injuries sustained when stall bars which had not been fastened to gymnasium wall fell upon him, testimony as to prior safe use of same room by other children was properly admitted as material and relevant on question of dangerous condition and knowledge of it by teacher, and that where court's instructions contain substance of requested instructions, although not as briefly and precisely as in requested instructions, and there was no exception taken at time of trial, there was no error.

Case Number: 39

Ragnone v. Portland School District No. 1J, 605 P.2d 1217 (Oregon Appellate, 1980).

Facts:

Sixty-one-year-old Rose Ragnone, a school cafeteria employee, fell and broke her hip in the school gymnasium. Although Rose was on leave of absence due to medical problems, she had been invited to the birthday party given for the cafeteria manager.

The accident happened after the birthday party. Rose and the cafeteria manager had walked to the office in order that the manager could use the phone. The manager was going to give Rose a ride home. The route to the office required a trip through the gym. The students had not been playing during the trip to the office, but were playing on their return. One or two of the students bumped into Rose and that is when she fell and broke her hip.

Judgment and Settlement:

Affirmed in favor of defendant

Before Tanzer, P. J., and Thornton and Campbell, J. J.

> The Circuit Court, Multnomah County, Robert E. Jones, J., granted school district's motion for judgment notwithstanding the verdict and employee appealed.
>
> The Court of Appeals, Campbell, J., held that: 1. school district had duty not to injure employee by affirmative or active negligence; 2. employee could not recover damages based on her allegations that school district failed to maintain proper control over the students or failed to provide proper supervision, since such allegations were allegations of passive negligence; and 3. employee could not recover based on her claim that manager was negligent in selecting route to be taken across the gymnasium floor, where there was no evidence that manager had authority to choose the route.

Case Number: 40

Rodriguez v. Seattle School District No. 1, 66 Wash.2d 51, 401 P.2d 326 (1965).

Facts:

Linda Rodriguez injured her right leg while attempting a tumbling exercise. The student was on a tumbling mat. She was instructed to do an exercise she could not do.

Judgment and Settlement:

Reversed in favor of plaintiff and cause remanded

Before Rosellini, C. J.

> The Superior Court, King County, James W. Mifflin, J., granted summary judgment for defendants and plaintiff appealed.
>
> The Supreme Court, Rosellini, C. J., held that statute precluding action against school district for any acts or omissions of district or its employees relating to athletic apparatus or appliance did not bar action for injuries sustained by student where claim for relief did not rest on alleged negligence in relation to tumbling mat, but on alleged negligence in requiring student to perform acts which defendants knew, or should have known, that she was incapable of performing safely.

Case Number: 41

Segerman v. Jones No. 102, 256 A.2d (1969).

Facts:

Nine-year-old Mary Latane Jones suffered injuries while doing calisthenics to a record being played in the classroom. Prior to exercising, the teacher played the record and asked if anyone did not know how to perform any of the exercises and nobody answered. She spaced the 30 children adequately, turned on the record player, and left the room. The record requested that the students do push-ups. Bobby Glaser, another student, moved because he could

not hear the record. Although the record requested that the students do the push-ups on their toes (which they had also previously done in class) Bobby did his on his knees. His feet hit Mary in the back of the head causing her to hit the floor. This resulted in Mary chipping two teeth.

Judgment and Settlement:

Reversed in favor of defendant.

Case Number: 42

Shelton v. Planet Insurance Company, 280 So.2d 380 (Louisiana, 1973).

Facts:

Carol B. Shelton, a public school teacher, sustained personal injuries while instructing a physical education class outdoors in the parking lot. There was not adequate space elsewhere on the school property. The parking lot was partly asphalt and gravel and contined many pot holes. Carol was demonstrating to her class proper running techniques with turning maneuvers when she fell on the gravel and into one of the pot holes.

Judgment and Settlement:

Affirmed in favor of defendant

Before Ayres, Bolin, and Price, J. J.

> The First Judicial Court, Parish of Caddo, C. J. Bolin, Jr., J., entered a decree dismissing the complaint and the teacher

and her husband appealed.

The Court of Appeal, Ayres, J., held that action could not be maintained against defendants in view of the uncontroverted showing that the school board had the sole authority to approve the repair and renovation of school board property and to provide funds thereof.

Case Number: 43

Siau v. Rapides Parish School Board, 264 So.2d 372 (1972).

Facts:

William Siau, a tenth grade student, was not properly attired for class. His class was engaged in running an 880 yard track event. Because William was not properly dressed his teacher directed him not to participate.

William decided that he would run on a grassy infield adjacent to the cinder track where his class was participating. During this time William ran into and impaled himself with a javelin that had been left sticking up in the grass by another student who had finished a workout. At the time of the accident the injured student was not wearing his glasses and he was known not to have good eyesight without glasses.

Judgment and Settlement:

Affirmed in favor of the defendant

Before Hood, Culpepper and Miller, J. J.

The 9th Judicial District, Parish of Rapides, Guy E.

Humphries, J., dismissed suit, and plaintiff appealed.

The Court of Appeal, Miller, J., held that student, who was running on grassy infield which, although adjacent to a 440-yard cinder track, was not prepared or used for running purposes and who had been told to stop after being denied permission to participate in race on track because he had not been properly attired, was negligent in failing to look and observe area in his direction of travel on infield in which fellow student, who had been practicing with javelin, had placed javelin in ground and in so proceeding while not wearing his glasses, without which he could not distinguish faces at a distance of 20 to 25 feet, and such negligence was proximate cause of his injury, precluding recovery from school board.

Case Number: 44

Smith v. Consolidated School District No. 2, 408 S.W.2d 50 (1966).

Facts:

Terry Lee Smith sustained an injury to his shoulder and other specified body parts while practicing holds and falls and other wrestling skills. There was no evidence to suggest that the partner of the injured party was either using illegal holds nor that he was bigger or stronger.

Judgment and Settlement:

Affirmed in favor of defendant

Before Holman, J.

The Circuit Court, Jackson County, Joe W. McQueen, J., rendered judgment for defendants and student appealed.

The Supreme Court, Holman, J., held that school district was political subdivision of state and was immune from tort liability for negligence, that no claim for relief was stated

> against superintendent, who was not required to eliminate wrestling from curriculum and did not employ competent wrestling instructor, and that allegations against instructor were legal conclusions and did not state claim for relief against instructor.

Case Number: 45

Staub v. Southwest Butler County School District, 398 A.2d 204 (Pennsylvania Superior, 1979).

Facts:

Diane Lynn Staub sustained an injury during gymnastics class. The student was participating on the still rings and fell. Brain damage resulted. The student was placed in a hospital and further damage allegedly occurred on the part of the treating neurosurgeon.

Judgment and Settlement:

Reversed in favor of plaintiff and remanded.

Before Cercone, P. J., and Wieand and Hoffman, J. J.

> The additional defendants then filed preliminary objections asserting that original jurisdiction to hear malpractice claims against them was vested in arbitration panels for health care. The Court of Common Pleas, Butler County, Civil Division-Law, at A.D. No. 76-1188, Dillon, J., entered order directing transfer of the case to administrator for administration panels for health care, and appeals were filed by the school district and one treating physician.
>
> The Superior Court, No. 500 April Term, 1978, and No. 513 April Term, 1978, Wieand, J., held that the Court of Common Pleas had original jurisdiction to hear and decide case in its entirety.

Case Number: 46

Stephens v. Shelbyville Central Schools, 318 N.E.2d 590 (Court of Appeals of Indiana, 1974).

Facts:

Fourteen year old Anthony Stephens drowned while participating in a swim class. The class was composed of non-swimmers engaged in activities at the shallow end of the pool. During class, Anthony was found unconcious on the pool floor and the instructor brought him to the pool side and applied artificial respiration. Also, it is believed that during the class, contrary to instructions, Anthony dove into the pool and participated in an underwater breath-holding contest.

During the prior school year, the student suffered a period of unconsciousness during a gym class rope climbing exercise. Although Anthony and his parents were aware of this incident occurring at the junior high school, it was not reported to the high school before entering the swimming class.

Judgment and Settlement:

Affirmed in favor of the defendant

Before Robertson, P. J.

The Superior Court, Shelby County, George R. Tolen, J., entered judgment for defendants and plaintiffs appealed.

The Court of Appeals, Robertson, P. J., held that evidence that decedent, contrary to instructions, may have dived into

the pool and that decedent's prior lapse of consciousness had not been reported to the high school supported instructions on contributory negligence and incurred risk; and that even if it was erroneous to grant school's counsel an additional four minutes for argument at conclusion of plaintiffs' final argument, there was no reversible error.

Case Number: 47

Summers v. Milvaukie Union High School District No. 5 Clackamas County, 481 P.2d 369, 370 (Oregon Appellate, 1971).

Facts:

Catherine M. Summers suffered a compression fracture of two vertebrae while performing a springboard exercise whereby she was to perform a tuck jump. She had a history of an infirm back condition. Her doctor requested a list of the required exercises on four separate occasions in order to select those that might cause damage. The school never responded.

