

# ATHLETIC LIABILITY ISSUES

## ***REDUCING RISK FOR ADMINISTRATORS AND COACHES***

The following information is designed to give school administrators and coaches “food for thought” regarding liability concerns as they pertain to athletics. This update is not intended to give legal advice to school districts, administrators, or coaches. It is simply designed to give a better understanding of current thinking by some legal experts regarding ways to reduce liability in an athletic setting. Any questions regarding possible liability in specific instances should be directed to qualified legal counsel.

The Athletic Association would like to thank Kathy Collins, Iowa Department of Education, for her assistance in providing resources and advice pertaining to the writing of this Wellness Update.

## ***SUPERVISION***

Lack of proper supervision is cause for serious liability concerns. What constitutes “proper supervision” varies depending upon many factors: for example, the age of the participants, the participants’ ability levels, the number of participants, and the number of dangerous implements involved in the activity or in proximity to where the activity is taking place. The more dangerous the situation or the more likely an injury is to occur, the more careful and prudent the supervisor must be.

The duty to supervise also includes the duty to properly instruct and warn of possible risks. Therefore, students involved in interscholastic athletics must receive proper instruction as to the correct or most acceptable methods of safely performing the tasks related to a specific activity and must be informed of the possible risks involved in participating in the given activity.

There are two types of supervision:

**GENERAL SUPERVISION** means the supervisor must be within the activity area, overseeing the activity, and must be immediately accessible to the participants. General supervision is most appropriate for individuals who have already received appropriate instruction, screening and approval.

The three basic considerations for determining adequate general supervision are:

1. The supervisor must never leave the premises and must be immediately accessible to anyone who needs him/her. The supervisor must be able to oversee the entire program systematically and must rotate to all parts of the activity area.
2. The supervisor must be alert to conditions that may be potentially dangerous. Coaches and administrators both play a role in identifying potentially dangerous situations. In planning for the activity, it should be made clear who has responsibility for identifying and rectifying potentially dangerous conditions. These conditions may include faulty equipment, lack of protective devices, participants going beyond their capabilities, and misbehavior. A supervisor should anticipate foreseeable problems and prevent them, if at all possible.
3. The supervisor should have a basic knowledge of emergency first-aid procedures for injuries likely to occur in the activity being supervised. It is important that supervisors receive refresher courses in first-aid on a regular basis and keep records of all training received.

**SPECIFIC SUPERVISION** means the supervisor must be at the specific activity location observing and/or instructing the participants. Specific supervision is required in high-risk activities. Specific supervision should continue until the participant is able to evaluate his/her own capabilities and to understand, and adhere to, the safety practices that have been established and taught. High-risk activities would include any activity that the participant is still learning or that places the participant at risk by using potentially dangerous equipment. Specific supervision must include proper instruction regarding the correct or most acceptable method of safely performing the activity, and any safety precautions involved.

There is an important point to remember in supervision - being involved in specific supervision with one student, or a small number of students, doesn't relieve a person of their general supervision duties. Even though your attention is focused on one individual, you must still be alert to what the rest of the participants are doing and be accessible to them.

## **NEGLIGENCE**

The most common causes of coach and administrator liability are 1) active negligence - doing something that accidentally causes injury to someone else, 2) passive negligence - not doing something that accidentally results in injury to someone else, 3) allowing dangerous conditions to exist, 4) improper treatment of injuries, and 5) negligent supervision. While participants in athletics assume some of the inherent risks associated with any sport, they do not assume risk resulting from negligence on the part of school personnel. A participant does not assume any risk if he/she is not aware of the risk or does not appreciate and understand the risk.

Certain elements need to be present within a given situation for negligence to occur. Those elements are: 1) duty of care, 2) breach of duty, 3) causation, and 4) injury. Each coach and administrator owes a duty of care to each student-athlete. This general duty of care includes a duty to provide proper and adequate instruction and supervision, to provide and maintain safe facilities and equipment, to provide proper medical attention, and to reasonably select and match participants according to maturity and conditioning. Duty of care is generally deemed to have been met if you acted as a reasonable and prudent person would under the same or similar circumstances.

A negligent breach of duty occurs when it is determined by the court that you failed to do what a reasonable and prudent person would have done under similar circumstances. A breach of duty may also occur by doing what a reasonable and prudent person would not have done under similar circumstances.

If breach of duty is determined by the court to be the cause of injury the person breaching that duty may be found to have been negligent.

The following are behaviors that may be expected of a reasonable and prudent administrator or coach in order to avoid being found negligent:

1. Foresee accidents before they happen. Be sure to rectify or eliminate dangerous conditions immediately. Administrators should require or provide proper training to anyone supervising students.
2. Enforce rules and regulations, especially those that are designed to safeguard student-athletes.
3. Match and select competitors in a reasonable manner.
4. Know basic first aid procedures.
5. Require student-athletes to have pre-participation physical examinations and accident insurance.
6. Establish safety and accident prevention guidelines and procedures.
7. Teach proper technique and explain why poor technique may be harmful.
8. Use only equipment that meets or exceeds existing standards.
9. Keep records on regular reconditioning and repair of equipment.
10. Instruct, warn, and caution participants on the importance and proper usage of protective equipment.
11. Inform participants of the inherent risks associated with specific sports.

