



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

LEGAL UPDATE

CALIFORNIA SUPREME COURT PROVIDES GUIDELINES REGARDING LIABILITY FOR PHYSICAL EDUCATION ACTIVITIES

The California Supreme Court has held that instructors and coaches of extracurricular athletic programs may be legally liable for injuries sustained by student athletes under their supervision. At the same time, however, the Court also stated that before liability may be attributed, the student athlete must prove that the instructor or coach recklessly abandons or departs from the ordinary standards of instruction or supervision.

The Supreme Court's decision in *Kahn v. East Side Union High School District* (2003 S105735) addressed a student athlete's claim that her coach's failure to provide instruction in proper shallow pool diving methods and insistence that she dive in a swimming competition despite her objections caused her to break her neck when she hit the bottom of a swimming pool. The Court held that a sports instructor may be found to have breached a duty of care, which is owed to all students under his or her supervision, only if the instructor "intentionally injures the student or engages in conduct that is reckless in the sense that it is totally outside the range of ordinary activity."

The *Kahn* decision is significant for California charter schools operating athletic programs because the Supreme Court has established a bright-line as to when an instructor or coach may be liable for injuries to student athletes. The Supreme Court stated that in order for a student athlete who has been injured to successfully sue an instructor or coach, the student must show that the instructor actually intended the student to be injured or that the instructor acted so recklessly to a point that the instructor's conduct is completely outside the range of ordinary activities associated with a particular sport. The ordinary activity acceptable for any particular activity is fact-sensitive in that the nature of the activity dictates the amount of care and supervision required on the part of athletic personnel. Thus, when charter schools provide ordinary care and supervision of student athletes participating in extracurricular activities, the charter school may be reasonably confident that it will not be liable for injuries to student athletes.

At the same time, charter schools should note that the *Kahn* case addressed injuries occurring during voluntary, extracurricular athletic activities where a student arguably assumes a risk of injury. In physical education programs that are part of a required curriculum, students do not generally assume a risk of injury, and thus a charter school is required to exercise a greater degree of care and supervision and to provide adequate instruction to students so as to help students avoid physical injuries. The required level of supervision, care, and instruction is likewise fact-sensitive and is determined by the nature of the physical education activity.

If you should have any questions regarding this update, please contact Phillip Murray at (pmurray@smymlaw.com) or Paul Minney at (pminney@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

SPECTOR, MIDDLETON, YOUNG & MINNEY LLP'S LEGAL ALERTS PROVIDE GENERAL INFORMATION ABOUT EVENTS OF CURRENT LEGAL IMPORTANCE; THEY DO NOT CONSTITUTE LEGAL ADVICE. AS THE INFORMATION CONTAINED HERE IS NECESSARILY GENERAL, ITS APPLICATION TO A PARTICULAR SET OF FACTS AND CIRCUMSTANCES MAY VARY.

WE DO NOT RECOMMEND THAT YOU ACT ON THIS INFORMATION WITHOUT CONSULTING COUNSEL.