Judgment and Settlement:

Affirmed in favor of plaintiff

Before Schwab, C. J., and Foley and Thorton, J. J.

A jury verdict in the Circuit Court, Clackamas County, Winston L. Bradshaw, J., awarded damages to the pupil, who had a history of an infirm back condition, and the school district appealed.

The Court of Appeals, Foley, J., held that where the pupil's doctor's request for a list of exercises which she was required to perform at the school was relayed to a counselor at school and was made at least four times but information was never furnished, the school was bound by information which it would have had, if it had exercised due diligence, that the

doctor would have recommended against a particular exercise being performed by such pupil when she was injured.

Case Number: 48

Sutphen v. Benthian, 397 A.2d 709 (New Jersey Appellate, 1979).

Facts:

Thomas Sutphen, a tenth grade student, was struck in his right eye by a hockey puck while participating in a floor hockey game in the school gym. School authorities were aware that he had a slight deficiency in the right eye. Also, there was an excess number of players for the size of the area where play occurred. The students were not provided with or required to use proper equipment, although eye glasses were available if students requested them.

Judgment and Settlement:

Reversed in favor of plaintiff and remanded for trial

Before Judges Matthews, Kole and Milmed

The Superior Court, Law Division, entered summary judgment dismissing the complaint, and plaintiffs appealed.

The Superior Court, Appellate Division, held that: 1. conduct of physical education instructor and board of education with respect to floor hockey game in which student was injured, allegedly as a result of being required to participate in a game with an excess number of players in a playing area that was too small and without being provided with and required to use proper protective equipment, was not the type of high-level policy decision contemplated by sections of the Tort Claims Act providing immunity with respect to discretionary activities, and 2. case presented questions of fact precluding summary judgment.

Case Number: 49

Tardiff v. Shoreline School District, 411 P.2d 889 (Washington, 1966).

Facts:

Seven-year-old John Tardiff suffered personal injuries when he fell from a cargo net in the gymnasium. The net had been in use since 1961. It was used in the same manner as one would climb a rope or a tree. This activity was normally used in the physical education curriculum.

Judgment and Settlement:

Reversed in favor of the plaintiff and remanded

Before Langenbach, J.

> The Superior Court, King County, Theodore S. Turner, J., granted defendant school district's motion for summary judgment and plaintiff appealed.
>
> The Supreme Court, Langenbach, J., held that complaint which alleged that school district was negligent in failing to provide reasonable protection over child's person, in failing to properly supervise activities, and in advancing and putting into effect plan whose reasonable and foreseeable consequence was to cause injury to child, presented question of fact as to school district's negligent supervision precluding entry of summary judgment on theory that negligence related to cargo net, an "athletic apparatus", within statute barring actions against school districts for acts relating to any athletic apparatus.

Case Number: 50

Tiemann v. Independent School District, 331 N.W.2d 250 (Minnesota, 1983).

Facts:

Sandra Tiemann injured her right leg while undertaking a vault over the horse during physical education class. The student had previously experienced several successful vaults. On the last vault one of Sandra's fingers stuck in a hole on the surface of the vault causing her to fall. There were insufficient mats to prevent injury in case of a fall. It was also customary to have the students vault on a horse which had holes in the surface.

Judgment and Settlement:

Affirmed in favor of the defendants, reversed in part, and remanded.

Before Hofman, J.

> The District Court, Stearns County, Paul Hoffman, J., entered directed verdict on judgment in favor of all defendants, and plaintiffs appealed.
>
> The Supreme Court held that: 1. expert testimony regarding appropriate standard of care to be exercised by school was not essential; 2. negligence could be found if jury were to find that prevailing custom of using vaulting horses with exposed holes fell below requirements of reasonable care; and 3. there was insufficient evidence of negligence on part of manufacturer.

Case Number: 51

Torres v. State of Texas, 476 S.W.2d 846 (1972).

Facts:

Celestine Torres and wife sued because their 17-year-old son

drowned in the school swimming pool. Their son was blind and attended a school for the blind.

Judgment and Settlement:

Affirmed in favor of defendant

Before Shannon, J.

> The 53rd District Court, Travis County, James R. Meyers, P. J., rendered summary judgment for defendants and plaintiffs appealed.
>
> The Court of Civil Appeals, Shannon, J., held that in view of Torts Claims Act provision that Act should not apply to school districts, plaintiffs could not recover although they sued, not the school, but the state and state education agency.

Case Number: 52

Treece v. Shawnee Community Unit School District No. 84, 233 N.E.2d 549, 39 Ill.2d 136 (Illinois, 1968).

Facts:

James Treece died while performing a tumbling stunt during school hours. The deceased was rolling over other students who were formed in a pyramid fashion. He sustained injuries which resulted in death.

Judgment and Settlement:

Affirmed in favor of plaintiff

Before Ward, J.

The Circuit Court, Union County, Paul D. Reese, J., denied school district's motion for leave to file counterclaim because district employee was entitled to indemnification by district. The school district appealed.

The Supreme Court, Ward, J., held that statute requiring school districts with population over 500,000 to cover employees with insurance and statute requiring school districts with lesser population to indemnify employees were not arbitrary and unreasonable; that with enactment of statute requiring school districts to indemnify employees, any right of school district to recover from negligent employee was eliminated; and that $10,000 limit on recovery under School Tort Liability Act was unconstitutional.

Case Number: 53

Weinstein v. Evanston Township Community School District No. 84, 233 N.E.2d 549, 39 Ill. 2d 136 (Illinois, 1968).

Facts:

Janet Lynn Weinstein suffered permanent injuries due to a fall during gymnastics class. The student was performing on the parallel bars and subsequently fell to the floor.

Judgment and Settlement:

Affirmed in favor of defendant

Before McGloon, J.

The Circuit Court of Cook County, Mel R. Jiganti, J., dismissed complaint against teacher and school district, and plaintiffs appealed.

The Appellate Court, McGloon, J., held that purchase of liability insurance did not waive defendants' general immunity from liability for negligent misconduct, and that statute creating such immunity was not unconstitutional.

Case Number: 54

Wilkinson v. Hartford Accident and Indemnity Company, 411 So.2d 22 (Louisiana, 1982).

Facts:

David Len Wilkinson, a 12-year-old boy, was injured when he fell through a glass panel at school. During gym class, the students were divided in order that they might run timed relays. David and other team members went into the foyer for the said purpose of getting water. They decided to practice the relay and during the relay David was hurt. He fell behind and pushed off the glass panel. His weight pushed through the glass and both arms and one knee were lacerated.

It is known that the boys were instructed to immediately return after getting water. Also, the boys had been instructed to avoid horseplay in the foyer. The boys kept a close watch during the forbidden relay as to not get caught.

Judgment and Settlement:

Affirmed in favor of plaintiff

Before Doucet, J.

> The 9th Judicial District Court, Parish of Rapides, Robert P. Jackson, J., entered judgment in favor of defendants, and plaintiffs appealed.

Case Number: 55

Wilson v. Kroll, 326 N.E.2d 94, 26 Ill.App.3d 954 (Illinois Appellate, 1975).

Facts:

First grader, Roger Lee Wilson, Jr., was injured when he fell from a horizontal ladder.

Judgment and Settlement:

Reversed and remanded in favor of plaintiff

Before Downing, P. J.

> The Circuit Court, Cook County, Joseph A. Salerno and Anthony Montelione, J. J., dismissed the action, and the parents appealed.
>
> The Appellate Court, Downing, P. J., held that it was not necessary that defendants be shown to have engaged in willful or wanton misconduct in order to be held liable, but that mere ordinary negligence would suffice.

Case Number: 56

Wong v. Waterloo Community School District, 232 N.W.2d 865, 871 (Supreme Court of Iowa, 1975).

Facts:

Eleven-year-old Peter Wong drowned while participating in swimming class at summer school. The class was composed of 17 boys, most of whom were unable to swim. There were six occasions when the boys were allowed to swim. Two of which, Peter did not swim. It is believed that his fear of the water was the reason. On the sixth

occasion, Peter was last seen in the shallow end before the accident. His body was found in the deeper end of the pool. No one is knowledgeable of the transition. There were no lifeguards or supervisors stationed at the pool during the time of Peter's death.

Judgment and Settlement:

Affirmed in favor of the defendant

Before Moore, C. J., and LeGrand, Rees, Reynoldson and Harris, J. J.

> From a judgment of the Black Hawk District Court, Carroll E. Engelkes, J., the plaintiff appealed.
>
> The Supreme Court, LeGrand, J., held, inter alia, that the court's failure to give a requested instruction saved no error in absence of specific objection to such failure; that plaintiff was not entitled to examine defendant's employees as adverse witnesses; that the trial court did not abuse its discretion in refusing to allow proposed evidence as rebuttal testimony; that the trial court may choose its own language and need not couch the charge in terms suggested by the parties; and that trial court's refusal to permit res ipsa loquitur to stay in the case was not reversible error.

Case Number: 57

Yerdon v. Baldwinsville Academy and Central School District, 374 N.Y.S.2d 877 (1975).

