

Student Head Injuries - Concussions

Background

A self-reported study published in 2018 by the Centers for Disease Control and Prevention (CDC) estimated that 15% of high school students reported having at least one concussion within 12 months of taking the survey.¹ While most accidents cannot always be avoided, school districts have a duty of care to do everything reasonably possible to protect their students from foreseeable harm, injury or death.

Scenario

In 2016, a precedent court case was decided holding a school district liable for the injuries sustained by a seventh-grade student while playing field hockey during a physical education (PE) class. The court found that the PE teacher, who was also the school's football coach, fell below the standard of care as the student lacked both the experience and the proper instruction to play this particular sport.

The student sued the school district for negligently failing to progressively teach and coach him in the necessary skills to play field hockey. In doing so, the student argued that the school exposed him to being struck in the face by another student's stick during the course of a game, causing him to fall to the ground and strike his head resulting in a concussion.

The school district argued that it had met the necessary standard of care in instructing and supervising the student during his scheduled PE class. In addition, the school district also argued that even if the teacher did fall below the standard of care, the student's level of dysfunction were not caused by the accident but were a combination of pre-existing conditions. The courts dismissed this claim and ultimately ruled in favor of the plaintiff.

Investigation

The seventh-grade student had a history of chronic absenteeism. He had missed over one-third of the school year at the time of the incident. In particular, the student had missed the entire three-week long field hockey educational rotation. Despite missing three weeks of instruction, the PE teacher encouraged the student to join the class and participate in the day's activities. The teacher later stated in his deposition that he thought this would be a good opportunity for the student to participate in the PE class and would help the student obtain a passing grade for the school year.

Prior to this incident, the student had no field hockey experience. The student did, however, have a background in ice and floor hockey. At trial, several experts for both the defense and plaintiff testified to whether having a background in any hockey-type sport would have provided enough knowledge of the basic set of skills the student would have needed to play field hockey. **The court found that the student did not have the basic requisite skills to play field hockey.**

On the date of the incident, the PE teacher divided the students into four relatively equal teams. Prior to the start of the "round-robin" tournament, the teacher reminded the students about the four basic rules of the game:

1. Not using the back of the stick;
2. Not using their feet;
3. Not lifting the sticks above their knees; *and*
4. Not checking from behind.

When the tournament commenced, there were two games played at the same time. Being the only teacher for the class, the PE teacher assumed a position in the middle of the gym to supervise the two games. During one of the games, one student had a breakaway towards the goal, and the plaintiff student began to give chase. As he got close enough to the other student, he attempted to check her from behind – this was a violation of the fourth basic rule of the game. As the plaintiff engaged in the back check, the other student swung her stick and struck the plaintiff in the face and head. The plaintiff immediately fell to the ground and was observed to have a small amount of blood coming from his nose.

The PE teacher did not notice what happened until another student approached him and pointed in the direction of the plaintiff. At this time, the teacher approached the plaintiff and began assessing him. The teacher later testified that the student seemed to be "out of it" for a few seconds but recovered after few minutes. The plaintiff was told to sit on the first row of the bleachers

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¹ [https://www.cdc.gov/mmwr/volumes/67/wr/mm6724a3.htm#:~:text=Overall%2C%209.1%25%20of%20high%20school,the%20survey%20\(Table%201\).](https://www.cdc.gov/mmwr/volumes/67/wr/mm6724a3.htm#:~:text=Overall%2C%209.1%25%20of%20high%20school,the%20survey%20(Table%201).)

Investigation - *continued*

until he felt well enough to participate. The teacher then returned to the middle of the gym and resumed the two games. After about 5 minutes the plaintiff approached the teacher in the middle of the gym floor and explained that, while he had a minor headache, he wanted to keep playing. The PE teacher allowed the plaintiff to continue to participate until the end of the class. The student was never sent to the nurse and no incident report was ever filed by the teacher.

After school, the student went home and complained to his parents that he was having weakness and had a bad headache. A short time later, the student began vomiting. This prompted his parents to bring the plaintiff to the emergency room, where the plaintiff explained to his parents and doctor what occurred at school that day. He was subsequently diagnosed with a concussion, facial abrasion, and a fractured nose.

Liability Assessment

The court found that the actions of the PE teacher were unreasonable in that the PE teacher failed to “progressively train and coach” the student in field hockey and, as a result, the school district was liable for the student’s injuries. The court also held that, based on the statements made by the PE teacher and other student witnesses, the teacher was not able to adequately supervise two field hockey games concurrently and, in doing so, did not provide the proper supervision to prevent the injury from occurring. Additionally, since the teacher was the school’s football coach, he should have been knowledgeable of the signs of concussions and notified the school nurse and/or the plaintiff’s parents based on the school’s policy regarding student head injuries.

The jury in this case awarded \$1,365,000 in damages, which included \$1,000,000 for future loss of income earning capacity, \$65,000 for future medical and physiological costs and \$300,000 for the parents’ lost wages.

Lessons Learned

- Effectively Communicate Safety Standards. Students should participate in the classroom in a progressive way that ensures they understand the safety standards of the activity, game or sport to safely participate in the activity. In the event these building block skills are lacking, the teacher should not allow the student to participate. This decision shows that even when the student is at risk of failing the class that will result in not being promoted to the next grade, safety is the paramount consideration when it comes to participation in PE class.
- All teachers should follow their current district’s policies regarding head injuries. This may include contacting the nurse and notifying the students’ parents.
- Communicate the responsibility of all staff to follow protocols in accordance with their level of training and district policies. The courts found that the Physical Education teacher owed the students a high duty of care based on his certification as a coach, and the subsequent training he received to identify the signs of a concussion. The teacher’s failure to assess the student based on his knowledge and level training was outside of what reasonable person in the same situation would have done, thus placing the student at risk and may have increased the severity of the student’s injuries.
- Ensure that plans for supervision of the physical activity is part of all lesson plans. While the degree of supervision is dependent upon the situation, physical activity planning should include how the educator will monitor the actions of the students.

For more information on this topic, please contact your CIRMA Risk Management Consultant. Visit our training schedule at CIRMA.org for a list of current training programs.