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SCHOOL LAW GROUP

Without Knowledge of Risk of Serious Harm, Failure to Provide Protective Eyewear While Playing Floor Hockey in Gym Class is Not Willful and Wanton Conduct

The Illinois Supreme Court found that a P.E. teacher was entitled to supervisory immunity for injuries sustained by a student while playing floor hockey during a physical education class. Students were playing floor hockey in physical education class when a ball bounced off Plaintiff's stick and hit him in the eye, causing permanent injury to his eye.

The Supreme Court found that the teacher did not show conscious disregard for the safety of her students when she did not require safety goggles for floor hockey. The Supreme Court emphasized that the teacher had implemented several safeguards to prevent injuries including replacing the equipment with safer equipment and imposing safety rules for the game. The court stated that employees who take some reasonable precautions, even if those precautions do not prevent all injuries, should not be guilty of willful and wanton conduct. Further, the Supreme Court rejected the argument that the teacher had "knowledge of impending danger" when there was no evidence that any other student has been injured playing floor hockey. The Court did not consider the modified game of floor hockey to be a sport that had inherent risk of serious injuries, let alone, an obvious risk that called for the use of protective eyewear.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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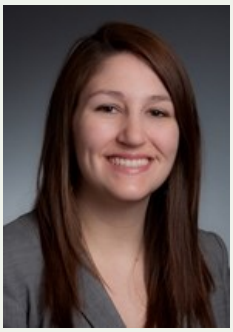


Inside This Issue

Barr. V. Cunningham

Teachers Not Liable For Injury During Powderpuff Football

Where prior to allowing female students to participate in football game (informally known as "powderpuff"), the teachers ran student practices, advised students that this football activity could be rough, warned the students to wear mouth guards, but otherwise did not require or provide any protective equipment, teachers were not liable for injury suffered by student during game. *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 430-31 (1980)

Eye Injury In Industrial Arts Class Could Be Willful and Wanton Conduct

To show willful and wanton conduct by a public employee in the absence of evidence of prior injuries, Illinois courts require at least some evidence the activity ordinarily involves or is associated with risk of serious injury. In an industrial arts class, students were assigned a woodworking project. Instead, several boys began trying to pound some scrap metal through a hole in an anvil, in full view and with the knowledge of the teacher. The teacher did not stop the boys or require they put on safety goggles before continuing. After extended time at the activity by the boys, a metal chip broke off and ricocheted into the eye of one of the boys, causing significant injury. The court there concluded the failure of the teacher to take any safety precautions while watching the students engage in a hazardous activity could result in liability for willful and wanton conduct. *Hadley v. Witt Unit School District 66*, 123 Ill. App. 3d 19, 23 (1984)

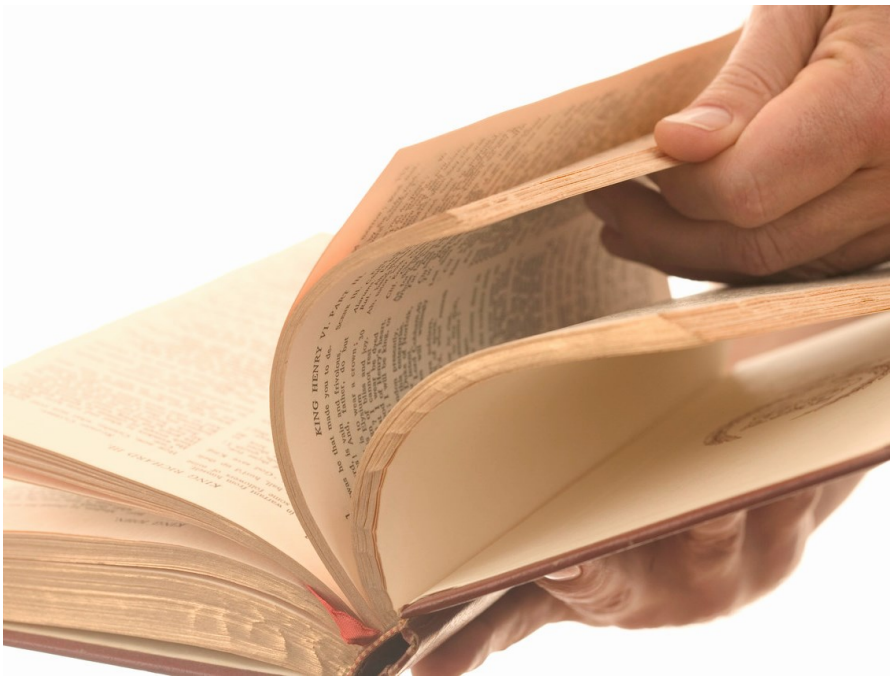
SUMMARY OF DECISION

In *Barr v. Cunningham* a high school student suffered an eye injury sustained during high school physical education class. The teacher had modified the game of floor hockey in physical education class by using plastic sticks instead of wooden stick and "squishy" safety balls instead of hard pucks. The teacher had additionally imposed safety rules such as no high sticking, no checking, no jabbing, no slashing, no tripping and no bending of the sticks. The plaintiff's argument centered on the fact that, although protective eyewear was available, the teacher did not require the students to wear protective eyewear while playing floor hockey.

Based on her experience and expertise, the P.E. teacher did not believe that safety goggles were needed and was not aware of any such injury having occurred playing floor hockey. The Court emphasized that willful and wanton conduct can include, in part, a failure by a public employee to take reasonable precautions after "knowledge of impending danger." Willful and wanton conduct is distinguished from ordinary negligence by requiring "a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man." (Citing to *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 449 (1992)) The Court therefore found that the P.E. teacher did not exhibit a conscious disregard for students' safety. She had considered student safety when she determined that the hockey equipment, and the rules students had to follow, were adequate to avoid injuries.

Unless a teacher has engaged willful and wanton conduct by consciously disregarding the safety of students, a teacher is immune from liability under Section 3-108 of the Illinois Tort Immunity Act for the supervision of an activity:

> "Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or



public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury." 745 ILCS 10/3-108

The Tort Immunity Act defines "willful and wanton conduct" to mean:

> "...a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210

The Court noted it previously established the principle that school employees who exercise "some precautions" to protect students from injury, even if those precautions were ultimately insufficient, were not liable for willful and wanton conduct.

Full Copy of the decision is available at:

Barr v. Cunningham

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