Facts:

A tenth grader, Stephen Yerdon, was injured while participating in an exercise commonly known as "ride the horse", or "Johnny, ride

the pony", or "buck-buck". No floor mats were used.

Judgment and Settlement:

Affirmed in favor of defendant

Before Moule, J. P., and Simons, Mahoney, Goldman and Witmer, J. J.

The Onondaga Trial Term, James P. O'Donnell, Jr., J., entered judgment for defendants, and plaintiff appealed.

The Supreme Court, Appellate Division, held that evidence was for jury on issue of alleged negligence of defendants in either requiring play of particular game involved or in inadequately supervising and directing such game.

Case Number: 58

Zawadzki v. Taylor and Lincoln Consolidated School System, 246 N.W.2d 161 (1976).

Facts:

David M. Zawadzki suffered eye injuries after being struck by a tennis ball during physical education class. The ball had been hit by a student playing on the adjacent court. There was no net to separate the two tennis courts which were located in the school gymnasium.

Judgment and Settlement:

Affirmed in favor of defendant

Before Allen, P. J.

The Circuit Court, Washtenaw County, Ross W. Campbell, J.,

granted school district's motion for accelerated judgment and plaintiff appealed.

The Court of Appeals, Allen, P. J., held that absence of net between tennis courts in gymnasium did not come within the "public building exception" to statute granting immunity from tort liability for governmental agencies.

APPENDIX B

A Brief Description of the Factors Studied for Each Individual Case

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
1	H.S.	M	LS	1979	Soft.		So. (La. Ct. App.)	P/B
2	11	F	S	1971	Gymn.		N.E. (N.Y.S. App. Div.)	P/T,S.D.
3	15	M	S	1976	Gymn.		So. (La. Ct. App.)	D/T,BI
4	19	M	S	1976	Gymn.	Gov. Im.	A. (Md. Cir.)	D/B,P,CO, T,IB,S
5	14	M	S	1979	Golf		N.W. (Neb. Sup. Ct.)	P/S.D.
6	9	M	LS	1976	Games		N.E. (N.Y.S. App. Div.)	P/S.D.,O
7	11	M	S	1983	Soft.		So. (Ala. Sup. Ct.)	D/B

table continues

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
8	?	M	?	1973		Gov. Im.	S.W. (Tx. Civ. App.)	D/S.D.
9	17	F	S	1969	Gymn.		N.E. (N.Y.S. App. Div.)	D/B
10	14	M	LS	1967	Basket.	Gov. Im. Comp. N.	N.W. (Wis. Sup. Ct.)	P/C,T
11	6	M	S	1978	Games		N.W. (Mo. Ct. App.)	D/T
12	H.S.	F	S	1970	Gymn.	Gov. Im.	N.W. (Mich. Ct. App.)	D/T,P,S.D.
13	10	M	LS	1973	Soccer		N.E. (N.Y.S. App. Div.)	P/S.D.
14	H.S.	M	S	1980	Wrest.		N.W. (Mich. Ct. App.)	D/T,S.D.
15	11	F	LS	1982	Exer. Cl.		N.E. (Ind. Ct. App.)	P/S.D.

table continues

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
16	M.S.	M	LS	1980	Gymn.		So. (Fla. Sup. Ct.)	P/T,S.D.,BI
17	16	F	LS	1975	Run.	Cont. N.	A. (N.J. App. Div.)	D/T,S.B.
18	H.S.	F	S	1973	Run.		N.E. (Ia. Sup. Ct.)	D/T,O
19	14	F	LS	1983	Run.		N.E. (N.Y.S. App. Div.)	P/B
20	Jr.	M	S	1971	Games	Gov. Im.	P. (Col. Sup. Ct.)	P/O,T, S.D.,S
21	14	M	S	1975	Games		N.W. (Ia. Sup. Ct.)	D/B,O
22	14	M	S	1967	Basket.		So. (La. Ct. App.)	P/T,B
23	12	F	LS	1973	Gymn.		P. (Ore. Ct. App.)	P/T,S.D.

table continues

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
24	16	M	S	1978	Wrest.		So. (La. Ct. App.)	D/S.B.
25	13	M	S	1975	Gym Cl.		N.W. (Mo. Ct. App.)	D/T,P,O,S
26	Jr. H.S.	F	S	1976	Gymn.		N.E. (Ill. App. Div.)	D/B,T
27	12	M	LS	1969	Soft.		P. (Ariz. Sup. Ct.)	D/IB,T
28	15	F	S	1978	Gymn.		N.E. (Ill. App. Div.)	P/S.D.
29	Jr. H.S.	M	S	1980	Gymn.	Disc. Im.	N.W. (Minn. Sup. Ct.)	S/T,P,S *
30	17	M		1979	Gymn.		N.W. (Wis. Sup. Ct.)	D/T,O
31	H.S.	M	S	1978	Gymn.		N.E. (Ill. App. Div.)	D/T,S.B.

table continues

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
32	H.S.	F	LS	1963	Exer. C.		N.E. (N.Y.S. App. Div.)	D/T,S.B.
33	H.S.	M	LS	1980	Basket.		N.E. (Ill. App.Div.)	D/,S.D.,O
34	H.S.	M	LS	1974	Gymn.		N.E. (N.Y.S. App. Div.)	D/S.B.
35		M	S	1971	Gym Cl.		N.E. (N.Y.S. App. Div.)	D/S.B.,O
36		M	LS	1975	Gym Cl.		N.E. (Ill. App. Div.)	P/T
37		M	S	1965	Basket.	Gov. Im.	N.W. (Mich. Ct. App.)	D/T,S.D., S.B.
38	12	M	LS	1968	Gym Cl.	Cont. N.	P. (Ore. Sup. Ct.)	D/S.D.
39	61 **	F	S	1980	Gym Cl.		P. (Ore. Ct. App.)	D/S.D.
40		F	LS	1965	Gymn.		P. (Wash. Sup. Ct.)	P/T,S.D.

table continues

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
41	9	F	LS	1969	Exer. C.		A. (Md. Ct. App.)	D/T ***
42	****	F	LS	1973	Run.		So. (La. Ct. App.)	D/S,B,BI
43	H.S.	M	S	1972	T. & F.		So. (La. Ct. App.)	D/B
44	H.S.	M	LS	1966	Wrest.	Sov. Im.	N.W. (Mo. Sup. Ct.)	D/T,S,S.D.
45	H.S.	F	S	1979	Gymn.		A. (Penn. Sup. Ct.)	O/S.D.,O *****
46	14	M	S	1974	Swim.	Inc. Risk	N.E. (Ind. Ct. App.)	D/S.D.,B.
47	H.S.	F	S	1971	Gymn.		P. (Ore. Ct. App.)	P/S.D.
48	H.S.	M	S	1979	Hockey	Gov. Im.	A. (N.J. App. Div.)	P/T,B
49	7	M	LS	1966	Gym Cl.	Gov. Im.	P. (Wash. Sup. Ct.)	P/S.D.

table continues

Case	Age	Sex	Injury	Date	Activity	Defense	Region (Court)	Judgment/ Party Sued
50		F	S	1983	Gym Cl.		N.W. (Minn. Sup. Ct.)	S/T,S.D.,O ******
51	17	M	S	1972	Swim.	Gov. Im.	S.W. (Tx. Civ. App.)	D/O,O
52	H.S.	M	S	1968	Gymn.		N.E. (Ill. Sup. Ct.)	O/T,S.D. *******
53	Jr. H.S.	F	S	1976	Gymn.	Gov. Im. Cont. N.	N.E. (Ill. App. Div.)	D/T,S.D.
54	12	M	LS	1975	Gym Cl.	Cont. N.	So. (La. Sup. Ct.)	P/T,B,BI
55		M	LS	1975	Gym Cl.		N.E. (Ill. App. Div.)	P/T,S.D.
56	11	M	S	1975	Swim.		N.W. (Ia. Sup. Ct.)	D/S.D.
57	H.S.	M	S	1975	Gym Cl.		N.E. (N.Y.S. App. Div.)	D/S.D.
58		M	S	1976	Tennis	Gov. Im.	N.W. (Mich. Ct. App.)	D/S.D.,O

*Note. Split decision. P.E. Teacher and principal were found negligent. Superintendant was not found negligent.

**Note. Cafeteria worker.

***Note. P.E. Teacher won the case. Teacher was actually the plaintiff in the case.

****Note. P.E. Teacher.

*****Note. Other. Student brought action against school district. School district joined as additional defendants the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for health care. A decision was made to hear the case in the Court of Common Pleas.

