

PLAYGROUND SAFETY MAINTENANCE GUIDELINES, THE NEXT GENERATION

James C. Kozlowski, J.D., Ph.D.

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In 1991, the U.S. Consumer Product Safety Commission (CPSC) completed the revised *Handbook for Public Playground Safety* (CPSC handbook) containing safety guidelines for public playground equipment. (The initial CPSC handbook appeared in 1980.) In the revised CPSC handbook, the CPSC reiterates its belief that "guidelines, rather than a mandatory rule" are appropriate because "many factors may affect playground safety."

These guidelines are not a CPSC standard and are not mandatory requirements. Therefore, the Commission is not endorsing them as the sole method to minimize injuries associated with playground equipment. The Commission believes, however, that the safety features in many of the recommendations in this handbook will contribute to greater equipment safety. Publication of the handbook is expected to promote greater safety awareness among those who purchase, install, and maintain public playground equipment.

Despite this CPSC statement to the contrary, there is a widely held misconception among playground safety experts and plaintiffs' attorneys that the CPSC guidelines necessarily define the applicable legal standard of care in the event of public playground injury litigation. To this point, however, the reported case law would indicate that courts refuse to be bound by the CPSC guidelines in determining negligence liability.

For example, in the case of *McCarthy v. State of New York*, 562 N.Y.S.2d 190 (1990), the state appeals court found that the CPSC guidelines did not constitute a legally binding safety standard with mandatory requirements. (This decision was presented in the *Recreation and Parks Law Reporter*, Vol. 8, no. 1, Report # 91-12.) In this case, plaintiff "was injured in a playground when she fell to the ground from a horizontal ladder." Based upon the CPSC guidelines, McCarthy's expert witness had testified that the State was "negligent in the maintenance and/or design of the ladder." The court, however, rejected McCarthy's contention that the CPSC guidelines for public playground safety constituted the applicable legal standard of care for determining negligence liability. On the contrary, the court found that the "guidelines promulgated by the United States Consumer Product Safety Commission CPSC, upon which he relied, were not mandatory or meant to be the exclusive standards for playground safety."

Accordingly, documents like the CPSC guidelines and generally accepted practices in the field of parks and recreation may be relevant evidence in a court's determination of the applicable legal standard of care in a given instance. In other words, such written standards or prevailing norms are not necessarily

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proof positive of the applicable legal standard of care, unless such standards have been given the effect of law by a legislative body. e.g., laws, ordinances, regulations. (To the best of my knowledge, California is the only jurisdiction with state playground safety statute based upon the CPSC guidelines.) The prevailing safety norms in a field or practices recommended by risk managers and safety experts are, therefore, not necessarily the same legal standards which would be imposed by a court. In fact, the legal standard may very well be lower than that advocated by safety experts in a given field.

Despite significant discrepancies between the recommended standards of safety experts and the generally lower legal standard of care, it would behoove the prudent park and recreation administrator to perform in a manner consistent with the more demanding safety standards. In so doing, the agency will have a margin of error between its practices and the applicable legal standard of care. More importantly, however, safety practices which are more demanding than the applicable legal standard are more likely to prevent injury-causing situations which give rise to lawsuits. Given the costs associated with defending a lawsuit and the political/public relations fallout associated with injuries, the litigation process is a losing proposition whether your agency ultimately wins or loses in court. The message is, therefore, to operate your facilities and programs on the generally higher plane espoused by safety experts and risk managers (including the CPSC guidelines) knowing that the legal standard may be less demanding.

The following paragraphs present a brief overview of layout, installation, and maintenance issues addressed in the CPSC *Handbook for Public Playground Safety*. (For further information write: U.S. Consumer Product Safety Commission, Washington, D.C. 20207 or contact NRPA.)

### MAKING A LIST, CHECKING IT TWICE

In addressing the "layout and design" concerns, the CPSC handbook recommends that playgrounds "should be organized into different areas to prevent injuries caused by conflicting activities and children running between activities."

Active, physical activities should be separate from more passive or quiet activities. Areas for play equipment, open fields, and sand boxes should be located in different sections of the playground. In addition, popular, heavy-use pieces of equipment or activities should be dispersed to avoid crowding in any one area. The layout of equipment and activity areas should be without visual barriers so that there are clear sight lines everywhere on the playground to facilitate supervision. Moving equipment, such as swings and merry-go-rounds should be located toward a corner or edge of the play area. Slide exits should also be located in an uncongested area of the playground. Care should be taken to ensure that the play and traffic patterns of children using adjacent components of equipment are complementary.

The CPSC handbook also notes that "[p]roper assembly and installation of playground equipment are

crucial for structural integrity, stability, and overall safety." To address these assembly and installation concerns, the CPSC handbook recommends the following:

The people who assemble and install playground equipment should not deviate from the manufacturer's instructions. After assembly, equipment should be thoroughly inspected before its first use. As a precaution, the manufacturer's assembly and installation instructions, and all other materials collected concerning the equipment should be kept in a permanent file.

