

IS PLAYGROUND SUPERVISION NEGLIGENT FOR FAILURE TO WITNESS INJURY?

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A familiar refrain among complaints claiming negligence in supervised playgrounds is the supervisor's failure to observe the child at the time of the injury. The real issue, however, is whether such supervision is reasonable and whether and such an increased level of scrutiny on the playground would have prevented a particular injury. Several years ago, I encountered similar allegations of negligence in a case involving a fatality on a supervised school playground. This particular incident occurred during a touch football game in which plaintiffs' son was a participant. The game was played on a playground outside defendant's school building. Plaintiffs' son was a sixth grade student at defendant's school. The teacher who supervised the playground testified she knew the school's rules for football in the playground. Specifically, she knew students were not permitted to play tackle football.

On the day in question, some of the boys, including plaintiffs' son were already playing football by the time the teacher reached the playground. The supervising teacher looked to make sure that no one was playing tackle football. She then went over and sat down in a grassy area next to where the children were playing. The playing surface was grass. After she sat down, another student came over to talk with her.

As the teacher was talking with one of the students, two boys brought plaintiff's son over to her. During the course of the game, the boy had apparently tripped over one of the other players and struck his head on the knee of another boy who was running toward him. It is believed that the boy's knee hit plaintiff's son in the back of the head. The teacher testified that she did not see the event that caused plaintiff's son to injure himself, because she had been talking to the other student. Plaintiffs' son was transported to the hospital where he eventually died from the head injury he sustained in the incident.

The plaintiffs alleged that the defendant school board was negligent in its supervision of the activities in which their son was involved at the time of the accident. In particular, plaintiffs claimed defendant's teacher was negligent in allowing the boys to play touch football and not observing their son at the time he of the injury.

As indicated by the following description of reported court decisions, a playground supervisor may reasonably allow children to engage in normal playground activities involving running, such as games of "tag." Similarly, one could reasonably characterize most schoolyard games of touch football as normal running activity in which children essentially chase each other in a prescribed form of "tag." In contrast to such reasonably safe running activities, it would be negligent for a supervisor to tolerate unreasonably

dangerous activities on the playground, like “crack-the-whip,” or tackle football.

Reasonable care does not require constant and undeviating scrutiny of children on a supervised playground. Accordingly, a playground supervisor is not necessarily negligent if he or she fails observe a particular child at the precise moment a collision occurs during normal play or informal sport activities.

Although the cases described herein involve school-based situations, the legal principles cited would generally apply to similar situations in supervised community recreation playgrounds.

#### RUNNING - NORMAL PLAY ACTIVITY?

In the case of *Norman v. Turkey Run Community School Corp.*, 411 N.E.2d 614 (Ind. 1980), plaintiff, age 7, was running and bumped heads in a collision with a 6-year-old during morning recess. There was no oral or written directive to defendant’s teachers to prohibit children from running on the playground during a supervised recess. On that particular day, seven or eight teachers were supervising the recess which was more than the number of supervisors required for the 188 children on the schoolyard.

At the time of the incident, two teachers who were standing close by looked up, but were unable to warn plaintiff. The trial court, therefore, found in favor of defendant because the collision was “instantaneous.” The appeals court, however, held that there was sufficient evidence to infer that defendant’s teachers were inattentive and had failed to observe a dangerous situation, or had failed to warn after observing a dangerous situation. The defendant school appealed to the state supreme court.

In general, the state supreme court noted that persons entrusted with children, “whose characteristics make it likely that they may do somewhat unreasonable things,” have a legal duty to supervise their charges. Further, the court acknowledged that school authorities have a legal duty to exercise reasonable care and supervision for the safety of the children under their control.

As characterized by the state supreme court, supervised recess periods are generally accepted as a normal school procedure for elementary school children. Moreover, the court found running and playing tag are normal recess activities for young children. Under such circumstances, the court doubted that there was any unreasonable risk of injury involved, so long as there are no unusual conditions present.