******Note. Split Decision. P.E. Teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

*******Note. Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

Table 1 Key:

Judgment	Party Sued:	
P/ Plaintiff won case	T	Teacher
D/ Defendant won case	D	Director of HPE
S/ Split Decision	P	Principal
O/ Other	S	Superintendent
	S.D.	School district

B	Board
IB	Individual Member of Board
BI	Board Insurer
O	Other

APPENDIX C

Judgments Determined in Favor of the Plaintiff or the Defendant Based on each Individual Factor

Age

__Younger than 11 Years of Age__

Case	Age	Judgment and Settlement
#6	9	Affirmed in favor of plaintiff and modified
#11	6	Affirmed in favor of defendant
#13	10	Reversed for new trial in favor of plaintiff
#41	9	Reversed in favor of defendant
#49	7	Reversed in favor of plaintiff and remanded

__11 Years and Older__

#1	high school	Amended and affirmed in favor of plaintiff
#2	11	Affirmed in favor of plaintiff (affirmed with costs)
#3	15	Affirmed in favor of defendants at appellant's cost
#4	19	Affirmed in favor of defendants
#5	14	Affirmed in favor of plaintiff
#7	11	Affirmed in favor of defendant
#9	17	Reversed in favor of defendant and new tril granted
#10	14	Reversed in favor of plaintiff
#12	high school	Affirmed in favor of defendant
#14	high school	Affirmed in part in favor of defendant and reversed in part

#15 11 Reversed in favor of plaintiff and remanded

#16 middle school Reversed in favor of plaintiff

#17 16 Affirmed in favor of defendants

#18 high school Affirmed in favor of defendant

#19 14 Reversed in favor of plaintiff, motion denied and new trial granted

#20 junior high Reversed in favor of plaintiff and remanded with instructions

#21 14 Affirmed in favor of defendant

#22 14 Affirmed in favor of plaintiff

#23 12 Reversed in favor of plaintiff and remanded with instructions

#24 16 Affirmed in favor of defendant

#25 13 Affirmed in favor of defendant and remanded with directions

#26 junior high Affirmed in favor of defendants

#27 12 Affirmed in favor of defendants

#28 15 Affirmed in favor of plaintiff

#29 junior-senior high Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#30 17 Affirmed in favor of defendant

#31 high school Affirmed in favor of defendant

#32 high school Modified and, so modified, affirmed in favor of defendants

#33 high school Affirmed in favor of defendant

#34 high school Reversed in favor of defendant and new trial granted

#38 12 Affirmed in favor of defendant

#39 61 Affirmed in favor of defendant

#42 PE teacher Affirmed in favor of defendant

#43 high school Affirmed in favor of defendant

#44 high school Affirmed in favor of defendant

#45 high school Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#46 14 Affirmed in favor of defendant

#47 high school Affirmed in favor of plaintiff

#48 high school Reversed in favor of plaintiff and remanded for trial

#51 17 Affirmed in favor of defendant

#52 high school Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#53 junior high Affirmed in favor of defendant

#54 12 Affirmed in favor of defendant

#56 11 Affirmed in favor of defendant

#57 10th grade Affirmed in favor of defendant

Age Unknown

#8 Affirmed in favor of defendant

#35 Reversed in favor of defendant; complaint dismissed

#36 Affirmed in favor of plaintiff

#37 Affirmed in favor of defendant

#40 Reversed in favor of plaintiff and cause remanded

#50 Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#55 Reversed in favor of plaintiff and remanded

#58 Affirmed in favor of defendant

Sex

Male - Plaintiff

Case Judgment and Settlement

#1 Amended and affirmed in favor of plaintiff

#3 Affirmed in favor of defendants at the appellant's cost

#4 Affirmed in favor of defendants

#5 Affirmed in favor of plaintiff

#6 Affirmed in favor of plaintiff and modified

#7 Affirmed in favor of defendants

#8 Affirmed in favor of defendants

#10 Revered in favor of plaintiff

#11 Affirmed in favor of defendant

#13 Reversed (set for new trial) in favor of plaintiff

#14 Affirmed in part in favor of defendant and reversed in part

#16 Reversed in favor of plaintiff

#20 Reversed in favor of plaintiff and remanded with instructions

#21 Affirmed in favor of defendant

#22 Affirmed in favor of plaintiff

#24 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#27 Affirmed in favor of defendants

#29 Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#30 Affirmed in favor of defendant

#31 Affirmed in favor of defendant

#33 Affirmed in favor of defendant

#34 Reversed in favor of defendant and new trial granted

#35 Reversed in favor of defendant, complaint dismissed

#36 Affirmed in favor of plaintiff

#37 Affirmed in favor of defendant

#38 Affirmed in favor of defendant

#43 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

#46 Affirmed in favor of defendant

#48 Reversed in favor of plaintiff and remanded for trial

#49 Reversed in favor of plaintiff and remanded

#51 Affirmed in favor of defendant

#52 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#54 Affirmed in favor of defendant

#55 Reversed in favor of plaintiff and remanded

#56 Affirmed in favor of defendant

#57 Affirmed in favor of defendant

#58 Affirmed in favor of defendant

<u>Female - Plaintiff</u>

#2 Affirmed in favor of plaintiff (affirmed with costs)

#9 Reversed in favor of defendant and new trial granted

#12 Affirmed in favor of defendant

#15 Reversed in favor of plaintiff and remanded

#17 Affirmed in favor of defendants

#18 Affirmed in favor of defendant

#19 Reversed in favor of plaintiff, motion defied, new trial granted

#23 Reversed in favor of plaintiff and remanded with instructions

#26 Affirmed in favor of defendants

#28 Affirmed in favor of plaintiff

#32 Modified, and as so modified, affirmed in favor of defendants

#39 Affirmed in favor of defendant

#40 Reversed in favor of plaintiff and cause remanded

#41 Reversed in favor of defendant

#42 Affirmed in favor of defendant

#45 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#47 Affirmed in favor of plaintiff

#50 Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#53 Affirmed in favor of defendant

Injuries

<u>Serious Injury - Back, Head, Neck, Fracture, Death</u>

Case Type of Injury

Judgment and Settlement

#2 Back injury

Affirmed in favor of defendant

#3 Slight luxation of the cervical spine (back)

Affirmed in favor of defendants at the appellant's cost

#4 Fractured neck, paraplegic since accident

Affirmed in favor of defendants

#5 Death

Affirmed in favor of plaintiff

#7 Concussion and permanent hearing loss in right ear

Affirmed in favor of defendant

#9 Fractured hip

Reversed in favor of defendant, new trail granted

#11 Fractured arm

Affirmed in favor of defendant

#12 Fractured both arms

Affirmed in favor of defendant

#14 Subluxation of two vertebrae resulting in quadriplegia

Affirmed in part in favor of defendant and reversed in part

#18 Fell, broke left femur, cracked right elbow

Affirmed in favor of defendant

#20 Death (hit by car)

Reversed in favor of plaintiff and remanded with instructions

#21 Four fractures of facial bones, depressed sinus

Affirmed in favor of defendant

#22 Fractured arm

Affirmed in favor of plaintiff

#24 Permanently paralyzed by injuries

Affirmed in favor of defendant

#25 Death from head injuries

Affirmed in favor of defendant and remanded with directions

#26 Spinal injuries

Affirmed in favor of defendants

#28 Serious injuries to neck

Affirmed in favor of plaintiff

#29 Broken neck, quadraplegic paralysis

Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#31 Fractured arm

Affirmed in favor of defendant

#35 Death, skull fracture

Reversed in favor of defendant, complaint dismissed

#37 Head injury

Affirmed in favor of defendant

#39 Fractured hip

Affirmed in favor of plaintiff

#43 Impaled by javelin

Affirmed in favor of defendant

#45 Brain damage

Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#46 Death by drowning

Affirmed in favor of defendant

#47 Back

Affirmed in favor of plaintiff

#48 Right eye injury resulting in removal of eye

Reversed in favor of plaintiff and remanded for trial

#50 Permanent injury to right leg

Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#51 Death by drowning

Affirmed in favor of defendant

#52 Death

Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#53 Sustained serious and permanent injuries

Affirmed in favor of defendant

#56 Death by drowning

Affirmed in favor of defendant

#57 Serious injuries

Affirmed in favor of defendant

#58 Eye injury

Affirmed in favor of defendant

Less-Serious Injury

#1 Right knee

Amended and affirmed in favor of plaintiff

#2 Back injury

Affirmed in favor of plaintiff (affirmed with costs)

#6 Loss of two front teeth

Affirmed in favor of plaintiff and modified

#10 Injured (pushed to floor by another student)