## **WAIVERS, DISCLAIMERS AND LIABILITY RELEASES**

Because of the possibility of catastrophic injury, some school districts have begun using waivers, disclaimers, and liability releases in an attempt to release themselves from liability which may result from such injury. These forms often include statements explaining the possible risks and dangers involved in the activity, and the importance of following coaches instructions and training rules. By signing the form, the student and parent or guardian agree to assume all risks associated with the student's participation. Since most high school student-athletes are minors and able to nullify a contract at any time before they reach the age of majority, such signed statements would be extremely difficult to enforce. While a parent or guardian may waive their own rights by signing such a statement, they may not waive the rights of the student. Therefore, it would seem unlikely that such waivers, liability releases, and disclaimers would prevent action against a school, administrator, or coach if injury resulted from negligence.

Risk statements, however, may be useful in providing documentation that a participant has been informed of the inherent risks involved with participation in certain activities and have assumed those risks. A risk statement is not a waiver of liability, but rather an informational document informing the participant of possible inherent risks. When using a risk statement, the participant should be given full knowledge and appreciation of the inherent risks involved and the opportunity to voluntarily accept those risks. In order to be considered to have assumed any risk, the participant must know of the danger, understand the risk involved, and voluntarily expose him or herself to that risk. Circumstances resulting from negligence are not inherent risks and a participant does not assume risk for injuries resulting from negligence.

For specific examples and court cases pertaining to negligence and supervision of activities, please refer to the information contained within the sources listed below.

Questions pertaining to reducing a coach's, administrator's, or school district's liability should be directed to qualified legal counsel.

**SOURCES:** Austin, Donald F., J.D., M.A.T. School Law Attorney, and Adjunct Professor, LAWLER, BONHAM, & WALSH, Oxnard, California. "Liability Prevention In School Athletic Programs," Outline of presentation given at 1989 National Organization on Legal Problems of Education National Convention; Ball, Richard T. President, SPORTS UNLIMITED, Phoenix, Arizona. "An Introduction to Legal Bounds," **Sportcare & Fitness**, January/February, 1989; Ball, Richard T. President, SPORTS UNLIMITED, Phoenix, Arizona, "Playing By The Rules: Roles and Responsibilities of Sportcare Professionals, Part 1," **Sportcare & Fitness**, march/April, 1989; Ball, Richard T. President, SPORTS UNLIMITED, Phoenix, Arizona. "Warning And Informed Consent: An Increased Burden In Athletics"; Bjorklun, Eugene, EdD - Assumption Of Risk And Its Effect On School Liability For Athletic Injuries"; Borkowski, Richard P. EdD, C.A.A., Sport Safety Consultant, Narbeth, PA. Borkowski, Richard P. EdD C.A.A., sport Safety Consultant, Narbeth, PA. "Five Kinds Of Supervision," **Scholastics Coach**, October, 1991; Borkowski, Richard P. Edd, C.A.A., Sport Safety Consultant, Narbeth, PA. "21-Point Defensive Plan for Lawsuit Conscious Coaches," **Coach's Legal Report**, march, 1986; Burling, Philip, J.D., FOLEY, HOAG, & ELIOT, Boston, MA and United Educators Insurance Risk Retention Group, Inc. "Managing Athletic Liability: An Assessment Guide"; Collins, Kathy, J.D., Legal Consultant, Iowa Department of Education. Outline of "sports Torts Presentation"; Conley, Lynn. "Liability Suite," International Cheerleading Foundation; Godek, M.S., A.T.C. "Organized Chaos", **Sportcare & Fitness**, January/February, 1989; Frascogna, X.M. Jr. and Paul Emerick. "Catastrophic Injury," **National Coach**; Iowa Association of School Boards, "Special Report: Liability of School Districts For Sports Injuries," April 23, 1986; Iowa Association of School Boards, "sports and Torts and Courts: The Athletic Injury Problem Conference," March 5, 1987; Iowa Association of School Boards, "Special Report: Liability for sports Injuries - Recent Developments," July 18, 1991; Iowa Association of School boards, "Sports Injuries Concern School Boards," **Update**, August 25, 1992; sharp, Linda A., Ph.D. **Sport Law**, NOLPE Monograph Series, 1990; "Sports Law and Liability: Guidelines for protecting the Athletic Department," **The first Aider**, winter, 1990; "Sports law and Liability: The Essential Duties," **The First Aider**, spring, 1991; "Sports Law and Liability: The Final Chapter," **The First Aider**, Summer, 1991.

**ATHLETIC SUPERVISION CHECKLIST**  
**(Check only those statements you can answer “yes” to.)**

- \_\_\_\_\_ Are you acting as a reasonable and prudent person would under similar circumstances?
- \_\_\_\_\_ Do you have a current physical examination form on file for each participant stating the participant is physically able to participate in the given activity?
- \_\_\_\_\_ If this is not an interscholastic athletics activity, do you have a current parent permission form on file?
- \_\_\_\_\_ Are you an active supervisor who is attentive to the activities going on around you?
- \_\_\_\_\_ Do you have rules posted pertaining to the use of the facility?
- \_\_\_\_\_ Are emergency care guidelines and emergency phone numbers posted near an easily accessible telephone?
- \_\_\_\_\_ Do you have a basic understanding of the skills needed for students to safely participate in the given activity?
- \_\_\_\_\_ Do you know and understand the basic safety guidelines for the given activity?
- \_\_\_\_\_ Have you verbally announced warnings about the possible risks associated with the given activity?
- \_\_\_\_\_ Do you know current emergency first-aid procedures and what the emergency care guidelines are in the event of serious injury?
- \_\_\_\_\_ Do you keep written lesson or practice plans of the activities performed each day and the instructions given?
- \_\_\_\_\_ Do you have written records of when equipment was purchased and repaired or reconditioned?
- \_\_\_\_\_ Do you submit all requests for repair in writing and keep them on file?
- \_\_\_\_\_ Do you complete written accident reports that are submitted to the nurse and school administrator when an accident does occur?