In this particular instance, the state supreme court found “no indication that there was any event, dangerous condition, dangerous instrumentality or special knowledge of students having a troublesome or mischievous nature being on the playground area known to the supervising teachers at the recess.” On the contrary, the court found “[t]he only possible ‘dangerous situation developing’ was the fact that students were running on the playground at recess.” Accordingly, the state supreme court reiterated its determination that running at school generally does not pose an unreasonable risk of injury.

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Certainly there is some remote risk of injury in all human existence and certainly in all locomotion... Certainly running... is not *ipso facto* [i.e., in and of itself] unreasonable conduct even though it does subject the runner to greater risk of injury than walking. Running in groups and running in games is also more hazardous than running alone, yet group running and game running are not unusual activities in school...

Moreover, the court determined “[t]he school personnel here clearly exercised ordinary and reasonable care for the safety of the children under their authority.”

No teacher can observe every student at every instant on a playground. To look at one is to look away from another. Even if the evidence showed that one or both teachers were looking in another direction, it would not give rise to an inference of negligence on the part of either or both of them. The fact that two students happened to be running toward each other would not necessarily indicate peril to them until they became close enough to make it apparent that they were going to collide. Students often run toward each other, and in every direction, when they are on a playground. The evidence here was that when one of the teachers saw this happen, it was too late to give any warning, and that the collision was instantaneous...

Since running on the playground did not present a dangerous or unusual condition, under no set of facts presented to the jury could it be said that a duty arose on any of the teachers or all of them to pay particular attention to a particular student who was running. More than likely most of the children were running about at the same time or at one time or another. It would put an unreasonable burden on the teacher to find her wanting in her supervision if she were not observing a particular student at the precise moment a collision was imminent.

A duty to warn contemplates an opportunity to know of the danger and to have time to communicate it. The facts were uncontroverted that this collision took place suddenly. To attempt to determine if closer attention by the teachers would have prevented this accident is to invite speculation. Even perfect attention to this incident might not have prevented it. There were also 186 other students needing attention at the same time. To hold the school personnel liable under the set of facts presented here would require them to be insurers of the safety of children in their care and impose strict liability for their safety.

The state supreme court, therefore, vacated the decision of the appeals court and affirmed the judgment

of the trial court entering summary judgment in favor of the defendant school.

#### ESPECIALLY HAZARDOUS RUNNING?

In contrast, the case of *Rodriguez v. Board of Education City of New York*, 480 N.Y.S.2d 901 (1984) presented a situation in which a child of limited mental capacity was allowed to run behind a building where he could not be observed by the playground supervisor. In this case, plaintiff, age 12, was injured in an apparent fall during a supervised play period. During this time, defendant encouraged exercise for sixteen mentally retarded students enrolled in special education classes. At the time of the incident, plaintiff had been running and chasing another child in a game of "monster." Plaintiff had disappeared from view for approximately ten to fifteen seconds and was found face down at the bottom of some steps.

Defendant's teacher testified that she never did anything to prevent running, nor did she try to ascertain plaintiff's whereabouts when he disappeared behind the playground storage building. Moreover, there was no set school policy with respect to the type of running activities permitted during school hours. Plaintiff's expert testified that purposeless, freestyle running should not have been permitted because it was dangerous and especially hazardous with mentally retarded children. The jury returned a verdict in favor of plaintiff for \$429,000. The city appealed.

According to the appeals court, the school had a legal duty to exercise the same degree of care toward its students as would a reasonably prudent parent under comparable circumstances. Under the circumstances of this case, the appeals court found sufficient evidence to establish defendant's negligent supervision of plaintiff in the playground. Specifically, the appeals court found the supervising teacher had failed to stop plaintiff from running when defendant was well aware of plaintiff's mental and physical limitations. Further, the appeals court found defendant's teacher had an opportunity and, therefore, should have stopped plaintiff as he ran by her. Under such circumstances, the appeals court found it was reasonably foreseeable that plaintiff would hurt himself, even though there was no evidence of a similar past injury. The appeals court, therefore, affirmed the judgment in favor of plaintiff.