When properly installed as directed by the manufacturer's instructions and specifications, equipment should withstand the maximum anticipated forces generated by active use which might cause it to overturn, tip, slide, or move in any way. Secure anchoring is a key factor to stable installation, and because the required footing sizes and depths may vary according to equipment type, the anchoring process should be completed in strict accordance with the manufacturer's specifications.

According to the CPSC, "[i]nadequate maintenance of equipment can lead to injuries on the playground." Therefore, once properly installed, the CPSC handbook acknowledges that the continued "safety of playground equipment and its suitability for use depend on good inspection and maintenance." Specifically, the CPSC recommends that "the manufacturer's maintenance instructions and recommended inspection schedules should be strictly followed."

A comprehensive maintenance program should be developed for each playground as a whole. Generally, all equipment should be inspected frequently for any potential hazards, for corrosion or deterioration from rot, insects, or weathering. The playground area should also be checked frequently for broken glass or other dangerous debris.

For each piece of equipment, the frequency of thorough inspections will depend on the type of equipment, the amount of use, and the local climate. Based on the manufacturer's recommendations regarding maintenance schedules for each piece of equipment, a maintenance schedule for the entire playground can be created. The detailed inspections should give special attention to moving parts and other components which can be expected to wear. Inspections should be carried out in a systematic manner by trained personnel.

As described in the CPSC handbook, one means for developing systematic inspections of playgrounds is through the use of equipment "checklists."

Some manufacturers supply checklists, for general or detailed inspections, with their maintenance instructions. These can be used to ensure that inspections are in compliance with the manufacturer's specifications. Inspections alone do not constitute a

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comprehensive maintenance program. All hazards or defects identified during inspections should be repaired promptly. All repairs and replacements of equipment parts should be completed in accordance with the manufacturer's instructions. A general checklist may be used as a guide for frequent routine inspections of public playgrounds.

The CPSC handbook, however cautions that "this checklist is only one of many elements which should be considered in the development of a comprehensive inspection schedule and system of maintenance."

In addition to this general maintenance inspection, more detailed inspections should be conducted on a regular basis. The procedures and schedules for these detailed inspections will depend on the types and amount of equipment on the playground, the level of use, and the local climate, as well as the maintenance instructions provided by equipment manufacturers...

Any damage or hazards detected during inspections should be repaired immediately, in accordance with the manufacturer's instructions for repair and replacement of parts... Complete documentation of all maintenance inspections and repairs should be retained, including the manufacturer's maintenance instructions and any checklists used.

The CPSC handbook provides the following "Suggested General Maintenance Checklist" that may be used "as a guide for frequent routine inspections of public playgrounds:

### GENERAL UPKEEP OF PLAYGROUNDS:

- (1) Check the entire playground area for miscellaneous debris or litter.
- (2) Check for missing trash receptacles and for those which are full.
- (3) Check for any damage (i.e., any broken or missing components) to equipment or other playground features caused by vandalism or wear; for example, check for any broken or missing handrails, guardrails, protective barriers, or steps or rungs on ladders, and for damage to any fences, benches, or signs on the playground.

### SURFACING:

- (1) Check for equipment which does not have adequate protective surfacing under and around it and for surfacing materials that have deteriorated.
- (2) Check loose surfacing materials for foreign objects or debris.
- (3) Check loose surfacing materials for compaction and reduced depth, with special attention to heavy use areas such as those under swings and slide exit regions.

### GENERAL HAZARDS:

- (1) Check all equipment and other playground features for any hazards which may have emerged.
- (2) Check for sharp points, corners, and edges; for example check the sides and sliding surface of slide

chutes for sharp or rough edges caused by deterioration.

- (3) Check for protrusions and projections.
- (4) Check for missing or damaged protective caps or plugs.
- (5) Check for potential clothing entanglement hazards, such as open S-hooks.
- (6) Check for pinch, crush, and shearing points or exposed moving parts.
- (7) Check for trip hazards, such as exposed footings on anchoring devices and rocks, roots, or any other environmental obstacles in the play area.

#### DETERIORATION OF EQUIPMENT:

- (1) Check all equipment and other playground features for rust, rot, cracks, and splinters, with special attention to possible corrosion where structures come in contact with the ground.
- (2) Check for unstable anchoring of equipment.

#### SECURITY OF HARDWARE:

- (1) Check for any loose or worn connecting, covering, or fastening hardware devices: for example, check the S hooks at both ends of suspending elements of swings and all connection points on flexible climbing devices for wear.
- (2) Check all moving parts, such as swing bearing hangers, for wear.

#### EQUIPMENT USE ZONES:

- (1) Check for obstacles in equipment use zones.

#### DRAINAGE SYSTEMS:

- (1) Check the entire play area for drainage problems, with special attention to heavy use areas such as those under swings and slide exit regions.