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Who is Liable for Student Injuries in Florida's Public Schools?

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Can public school employees in the state of Florida be held personally liable for injuries incurred by students under their supervision? In today's litigious society, knowing the answer to this question has become a professional imperative and a practical necessity for all public school employees. Indeed, for physical education teachers and athletic coaches in the Sunshine State it is especially important they know the answer since it has been well established that the majority of school related injuries occur in and around the fields of play and sport (Dauer & Pangrazi, 1986; Lenich, 1987; NATA, 1989). Unfortunately, the answer to this question is neither simple nor straight forward to those unfamiliar with the law.

The purpose of this article is to clarify the legal liability status of the teachers and coaches in Florida's public schools. The statutory protections extended to these individuals and the school districts they contract with are examined via an analysis of Section 768.28, *Florida Statutes* (1991). Relevant court cases in which these principles have been applied are reviewed in order to distinguish those situations in which liability for student injury would be imposed upon the school district from those situations in which liability would be assessed against the individual employee.

In the not too distant past, Florida's public school districts and their employees enjoyed complete protection from liability in tort under the legal doctrine of sovereign immunity. Under this doctrine, regardless of how unsafe or irresponsible the actions of the employee might have been in causing injury to a student, no liability could be imposed upon the school district or the employee. Both were unconditionally free from being held accountable for any and all tortious acts, a situation that the Florida legislature sought to remedy in 1973.

In that year, Section 768.28, *Florida Statutes* was enacted and the broad shield of absolute immunity from liability in tort once afforded public agencies and their employees was conditionally waived. This statute specifically addresses those conditions in which a school district, as a public agency, will or will not be subject to

liability for the tortious acts of its employees. It also sets forth those conditions whereby public school employees will or will not be subject to personal liability for their tortious acts (see Figure 1).

By enacting Section 768.28, the legislature intended that all public agencies, including school districts, be liable for tort claims "in the same manner and to the same extent as a private individual" would be in similar circumstances. Section 768.28(1), *Florida Statutes*, provides in relevant part that:

> ... the state, for itself and for its agencies or subdivisions hereby waives sovereign immunity for liability in torts ... Actions to recover damages ... for injury or loss of property, personal injury or death caused by the negligent act or wrongful act or omission for any employee ... while acting within the scope of his employment ... may be prosecuted.

So, as it stands today, school districts and their employees no longer enjoy a cloak of complete and absolute immunity. However, they have not been thrown to wolves either.

According to subsection (1) of the statute, a school district assumes complete liability for all the tortious acts (exceptions noted later in the statute) of its employees when they are acting "within the scope of their employment" (see Figure 2). The determination of whether or not a teacher or coach was acting "within the scope of employment" is therefore crucial in determining where liability will ultimately be fixed. The 4th District Court of Appeal in *Craft v. John Sirounis and Sons, Inc.* (1991), provided guidelines for this determination when it interpreted the phrase "within the scope of employment" to mean those instances when: (1) an employee performs the type of conduct which he was hired to perform; (2) the employee's conduct occurs substantially within the time and space limits authorized or required by the work to be performed; and (3) the employee's conduct is activated at least in part by a purpose to serve the employer.

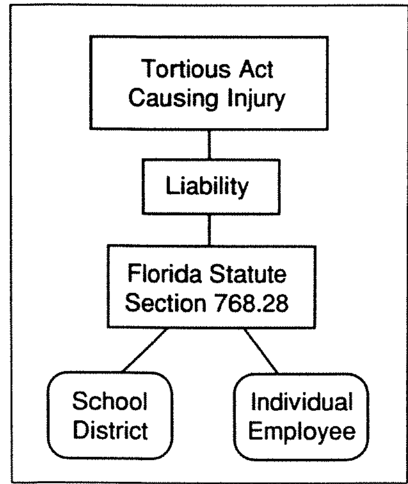

Figure 1. Florida Statute 768.28 directs liability for student injury.

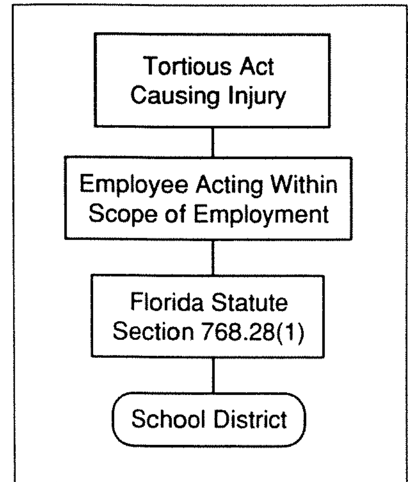

Figure 2. The school district assumes liability for student injury

In keeping with the *Craft* characterization, it can be generally said that a teacher spotting tumbling maneuvers during physical education class, a coach overseeing a practice scrimmage, or an athletic trainer providing assistance to an injured player would all usually be considered to be acting within the scope of their employment. It also follows that if a student was injured in any of these situations by a negligent act on the part of the employee the student could only file a lawsuit for the recovery of his or her damages against the school district and not the teacher or coach.

