



## Playtime is over – schools liability for injury at play

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A number of schools have implemented a ban on students running in the playground because they are fearful of accidents and the possible litigation which will arise. Teaching unions have stated that this limitation on physical activity was in response to the increasing number of claims against schools in recent years and the only way that schools can reduce claims is by restricting activities.

What is the duty of care which falls on our educators? How can schools protect themselves? Are the restrictions on play justified? What approach are our courts taking?

### Recent Case law

The general guiding principle is as set out in [Maher v. Board of Management Presentation Junior School](#) [2004] IEHC 337. In that case, Peart J. held that the standard of care required in school is that of the prudent parent. Teachers are said to be *in loco parentis* and be no more or no less vigilant than a prudent parent would be within his or her own home. In *Maher*, the court held that simply because an injury occurs during school hours does not mean that the school management or any individual teacher has been negligent. A degree of foreseeability is required.

In [Carolán v. The Board of Management of St. Ciarán's National School](#) [2006] IEHC 416, Feeney J. said that '*physical education is both an appropriate and vital part of the school curriculum.*' During a PE class the students were playing dodge ball. The plaintiff and her classmates had to run the width of the room and avoid being hit by sponge balls which were thrown by three classmates. The plaintiff appeared to stumble or trip over her own legs as she made the final

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run to the other side. The plaintiff had previously made a number of successful crossings without being hit by a ball and was the last successful pupil. The court found that this was a simple and straight forward game that could be safely played. No negligence or lack of care was found on the part of the defendant and the plaintiff's claim was dismissed.

This is contrasted with the case of [Kane v. Kennedy](#) [1999] IEHC 142, where the High Court found in favour of a plaintiff who was injured while playing a game of rounders in a sports hall. The school were found negligent in failing to ensure that there was a safe distance between the home base cone to which the pupils were running and the brick wall behind it against which she fell.

More recently, the President of the Circuit Court dismissed a plaintiff's claim where he found that no prudent, reasonable or responsible parent would have prohibited the game of chase which was taking part in the school yard on the day of the plaintiff's accident.<sup>1</sup>

Fullam J. in the High Court dismissed a plaintiff's case against the Sisters of St. Joseph of Cluny in Killiney for injuries sustained while she was playing hockey on the school grounds. The court held that what occurred was *'an accident pure and simple'* and *'if schools were to be made legally responsible for pupils slipping on wet or mucky grass in the course of outdoor games, it would be impossible to include any outdoor sport on the curriculum.'*<sup>2</sup>

More recently, the High Court dismissed a plaintiff's claim where it was satisfied that the injury was not caused by any negligence or want of care on the part of the PE teacher or the school authorities. The plaintiff had sustained injuries during a PE class and alleged that there was a failure on the part of the school to train and adequately supervise him. The school denied the plaintiff's claims and argued that the activity had been demonstrated to the plaintiff. Barr J. accepted the school's account and found that injuries can occur when one is participating in a sporting activity.<sup>3</sup>

The Supreme Court looked at the issue of supervision in the case of [Murphy v. County Wexford VEC](#) [2004] IESC 49. The court found that the extent of supervision will depend on a number of factors such as:

1. the age of the pupils;
2. the location at which they congregate;
3. the number of pupils present at any one time; and
4. the propensity of pupils to act dangerously.

A rota system for supervision had been in operation at the school but did not operate on the day when the plaintiff was injured. The Supreme Court found that there was a duty of care on the school

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<sup>1</sup> [Judge dismisses €38k claim after child fell playing chase in school yard](#) – Irish Independent – 3 April 2017

<sup>2</sup> [South Dublin student loses claim over hockey injury](#) – Irish Times – 16 December 2016

<sup>3</sup> [PE student who said he fractured knee doing high jump loses High Court action against school](#) – Irish Examiner – 24 January 2019

to provide supervision in accordance with the rota and the failure to do so constituted negligence on the part of the school.

### Potential Impact

A statement from teaching unions would suggest that schools are considering removing outdoor sports from the curriculum to try and eliminate the risk of any potential litigation.<sup>4</sup> This would be a shame as physical education and sport are a vital part of a child's development especially where an increase in childhood obesity in Ireland has been reported in recent years. Sports are also important in developing a child's social skills and encouraging teamwork and the ability to work with their peers.

### Conclusion

The courts have supported physical activities and games within schools provided that the play is risk assessed, supervised and the correct instruction has been given.

The cases which have come before the courts highlight the need for schools to carry out appropriate risk assessments for the activities which their pupils carry out during school hours. These assessments should identify all hazards which the school considers foreseeable and contain a plan for dealing with this. If an expert opinion as to the suitability of any particular equipment or game is required, this should be sought.

Schools should also ensure that adequate supervision is put in place paying particular attention to the age of the pupils and the activity which is to be carried out. If the school operates a rota for the supervision of pupils, this ought to be strictly followed.

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<sup>4</sup> [Irish schools banning students from running in yard over accident fears](#) – Irish Independent – 16 May 2018