#### REASONABLE PARENTAL SUPERVISION?

In the case of *Partin v. Vernon Parish School Board*, 343 So.2d 417 (La.App. 1977), the court found the accident happened so quickly it would have been impossible to prevent it without direct supervision of every child. Moreover, the court recognized such one-to-one supervision would be impossible. In this particular instance, plaintiff, age 7, fell on a tree stump located in defendant's school playground. As characterized by the court, the stump in question did not constitute a hazardous or dangerous condition because it was squared off on top and had no jagged or knife-like protrusions.

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In this opinion of the court, this particular tree stump presented no more hazard than would a trash barrel, bench, water fountain, or any other of the many objects normally and usually found on school playgrounds. As a result, the court found in favor of defendant. In so doing the court acknowledged that the law does not require playground supervisors to be no more vigilant than the reasonable parent: “We then, as parents, should not expect more of others than we do of ourselves. We cannot insulate our children from all risks which they may encounter.”

### INJURY PREVENTABLE?

Similarly, in the case of *Ferguson v. DeSoto School Board*, 467 So.2d 1257 (La.App. 1985), the court found the child’s injury would not have prevented by an increased degree of adult supervision. In this case, plaintiff, age 9, died after he was struck in the head by a bat while he was recovering his baseball glove behind home plate. As noted by the court, negligence liability requires evidence that the supervisors could have prevented the injury and did not do so. Further, the court held that teachers charged with supervising children must exercise reasonable care commensurate with the age of the children and attendant circumstances.

According to the court, a greater degree of care must be exercised if the student is required to use or come into contact with an inherently dangerous object, or the children engage in an activity where it is reasonably foreseeable that an accident or injury may occur. The issue in this case was, therefore, whether this particular accident was preventable by an appropriate degree of supervision. Specifically, the court stated that negligence liability presupposes that the teacher would have seen and anticipated this particular occurrence. Under the circumstances of this case, the court determined that only “constant and undeviating supervision” would have prevented “this regrettable and tragic accident.”

Even if the supervising teacher had been positioned directly behind home plate, the court found the accident would still have occurred if the supervisor’s attention had been diverted for only a few seconds. In so doing, the court noted that softball is not an inherently dangerous activity. The court, therefore, refused to impose negligence liability under such circumstances. To do so, in the opinion of the court, would “mandate constant and undeviating supervision of children of this age.” According to the court, such supervision would impose a prohibitive and probably impossible legal burden on playground activities. While recognizing that those supervising young children at play have a high duty of care, the court held that this legal duty does not extend to constant and undeviating supervision.

### NO CONTINUOUS, DIRECT SUPERVISION

Similarly, in the case of *Fagan v. Summers*, 498 P.2d 1227 (Wyo. 1972), the court refused to impose

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a legal standard which would effectively require one-to-one supervision of play activities. In this particular case, plaintiff, age 7, lost the sight in one of his eyes when he struck by a rock during school recess. Another student threw the rock which hit a larger rock and bounced up and struck plaintiff.

According to the court, there is no legal requirement for constant and unremitting scrutiny of all precise spots where every phase of play activities are being pursued. Moreover, the court noted that there is no legal compulsion that general supervision be continuous and direct at all times and all places. Furthermore, the court found it was “common knowledge” that “small boys may indulge in horseplay when a teacher’s back is turned.”

The court, therefore, recognized “the impossibility of a teacher supervising every minute detail of every activity.” The court also held that rocks on the ground did not necessarily constitute a dangerous and defective condition on the playground. On the contrary, the court found the legal cause of plaintiff’s injury was the act of his fellow student, not defendant’s failure to adequately supervise or maintain the playground in a reasonably safe condition.