

## Students' Injury and Liability for PE Training in Middle School

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**Abstract.** In the past decade, PE score has been an important and compulsory part of entrance exam to senior high school. Extremely high pressure results in student's poor immune system. It is not rarely reported that some young people are injured badly in PE training. This paper tries to analyse the problem that who should be liable for the students' injury if it is not foreseeable and the school is not negligent? It is suggested that state compensation should be awarded to the victim if no one breaches his duty of care.

### I. Background

Chinese middle school students are suffering from extremely high pressure in study. Chinese middle school students' average sleeping hour is less than 6, which results in their weak immune system and they are more inclined to get unexpected diseases. Since 2008, PE score has been part of the total score for entrance examination to high school. In order to perform better in the PE test, many middle schools organize the students to do morning PE training, therefore, students have to get up early to do morning exercise without enough sleep. It is like a candle burning at two ends.

Before the formal PE test, the Municipal Committee of Education would require the parents to sign a Liability Disclaimer, which states that the parents are to guarantee their children to be physically fit for the coming PE test. If their children suffered any injury or disease, the school is not responsible. However, no matter what precautions have been taken, it is sometimes reported that some young people die suddenly after strenuous exercise without any previous symptom.

The problem is who should be liable for student's injury or death in the course of PE training or the formal test? Is it fair that the school is not liable since the parents have already signed the disclaimer?

People who defend the schools argue that "schools have a role in protecting health, but there are major differences in the mission and goals of the educational system and the public health systems. It is rarely stated explicitly, but there is an undercurrent of 'passive non-resistance' in the educational world with respect to public health goals. The attitude that such responsibilities are 'not our job' is inherent in the educational system."<sup>[1]</sup> School's major job is to educate children, not to secure the children's health. School's major goal is to promote the student's score in the exam, not to ensure the student's health, so the school is not responsible for the student's injury as long as it has done its job properly.

Another defense for school is that public schools are not for profit. If students are injured in the physical training course and the victim's parents file lawsuits against the school, the school can not bear the heavy burden of excessively high compensation. "It is well settled by the great weight of American authority that a school district is not liable, in the absence of statutes imposing liability, for injuries to pupils of public schools suffered through the negligence of the officers or employees of the district while the students are under their supervision. The basis for the rule is that such district is an

agent of the state in maintaining schools and performing a governmental function imposed by law for which it receives no profit.”<sup>[2]</sup>

It is worried that if schools are held to be liable for the students’ injury or death, lawsuit against the schools will be rampant and schools will be busy litigating. It will put teacher-student relationship on a confronting position. “A vigorous dissenting opinion declared the decision to be unfair to school districts and education in California generally in that it opened the door to suits for damages for any injury sustained by a student at a public school.”<sup>[2]</sup>

A third defense for teachers and school’s exemption is that “teachers play the role of parents at school, they should only be subject to the same liability as parents. Parents are liable only when they act willfully and wantonly, but not when they act negligently.”<sup>[3]</sup> Therefore, to impose a duty to exercise ordinary care in adequately supervising students and to not act negligently would impose a greater liability on teachers and the school than parents. It is unreasonable to require that teachers and schools to perform a higher level of duty of care than parents.

## **II. The General “Reasonable, Prudent Person” Standard**

The above opinions are arguable. Firstly, it is proposed that a general “reasonably prudent person” standard should be applied in deciding whether schools shall be liable for students’ injury or death in physical training or test.

“Under the reasonable, prudent person standard, a school will be held liable for a student’s injuries if the school negligently supervised the student.”<sup>[4]</sup> The student must satisfy two requirements. First, the student must prove that the injury was reasonably foreseeable. Second, the student must prove that the negligent supervision was in fact the proximate cause of the injury. Under this standard, the school will be held liable and required to pay damages to the student for injuries when the school knew or should have known that the student might be injured, but failed to take reasonable, adequate precautions against the injury. PE classes often involve dangerous activities and equipment and the students are in motion instead of sitting quietly in the classroom. PE teachers should perform a higher level of duty of care than the other teachers<sup>[1]</sup>.

It is foreseeable that the possibility of the students’ injury is high, therefore, the school and teachers should perform reasonable duty of care to supervise the students doing the sports. If the school and teachers have taken all necessary and reasonable duty of care, but injury still happens, the school is no longer liable for the students’ injury. For instance, in a soccer game, the coach has given a clear instruction about the safety and supervises near the court all the time. One boy kicked another boy on the head and the victim got into a coma and had to stay in hospital for a month. In this case, the school is not liable for the student’s injury because the school has taken all reasonable duty of care and the teacher is not negligent in supervising the game.

Whether a reasonable level of duty of care is taken depends on various factors, including the age and physical condition of students as well as the severity of hazard inherent in a sport, this duty does not require teachers to foresee all harm that might befall children. Rather, “educators are responsible for only those mishaps that can reasonably be anticipated or of which they are actually aware.”<sup>[2]</sup> (p53) So far, this principle sounds good and is applied without questioning. However, this principle may come to a dead end in a special situation.

## **III. An Exception to the Principle of Foreseeability**

According to the principle of foreseeability and reasonable man standard, the school is not liable for the student’s injury if all reasonable duty of care has been taken and the injury is unforeseeable. This essentially exposes students and their parents to financial burdens beyond their control. Because

the Department of Education makes physical education classes mandatory, students have no choice but to participate. It is the students and their families that suffer the consequences of unforeseeable tragedy and exposure to unreasonable risks of injury in already inherently dangerous physical education classes.

It is reported that excessive physical training may activate dormant disease without any symptom, which can not be diagnosed by doctors. It is triggered suddenly by excessive physical training and the student may suffer very serious disease or even death. It is unforeseeable and no matter what level of duty of care has been taken, it can not be avoided. If the school is held to be not liable, all the consequences will be on the victim and their parents, which is an unbearable disaster.

PE score is a mandatory part of vital entrance exam to high school. The students have to choose but to exert great effort to improve their performance in PE class. In the author's opinion, the command is made by the Department of Education, and the school has no option but to follow the order of the state. It is fair to claim for state compensation for the student's injury or death occurred in physical training class or in the course of taking the PE test.

"Eggshell skull rule" shall be applied in PE injury. It is impossible to explain why some people are more vulnerable than average people to some potential disease. Common people may not be hurt after 10 kilometers' running, while some people may suffer a stroke or heart attack after 1 kilometer's running, even though they have no previous symptom. No one is negligent in this situation. If no one is to be responsible, the victim's situation will be much worse.

It is not proper to impose the liability on the school. Because the school is only following the state order. And most schools in China are funded by the government, they have no other financial sources to cover this part of liability.

The state makes the order, and to impose the compensation liability on the state is fair and reasonable. Although it is not the fault of the state to make the order, this abstract administrative act has specifically affected particular individual, so it should be one exception for the exemption of state compensation. Basically, the state is not liable for its abstract administrative act because its act may not affect a specific individual and the possibility of hurting an individual is very tiny. To require state compensation doesn't mean the government's order is wrong, it is no more than a financial relief to the victim while no one is liable for such terrible situation.

### **Conclusion**

School PE injury can be categorized into three situations. One is that the injury is caused by negligent teachers' supervision or instruction and the injury is reasonably foreseeable, so the school is liable for the students' injury. The second is that all reasonable duty of care has been taken, and if a student is injured, the school is not legally liable. The third is that it is unforeseeable that a student suffers from serious injury due to his special vulnerable physique. Although the school or the teachers are not negligent, the state shall be responsible for the compensation to the victim.

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