Reversed in favor of plaintiff

#13 Injured

Reversed for new trial in favor of plaintiff

#15 Tooth injury - permanent tooth

Reversed in favor of plaintiff and remanded

#16 Knee and teeth

Reversed in favor of plaintiff

#17 Serious injuries to knee

Affirmed in favor of defendant

#19 Dislocated right elbow

Reversed in favor of plaintiff, motion denied and new trial granted

#23 Struck head

Reversed in favor of plaintiff and remanded with instructions

#27 Minor injuries

Affirmed in favor of defendants

#30 Substantial injuries

Affirmed in favor of defendant

#32 Pain in left knee

Modified and, as so modified, affirmed in favor of defendants

#33 Injured

Affirmed in favor of defendant

#34 Injuries sustained

Reversed in favor of defendant and new trial granted

#36 Swollen eye and bloody nose

Affirmed in favor of plaintiff

#38 Not specified

Affirmed in favor of defendant

#40 Right leg

Reversed in favor of plaintiff and remanded

#41 Chipped teeth

Reversed in favor of defendant

#42 Not specific - personal injuries

Affirmed in favor of defendant

#44 Shoulder injury and other specified body parts

Affirmed in favor of defendant

#49 Personal injury

Reversed in favor of plaintiff and remanded

#54 Multiple cuts, profuse bleeding

Affirmed in favor of plaintiff

#55 Personal injury

Reversed in favor of plaintiff and remanded

Dates

<u>1973-1983</u>

Case	Date	Judgment and Settlement
#1	1979	Amended and affirmed in favor of plaintiff
#3	1976	Affirmed in favor of defendants at appellant's cost
#4	1976	Affirmed in favor of defendants
#5	1979	Affirmed in favor of plaintiff
#6	1976	Affirmed in favor of plaintiff and modified
#7	1983	Affirmed in favor of defendant
#8	1973	Affirmed in favor of defendant
#11	1978	Affirmed in favor of defendant
#13	1973	Reversed for new trial in favor of plaintiff
#14	1980	Affirmed in part in favor of defendant and reversed in part
#15	1982	Reversed in favor of plaintiff and remanded
#16	1980	Reversed in favor of plaintiff
#17	1975	Affirmed in favor of defendants
#18	1973	Affirmed in favor of defendant
#19	1983	Reversed in favor of plaintiff, motion denied and new trial granted
#21	1975	Affirmed in favor of defendant
#23	1973	Reversed in favor of plaintiff and remanded with instructions
#24	1978	Affirmed in favor of defendant
#25	1975	Affirmed in favor of defendant and remanded with instructions
#26	1976	Affirmed in favor of defendants
#26	1976	Affirmed in favor of defendants

#28 1978 Affirmed in favor of plaintiff

#29 1980 Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#30 1979 Affirmed in favor of defendant

#31 1978 Affirmed in favor of defendant

#33 1980 Affirmed in favor of defendant

#34 1974 Reversed in favor of defendant and new trial granted

#36 1975 Affirmed in favor of plaintiff

#39 1980 Affirmed in favor of defendant

#42 1973 Affirmed in favor of defendant

#45 1979 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#46 1974 Affirmed in favor of defendant

#48 1979 Reversed in favor of plaintiff and remanded for trial

#50 1983 Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#53 1976 Affirmed in favor of defendant

#54 1982 Affirmed in favor of plaintiff

#55 1975 Reversed in favor of plaintiff and remanded

#56 1975 Affirmed in favor of defendant

#57 1975 Affirmed in favor of defendant

#58 1976 Affirmed in favor of defendant

1963-1972

#2 1971 Affirmed in favor of plaintiff (affirmed with costs)

#9 1969 Reversed in favor of defendant and new trial granted

#10 1967 Reversed in favor of plaintiff

#12 1970 Affirmed in favor of defendant

#20 1971 Reversed in favor of plaintiff and remanded with instructions

#22 1967 Affirmed in favor of plaintiff

#27 1969 Affirmed in favor of defendants

#32 1963 Modified, and as so modified, affirmed in favor of defendants

#35 1970 Reversed in favor of defendant, complaint dismissed

#37 1965 Affirmed in favor of defendant

#38 1968 Affirmed in favor of defendant

#40 1965 Reversed in favor of plaintiff and cause remanded

#41 1969 Reversed in favor of defendant

#43 1972 Affirmed in favor of defendant

#44 1966 Affirmed in favor of defendant

#47 1971 Affirmed in favor of plaintiff

#49 1966 Reversed in favor of plaintiff and remanded

#51 1972 Affirmed in favor of defendant

#52 1968 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

Activity or Sport

Gymnastics

Case Activity

Judgment and Settlement

#2 Rings

Affirmed in favor of plaintiff (affirmed with costs)

#3 Tumbling

Affirmed in favor of defendants at the appellant's cost

#4 Trampoline

Affirmed in favor of defendants

#9 Vaulting (jumping the buck)

#12 Mini trampoline

Affirmed in favor of defendant

#16 Trampoline

Reversed in favor of plaintiff

#23 Springboard

Reversed in favor of plaintiff and remanded with instructions

#26 Rings

Affirmed in favor of defendants

#28 Tumbling (backward roll)

Affirmed in favor of plaintiff

#29 Tumbling (headspring over a rolled mat)

Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#30 Rings (forward roll on still rings)

Affirmed in favor of defendant

#31 Vaulting horse

Affirmed in favor of defendant

#34 Tumbling

Reversed in favor of defendant and new trial granted

#40 Tumbling

Reversed in favor of plaintiff and cause remanded

#45 Still rings

Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#47 Affirmed in favor of plaintiff

#50 Vaulting

Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#52 Tumbling

Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#53 Parallel bars

Affirmed in favor of defendant

#55 Horizontal ladder

Reversed in favor of plaintiff and remanded

Exercise Class

#15 Vertical jump

Reversed in favor of plaintiff and remanded

#32 Bodily exercise (knee walk, inch worm)

Modified and, as so modified, affirmed in favor of defendants

#41 Calisthenics

Reversed in favor of defendant

#46 Affirmed in favor of defendant

Gym Class

#25 Affirmed in favor of defendant and remanded with directions

#35 Reversed in favor of defendant, complaint dismissed

#36 Unspecified

Affirmed in favor of plaintiff

#38 Unspecified

Affirmed in favor of defendant

#39 Affirmed in favor of defendant

#49 Fell from cargo net

Reversed in favor of plaintiff and remanded

#55 Reversed in favor of plaintiff and remanded

#57 Affirmed in favor of defendant

Running

#17 Affirmed in favor of defendants

#18 Running to shower

Affirmed in favor of defendant

#19 Speed test

Reversed in favor of plaintiff, motion denied and new trial granted

#42 Running demonstration

Affirmed in favor of defendant

#54 Race during class

Affirmed in favor of plaintiff

Softball

#1 Amended and affirmed in favor of plaintiff

#7 Affirmed in favor of defendant

#27 Affirmed in favor of defendants

Basketball

#10 Reversed in favor of plaintiff

#22 Affirmed in favor of plaintiff

#33 Affirmed in favor of defendant

#37 Affirmed in favor of defendant

Wrestling

#14 Affirmed in part in favor of defendant, reversed in part

#24 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

Track and Field

#43 Affirmed in favor of defendant

<u>Hockey</u>

#48 Reversed in favor of plaintiff and remanded for trial

<u>Swimming</u>

#46 Affirmed in favor of defendant

#51 Affirmed in favor of defendant

#56 Affirmed in favor of defendant

<u>Golf</u>

#5 Affirmed in favor of plaintiff

<u>Soccer</u>

#13 Reversed for new trial in favor of plaintiff

<u>Tennis</u>

#58 Affirmed in favor of defendant

<u>Games</u>

#6 Ball games (low skill, elementary level)

Affirmed in favor of plaintiff and modified

#11 Free play (on playground equipment)

Affirmed in favor of defendant

#20 Reversed in favor of plaintiff and remanded with instructions

#21 Bombardment

Affirmed in favor of defendant

Defenses

Comparative Negligence

Case Judgment and Settlement

#10 Reversed in favor of plaintiff

Contributory Negligence

#5 Affirmed in favor of plaintiff

#38 Affirmed in favor of defendant

#46 Affirmed in favor of defendant

#53 Affirmed in favor of defendant

#54 Affirmed in favor of plaintiff

#56 Affirmed in favor of defendant

Governmental Immunity

#4 Affirmed in favor of defendants

#8 Affirmed in favor of defendant

#10 Reversed in favor of plaintiff

#12 Affirmed in favor of defendant

#20 Reversed in favor of plaintiff and remanded with instructions

#25 Affirmed in favor of defendant and remanded with directions

#37 Affirmed in favor of defendant

#48 Reversed and remanded in favor of plaintiff

#49 Reversed and remanded in favor of plaintiff

#51 Affirmed in favor of defendant

#53 Affirmed in favor of defendant

#58 Affirmed in favor of defendant

In Loco Parentis

#24 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#27 Affirmed in favor of defendant

#28 Affirmed in favor of plaintiff

#31 Affirmed in favor of defendant

#36 Affirmed in favor of plaintiff

#41 Reversed in favor of defendant

#53 Affirmed in favor of defendant

#55 Reversed and remanded in favor of plaintiff

Incurred Risk

#46 Affirmed in favor of defendant

Res Ispa Loquiter

#9 Reversed in favor of defendant and new trial granted

#21 Affirmed in favor of defendant

Respondant Superior

#33 Affirmed in favor of defendant

Sovereign Immunity

#44 Affirmed in favor of defendant

Court District

<u>Pacific Region</u>

Case Judgment and Settlement

#20 Supreme Court of Colorado, En. Banc.

Reversed in favor of plaintiff and remanded with instructions

#23 Court of Appeals of Oregon

Reversed in favor of plaintiff and remanded with instructions

#27 Supreme Court of Arizona In Division

Affirmed in favor of defendants

#38 Supreme Court of Oregon, Department 1

Affirmed in favor of defendant

#39 Court of Appeals of Oregon

Affirmed in favor of defendant

#40 Supreme Court of Washington, Department 2

Reversed in favor of plaintiff and cause remanded

#47 Court of Appeals of Oregon, Department 2

Affirmed in favor of plaintiff

#49 Supreme Court of Washington, Department 1

Reversed in favor of plaintiff and remanded

<u>Northwestern Region</u>

#5 Supreme Court of Nebraska

Affirmed in favor of plaintiff

#10 Supreme Court of Wisconsin

Reversed in favor of plaintiff

#12 Court of Appeals of Michigan, Division 2

Affirmed in favor of defendant

#14 Court of Appeals of Michigan

Affirmed in part in favor of defendant, reversed in part

#21 Supreme Court of Iowa

Affirmed in favor of defendant

#29 Supreme Court of Minnesota

Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#30 Supreme Court of Wisconsin

Affirmed in favor of defendant

#37 Court of Appeals of Michigan

Affirmed in favor of defendant

#50 Supreme Court of Minnesota

Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#56 Supreme Court of Iowa

Affirmed in favor of defendant

#58 Court of Appeals of Michigan

Affirmed in favor of defendant

Northeastern Region

#2 Supreme Court, Appellate Division, Third Department N.Y.S.

Affirmed in favor of plaintiff (affirmed with costs)

#6 Supreme Court, Appellate Division, Third Department, N.Y.S.

Affirmed in favor of plaintiff and modified

#9 Supreme Court, Appellate Division, Second Department, N.Y.S.

Reversed in favor of defendant and new trial granted

#13 Supreme Court, Appellate Division, Fourth Department, N.Y.S.

Reversed in favor of plaintiff and set for new trial

#15 Court of Appeals of Indiana, Second District

Reversed in favor of plaintiff and remanded

#18 Court of Appeals of Indiana, Second District

Affirmed in favor of defendant

#19 Supreme Court Appellate Division, Fourth Department, N.Y.S.

Reversed in favor of plaintiff, motion denied and new trial granted

#26 Appellate Court of Illinois, First District, Fifth Division

Affirmed in favor of defendants

#28 Appellate Court of Illinois, Fifth District

Affirmed in favor of plaintiff

#31 Appellate Court of Illinois, Fifth District, Third Division

Affirmed in favor of defendant

#32 Supreme Court, Appellate Division, Third Department, N.Y.S.

Modified and, as so modified, affirmed in favor of defendants

#33 Appellate Court of Illinois, First District, Fifth Division

Affirmed in favor of defendant

#34 Supreme Court, Appellate Division, First Department

Reversed in favor of defendant and new trial granted

#35 Supreme Court, Appellate Division, Second Department, N.Y.S.

Reversed in favor of defendant, complaint dismissed

#36 Appellate Court of Illinois, First District, Third Division

Affirmed in favor of plaintiff

#41 Maryland

Reversed in favor of defendant

#46 Court of Appeals of Indiana, First District

Affirmed in favor of defendant

#52 Supreme Court of Illinois

Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#53 Appellate Court of Illinois, First District, Third Division

Affirmed in favor of defendant

#55 Appellate Court of Illinois, First District, Second Division

Reversed in favor of plaintiff and remanded

#57 Supreme Court, Appellate Division, Fourth Department, N.Y.S.

Affirmed in favor of defendant

Southwestern Region

#8 Court of Civil Appeals of Texas

Affirmed in favor of defendant

#11 Missouri Court of Appeals

Affirmed in favor of defendant

#25 Missouri Court of Appeals, Springfield District

Affirmed in favor of defendant and remanded with directions

#44 Supreme Court of Missouri, En. Banc.

Affirmed in favor of defendant

#51 Court of Civil Appeals of Texas

Affirmed in favor of defendant

Southern Region

#1 Court of Appeal of Louisiana

Amended and affirmed in favor of plaintiff

#3 Court of Appeal of Louisiana, Third Circuit

Affirmed in favor of defendants at the appellant's cost

#7 Supreme Court of Alabama

Affirmed in favor of defendant

#16 Supreme Court of Florida

Reversed in favor of plaintiff

#22 Court of Appeal of Louisiana, Fourth Circuit

Affirmed in favor of plaintiff

#24 Court of Appeal of Louisiana, Fourth Circuit

Affirmed in favor of defendant

#42 Court of Appeal of Louisiana, Second Circuit

Affirmed in favor of defendant

#43 Court of Appeal of Louisiana, Third Circuit

Affirmed in favor of defendant

#54 Supreme Court of Louisiana

Affirmed in favor of plaintiff

Atlantic Region

#4 Court of Special Appeals, Maryland

Affirmed in favor of defendants

#17 Superior Court of New Jersey, Appellate Division

Affirmed in favor of defendants

#45 Superior Court of Pennsylvania

Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#48 Superior Court of New Jersey, Appellate Division

Reversed in favor of plaintiff and remanded for trial

Party Being Sued

Board of Directors

Case Judgment and Settlement

#21 Affirmed in favor of defendant

Board of Education

#4 Affirmed in favor of defendants

#6 Affirmed in favor of plaintiff and modified

#7 (County) Affirmed in favor of defendant

#9 Reversed in favor of defendant and new trial granted

#19 Reversed in favor of plaintiff and remanded with instructions

#26 Affirmed in favor of defendants

#32 Modified and, as so modified, affirmed in favor of defendants

#34 Reversed in favor of defendant and new trial granted

#35 Reversed in favor of defendant, complaint dismissed

#37 Affirmed in favor of defendant

#48 Reversed in favor of plaintiff and remanded for trial

Board of Regents

#23 Affirmed in favor of defendant

Board of Trustees

#46 Affirmed in favor of defendant

Car Drivers

#20 Reversed in favor of plaintiff and remanded with instructions

<u>City of Jonesville</u>

#30 Affirmed in favor of defendant

<u>City of Milwaukee</u>

#10 Reversed in favor of plaintiff

<u>County</u>

#4 Affirmed in favor of defendants

#6 Affirmed in favor of plaintiff and modified

<u>Director of Health and Physical Education</u>

#21 Affirmed in favor of defendant

#54 Affirmed in favor of defendant

<u>Fellow Student</u>

#33 Affirmed in favor of defendant

#58 Affirmed in favor of defendant

<u>Individual Member of the Board</u>

#4 Affirmed in favor of defendants

#21 Affirmed in favor of defendant

#27 Affirmed in favor of defendants

#42 (Unnamed Executive Officer) Affirmed in favor of defendant

<u>Manufacturer</u>

#50 Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

<u>Medical Doctor</u>

#45 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

<u>Physical Education Teacher</u>

#2 Affirmed in favor of plaintiff (Affirmed with costs)

#3 Affirmed in favor of defendants at the appellant's costs

#4 Affirmed in favor of defendants

#10 Reversed in favor of plaintiff

#11 Affirmed in favor of defendant

#12 Affirmed in favor of defendant

#13 Reversed for new trial in favor of plaintiff

#14 Affirmed in part in favor of defendant and reversed in part

#16 Reversed in favor of plaintiff

#17 Affirmed in favor of defendants

#18 Affirmed in favor of defendant

#21 Affirmed in favor of defendant

#22 Affirmed in favor of plaintiff

#23 Reversed in favor of plaintiff and remanded with instructions

#25 Affirmed in favor of defendant and remanded with instructions

#26 Affirmed in favor of defendant

#27 Affirmed in favor of defendants

#29 Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#30 Affirmed in favor of defendant

#31 Affirmed in favor of defendant

#32 Modified and, as so modified, affirmed in favor of defendants

#36 Affirmed in favor of plaintiff

#37 Affirmed in favor of defendant

#38 Affirmed in favor of defendant

#40 Reversed in favor of plaintiff and cause remanded

#41 Reversed in favor of defendant

#44 Affirmed in favor of the defendant

#48 Reversed in favor of plaintiff and remanded for trial

#50 Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#52 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#53 Affirmed in favor of defendant

#54 Affirmed in favor of plaintiff

#55 Reversed in favor of plaintiff and remanded

Principal

#4 Affirmed in favor of defendants

#12 Affirmed in favor of defendant

#20 Reversed in favor of plaintiff and remanded with instructions

#21 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#27 Affirmed in favor of defendants

#29 Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

School Board

#1 Amended and affirmed in favor of plaintiff

#3 Affirmed in favor of defendants at the appellant's cost

#4 Affirmed in favor of defendants

#16 Reversed in favor of plaintiff

#17 Affirmed in favor of defendant

#22 Affirmed in favor of plaintiff

#24 Affirmed in favor of defendant

#31 Affirmed in favor of defendant

#42 Affirmed in favor of defendant

#43 Affirmed in favor of defendant

#54 Affirmed in favor of plaintiff

School Board's Insurer

#3 Affirmed in favor of defendants at appellant's cost

#16 Reversed in favor of plaintiff

#54 Affirmed in favor of plaintiff

School District

#2 Affirmed in favor of plaintiff (with costs)

#3 Affirmed in favor of defendants at the appellant's cost

#5 Affirmed in favor of plaintiff

#6 Affirmed in favor of plaintiff and modified

#12 Affirmed in favor of defendant

#13 Reversed for new trial in favor of plaintiff

#14 Affirmed in part in favor of defendant and reversed in part

#15 Reversed in favor of plaintiff and remanded

#16 Reversed in favor of plaintiff

#18 (Community School Corporation) Affirmed in favor of defendants

#20 Reversed in favor of plaintiff and remanded with instructions

#21 Affirmed in favor of defendant

#23 Reversed in favor of plaintiff and remanded with instructions

#27 Affirmed in favor of plaintiff

#28 Affirmed in favor of plaintiff

#33 Affirmed in favor of defendant

#37 Affirmed in favor of defendant

#38 Affirmed in favor of defendant

#39 (Portland) Affirmed in favor of defendant

#40 Reversed in favor of plaintiff and cause remanded

#44 Affirmed in favor of the defendant

#45 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians.

Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#46 Affirmed in favor of defendant

#47 Affirmed in favor of plaintiff

#49 (Shoreline) Reversed in favor of the plaintiff and remanded

#50 Split decision. P.E. teacher and school district had judgment in their favor reversed. The directed verdict in favor of the manufacturer was affirmed.

#52 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#53 (Consolidated) Affirmed in favor of defendant

#55 Reversed in favor of plaintiff and remanded

#56 Affirmed in favor of defendant

#57 (Academy) Affirmed in favor of defendant

#58 Affirmed in favor of defendant

<u>School Nurse</u>

#25 Affirmed in favor of defendant and remanded with directions

<u>State Education Agency</u>

#51 Affirmed in favor of defendant

<u>State of Texas</u>

#51 Affirmed in favor of defendant

Superintendent

#4 Affirmed in favor of defendants

Reversed in favor of plaintiff and remanded with instructions

#20 Reversed in favor of plaintiff and remanded with instructions

#21 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with instructions

#29 Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#42 Affirmed in favor of defendant

#44 Affirmed in favor of the defendant

Unknown

#35

APPENDIX D

Judgments Determined in Favor of the Plaintiff or the Defendant

Affirmed in Favor of Plaintiff

Case Judgment and Settlement

#1 Amended and affirmed in favor of plaintiff

#2 Affirmed in favor of plaintiff (affirmed with costs)

#5 Affirmed in favor of plaintiff (Colwell, District Judge, dissented and fled opinion in which McCown, J., joined)

#6 Affirmed in favor of plaintiff and modified

#22 Affirmed in favor of plaintiff

#28 Affirmed in favor of plaintiff

#29 Split decision. P.E. teacher and principal were found negligent. Superintendant was not found to be negligent.

#36 Affirmed in favor of plaintiff

#47 Affirmed in favor of plaintiff

#52 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#54 Affirmed in favor of plaintiff

Affirmed in Favor of Defendant

#3 Affirmed in favor of defendants at the appellant's cost

#4 Affirmed in favor of defendants

#7 Affirmed in favor of defendant

#8 Affirmed in favor of defendant

#11 Affirmed in favor of defendant

#12 Affirmed in favor of defendant

#14 Affirmed in part in favor of defendant and reversed in part

#17 Affirmed in favor of defendants

#18 Affirmed in favor of defendant

#21 Affirmed in favor of defendant

#24 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#26 Affirmed in favor of defendants

#27 Affirmed in favor of defendants

#30 Affirmed in favor of defendant

#31 Affirmed in favor of defendant

#32 Modified and, as so modified, affirmed in favor of defendants

#33 Affirmed in favor of defendant

#37 Affirmed in favor of defendant

#38 Affirmed in favor of defendant

#39 Affirmed in favor of defendant

#42 Affirmed in favor of defendant

#43 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

#46 Affirmed in favor of defendant

#50 Affirmed in part in favor of defendants, reversed in part, and remanded

#51 Affirmed in favor of defendant

#53 Affirmed in favor of defendant

#56 Affirmed in favor of defendant

#57 Affirmed in favor of defendant

#58 Affirmed in favor of defendant

Reversed in Favor of Plaintiff

#10 Reversed in favor of plaintiff

#16 Reversed in favor of plaintiff

Reversed in Favor of Defendant

#9 Reversed in favor of defendant and new trial granted

#41 Reversed in favor of defendant, complaint dismissed

Remanded and Reversed in Favor of Plaintiff

#13 Reversed for new trial in favor of plaintiff

#15 Reversed in favor of plaintiff and remanded

#19 Reversed in favor of plaintiff, motion denied and new trial granted

#20 Reversed in favor of plaintiff and remanded with instructions

#23 Reversed in favor of plaintiff and remanded with instructions

#40 Reversed in favor of plaintiff and cause remanded

#45 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#48 Reversed in favor of plaintiff and remanded for trial

#49 Reversed in favor of plaintiff and remanded

#55 Reversed in favor of plaintiff and remanded

<u>Remanded and Reversed in Favor of Defendant</u>

#34 Reversed in favor of defendant and new trial granted

#35 Reversed in favor of defendant, complaint dismissed

APPENDIX E

Judgments Determined in Favor of the Plaintiff or the Defendant Based on Each Individual Classification

Instruction/Supervision

CLASSIFICATION: Failure to properly supervise

Cases decided in favor of plaintiff

Case Judgment and Settlement

#5 Affirmed in favor of plaintiff (Colwell, District Judge, dissented and filed opinion in which McCown, J., joined)

#20 Reversed in favor of plaintiff and remanded with instructions

#23 Reversed in favor of plaintiff and remanded with instructions

#45 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for healthy care. A decision was made to hear the case in the Court of Common Pleas.

#47 Affirmed in favor of plaintiff

#49 Reversed in favor of plaintiff and remanded

#52 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#55 Reversed in favor of plaintiff and remanded

Cases decided in favor of defendant

#8 Affirmed in favor of defendant

#11 Affirmed in favor of defendant

#17 Affirmed in favor of defendants

#24 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#32 Modified and, as so modified, affirmed in favor of defendants

#34 Reversed in favor of defendant and new trial granted

#35 Reversed in favor of defendant, complaint dismissed

#39 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

#46 Affirmed in favor of defendant

#51 Affirmed in favor of defendant

#56 Affirmed in favor of defendant

#57 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 8

Total number of cases decided in favor of defendant - 14

CLASSIFICATION: Failure to properly instruct

Cases decided in favor of plaintiff

#19 Reversed in favor of plaintiff, motion denied and new trial granted

#40 Reversed in favor of plaintiff and cause remanded

#45 Student brought action against school district. School district joined as additional defendants, the hospital treating physicians. Additional defendants then filed preliminary objections asserting that malpractice claims should be held in an arbitration panel for

healthy care. A decision was made to hear the case in the Court of Common Pleas.

#52 Other. Action was taken against school district. Defendant school district filed motion asking leave to file a third-party counterclaim against defendant employee. The motion was denied.

#55 Reversed in favor of plaintiff

Cases decided in favor of defendant

#8 Affirmed in favor of defendant

#24 Affirmed in favor of defendant

#34 Reversed in favor of defendant and new trial granted

#35 Reversed in favor of defendant, complaint dismissed

#43 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

#46 Affirmed in favor of defendant

#54 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 5

Total number of cases decided in favor of defendant - 8

CLASSIFICATION: Failure to warn students of inherent dangers

Cases decided in favor of plaintiff

#15 Reversed in favor of plaintiff and remanded

#23 Reversed in favor of plaintiff and remanded with instructions

Cases decided in favor of defendant

#8 Affirmed in favor of defendant

#24 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 3

CLASSIFICATION: Failure to listen to protestations and having student perform

<u>Cases decided in favor of plaintiff</u>

#10 Reversed in favor of plaintiff

#16 Reversed in favor of plaintiff

<u>Cases decided in favor of defendant</u>

#12 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#41 Reversed in favor of defendant

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 3

CLASSIFICATION: Failure to provide rules to guide the class

<u>Cases decided in favor of plaintiff</u>

#10 Reversed in favor of plaintiff

<u>Cases decided in favor of defendant</u>

#44 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Failure to control the class

Cases decided in favor of plaintiff

#10 Reversed in favor of plaintiff

#20 Reversed in favor of plaintiff and remanded with instructions

Cases decided in favor of defendant

#17 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

#39 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 3

CLASSIFICATION: Failure to watch student perform or see accident

Cases decided in favor of plaintiff

#2 Affirmed in favor of plaintiff (affirmed with costs)

#5 Affirmed in favor of plaintiff (Colwell, District Judge, dissented and filed opinion in which McCown, J., joined)

Cases decided in favor of defendant

#4 Affirmed in favor of defendant

#21 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 2

CLASSIFICATION: Failure to account for individual abilities of students

Cases decided in favor of plaintiff

#28 Affirmed in favor of plaintiff

Cases decided in favor of defendant

#4 Affirmed in favor of defendants

#24 Affirmed in favor of defendant

#56 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 3

CLASSIFICATION: Failure to assure students were in adequate physical condition

Cases decided in favor of plaintiff

--

Cases decided in favor of defendant

#4 Affirmed in favor of defendant

#24 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 0

Total number of cases decided in favor of defendant - 2

CLASSIFICATION: Inadequate safety instruction

Cases decided in favor of plaintiff

#5 Affirmed in favor of plaintiff (Colwell, District Judge, dissented and fled opinion in which McCown, J., joined)

#13 Reversed for new trial in favor of plaintiff

#16 Reversed in favor of plaintiff

Cases decided in favor of defendant

--

Total number of cases decided in favor of plaintiff - 3

Total number of cases decided in favor of defendant - 0

CLASSIFICATION: Permitting or asking students to participate in improper attire

Cases decided in favor of plaintiff

#6 Affirmed in favor of plaintiff and modified

Cases decided in favor of defendant

#34 Reversed in favor of defendant and new trial granted

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Willful and wanton disregard of student

Cases decided in favor of plaintiff

#20 Reversed in favor of plaintiff and remanded with instructions

#28 Affirmed in favor of plaintiff

Cases decided in favor of defendant

#26 Affirmed in favor of defendants

#31 Affirmed in favor of defendant

#33 Affirmed in favor of defendant

#53 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 4

CLASSIFICATION: Failure to demonstrate

Cases decided in favor of plaintiff

#2 Affirmed in favor of plaintiff (affirmed with costs)

#13 Reversed for new trial in favor of plaintiff

#15 Reversed in favor of plaintiff and remanded

<u>Cases decided in favor of defendant</u>

--

Total number of cases decided in favor of plaintiff - 3

Total number of cases decided in favor of defendant - 0

CLASSIFICATION: Spotters were not instructed

<u>Cases decided in favor of plaintiff</u>

#2 Affirmed in favor of plaintiff (affirmed with costs)

<u>Cases decided in favor of defendant</u>

--

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 0

CLASSIFICATION: Assault or assault and battery on student

<u>Cases decided in favor of plaintiff</u>

#22 Affirmed in favor of plaintiff

#36 Affirmed in favor of plaintiff

<u>Cases decided in favor of defendant</u>

#27 Affirmed in favor of defendants

#37 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 2

CLASSIFICATION: Allowing student to return to activity after injury

Cases decided in favor of plaintiff

--

Cases decided in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

Total number of cases decided in favor of plaintiff - 0

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Improper progression; too difficult an activity or movement

Cases decided in favor of plaintiff

#40 Reversed in favor of plaintiff and cause remanded

#47 Affirmed in favor of plaintiff

Cases decided in favor of defendant

--

Total number of cases decided in favor of plaintiff - 2

Total number of cases decided in favor of defendant - 0

CLASSIFICATION; Failure to forsee injury

Cases decided in favor of plaintiff

#49 Reversed in favor of plaintiff and remanded

Cases decided in favor of defendant

#44 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Failure to follow state physical education syllabus, fitness manual, curriculum guide or Federation rules in the teaching of a class

Cases decided in favor of plaintiff

#2 Affirmed in favor of plaintiff (affirmed with costs)

#5 Affirmed in favor of plaintiff (Colwell, District Judge, dissented and filed opinion in which McCown, J., joined)

#19 Reversed in favor of plaintiff, motion denied and new trial granted

Cases decided in favor of defendant

#4 Affirmed in favor of defendants

#33 Affirmed in favor of defendant

#44 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 3

Total number of cases decided in favor of defendant - 3

CLASSIFICATION: Too many students in class

Cases decided in favor of plaintiff

#10 Reversed in favor of plaintiff

#20 Reversed in favor of plaintiff and remanded with instructions

#48 Reversed in favor of plaintiff and remanded for trial

Cases decided in favor of defendant

#3 Affirmed in favor of defendants at the appellant's cost

#4 Affirmed in favor of defendants

#7 Affirmed in favor of defendant

#18 Affirmed in favor of defendant

#25 Affirmed in favor of defendant and remanded with directions

Total number of cases decided in favor of plaintiff - 3

Total number of cases decided in favor of defendant - 5

CLASSIFICATION: Failure to require teachers to seek professional training

Cases decided in favor of plaintiff

--

Cases decided in favor of defendant

#4 Affirmed in favor of defendants

Total number of cases decided in favor of plaintiff - 0

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Failure to provide recently marketed spotting equipment

Cases decided in favor of plaintiff

--

Cases decided in favor of defendant

#4 Affirmed in favor of defendants

Total number of cases decided in favor of plaintiff - 0

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Failure to adequately instruct teachers as to matters of safety

<u>Cases decided in favor of plaintiff</u>

<u>Cases decided in favor of defendant</u>

#4 Affirmed in favor of defendants

#8 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 0

Total number of cases decided in favor of defendant - 2

CLASSIFICATION: Permitting an activity in the curriculum which is dangerous to students

<u>Cases decided in favor of plaintiff</u>

#15 Reversed in favor of plaintiff and remanded

<u>Cases decided in favor of defendant</u>

#14 Affirmed in part in favor of defendant and reversed in part

#21 Affirmed in favor of defendant

#57 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 3

CLASSIFICATION: Failure to provide a safe way of passage

<u>Cases decided in favor of plaintiff</u>

#20 Reversed in favor of plaintiff and remanded with instructions

<u>Cases decided in favor of defendant</u>

#39 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 1

Total number of cases decided in favor of defendant - 1

CLASSIFICATION: Failure to hire competant instructors on staff

<u>Cases decided in favor of plaintiff</u>

--

<u>Cases decided in favor of defendant</u>

#44 Affirmed in favor of defendant

#56 Affirmed in favor of defendant

Total number of cases decided in favor of plaintiff - 0

Total number of cases decided in favor of defendant - 2

APPENDIX F

Classification of Cases as Determined by Category and Classification

Teachers

Instruction/Supervision

Classification: Failure to properly supervise

Case Numbers: 5, 8, 11, 17, 29, 23, 24, 25, 32, 34, 35, 39, 44, 45, 46, 47, 49, 51, 52, 55, 56, 57

Classification: Failure to properly instruct

Case Numbers: 8, 19, 24, 34, 35, 40, 43, 44, 45, 46, 52, 54, 55

Classification: Failure to warn students of inherent dangers

Case Numbers: 8, 15, 23, 24, 44

Classification: Failure to listen to protestations and having student perform

Case Numbers: 10, 12, 16, 25, 41

Classification: Failure to provide rules to guide the class

Case Numbers: 10, 44

Classification: Failure to control the class

Case Numbers: 10, 17, 20, 25, 39

Classification: Failure to watch student perform or see accident

Case Numbers: 2, 4, 5, 21

Classification: Failure to account for individual abilities of students

Case Numbers: 4, 24, 28, 56

Classification: Failure to assume students were in adequate physical condition

Case Numbers: 4, 24

Classification: Inadequate safety instruction

Case Numbers: 5, 13, 16

Classification: Permitting or asking students to participate in improper attire

Case Numbers: 6, 34

Classification: Willful and wanton disregard of student

Case Numbers: 20, 26, 28, 31, 33, 53

Classification: Not demonstrating

Case Numbers: 2, 13, 15

Classification: Spotters were not instructed

Case Number: 2

Classification: Assault or assault and battery on student

Case Numbers: 22, 27, 36, 37

Classification: Allowing student to return to activity after injury

Case Number: 25

Classification: Improper progression; too difficult an activity or movement

Case Numbers: 40, 47

Classification: Failure to forsee injury

Case Numbers: 44, 49

<u>Supervisors and Administrators</u>

<u>Instruction/Supervision</u>

Classification: Failure to follow state physical education

syllabus, fitness manual, curriculum guide, or Federation rules in the teaching of a class

Case Numbers: 2, 4, 5, 19, 33, 44

Classification: Too many students in class

Case Numbers: 3, 4, 7, 10, 18, 20, 24, 48

Classification: Not requiring teacher to seek professional training

Case Number: 4

Classification: Failure to provide recently marketed spotting equipment

Case Number: 4

Classification: Failure to adequately instruct teachers as to matters of safety

Case Numbers: 4, 8

Classifiaction: Permitting an activity in the curriculum which is dangerous to students

Case Numbers: 14, 15, 21, 57

Classification: Failure to provide a safe way of passage

Case Numbers: 20, 39

Classification: Failure to hire competant instructors or staff

Case Numbers: 44, 56

Classification: Failure to give physician information about student needed

Case Numbers:

Classification: Failure to provide adequate safety devices

Case Numbers:

APPENDIX G

Number in Party Being Sued

<u>One Party Sued</u>

Case

#1
#5
#7
#8
#9
#11
#12
#15
#19
#24
#28
#33
#34
#35
#36
#39
#41
#43
#47
#49
#56
#57

<u>Two Parties Sued</u>

Case

#2
#6
#10
#13
#14
#17
#18
#22
#23
#26
#30
#31
#32
#38
#40
#42
#46
#48
#51
#52
#53
#55
#58

<u>Three Parties Sued</u>

Case

#3
#16
#29
#37
#44
#50
#54

<u>Four Parties Sued</u>

#20
#25
#27
#45

<u>Six Parties Sued</u>

#4

<u>Seven Parties Sued</u>

#21