Furthermore, if the student's action against the school district was successful, the school district would assume full responsibility for the payment of any monetary damages awarded to the student. The teacher, coach, or athletic trainer involved, in accordance with subsection (1), would not be obligated or required to pay any portion of that award.

Leahy v. School Board of Hernando County (1984), provides an example of the application of subsection (1) to an athletic setting. Leahy, a high school football player, shattered his front teeth and suffered other facial injuries while participating in an agility drill. Although helmets with face guards had been issued to most of the players on the team, there were not enough helmets for all the players trying out for the team. Leahy was one of those players who did not receive headgear. Even though several players were without the protection of a helmet, the coaches made no modifications in how the drill was conducted, made no adjustments in the intensity level of the drill and gave no additional instructions or warnings to the players for the safety of those without helmets. Despite this fact, Leahy was required to participate in a drill that involved physical contact. Leahy sued the school board alleging that through its employees (the coaches) had negligently failed to provide proper supervision, instruction, and equipment. The circuit court issued a directed verdict for the school board and Leahy appealed. On appeal, the Fifth District Court of Appeal held that the circuit court had errored in granting a directed verdict for the school district because there was sufficient evidence upon which a jury could fault the school board for negligently failing to provide proper supervision, instruction, and equipment. The case was remanded to the circuit court for a new trial.

By ordering the case to proceed against the school district the appellate court indicated, without explicitly stating, that it regarded the actions of the embroiled coaches as being "within the scope of their employment." Thus, directing the potential liability for Leahy's injuries toward the school district, as required by Section 768.28 (1).

Although in *Leahy*, the coaches were immune from personal liability, there are circumstances in which this freedom from personal liability does not apply. Section 768.28 (9)(a), identifies those instances whereby personal liability would be imposed upon the individual employee for his tortious conduct even though the employee is "on the clock" for the employer. This section provides in relevant part that:

> The state or its subdivisions shall not be liable in tort for the omissions of an ... employee ... committed while acting outside the course and scope of his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.

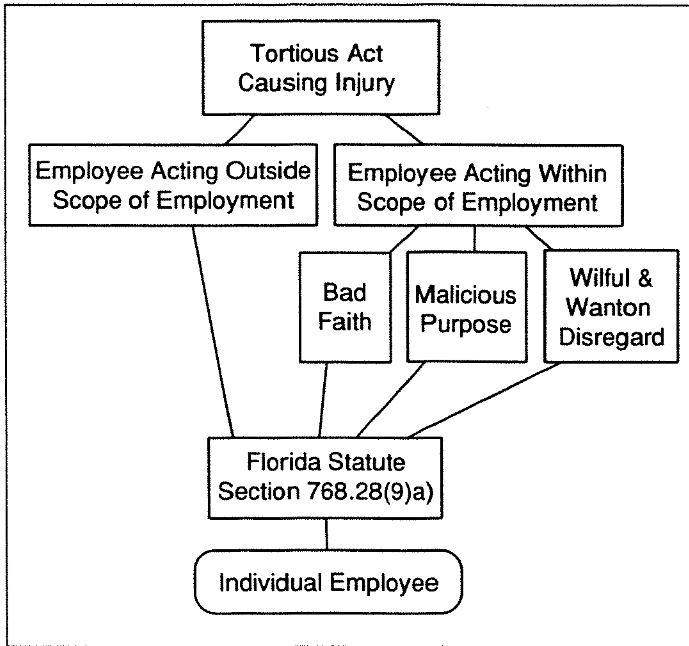

Figure 3. The individual employee assumes liability for student injury

Thus, there are basically two types of situations in which a school district will be released from liability and the individual employee would shoulder the burden of any damages awarded to the student (see Figure 3).

The first is those situations in which an employee engages in conduct which is outside the scope of his/her employment. In other words, the employee is acting to accomplish his/her own purposes, and not to serve the interests of the employer. A recent case involving a public school music teacher,*Duyser v. The School Board of Broward County* (1991), poignantly illustrates this type of scenerio. The teacher involved in the incident, George Robert Smith, was a member of a satanic cult and had performed satanic acts on his students, acts which included sexual abuses and sexual batteries. Based on the facts of the case, it was obvious to the court that the purpose of those acts was completely self-serving and could not in any conceivable way be connected to the course and scope of his employment to the school district. Therefore, it was ruled Smith would have to shoulder the responsibility and liability for his actions since his motives clearly did not serve the interests of his employer. The Broward County School Board was therefore properly relieved of any liability related to the actions of this teacher.

The second situation identified in Section (9)(a) which would impose liability on the individual employee focuses on acts of a grievous nature which are perpetrated while the employee acts "within the scope of his/her employment." Whether or not an employee's conduct rises to such an alarming level (bad faith,

malicious purpose, or willful and wanton disregard) is determined on a case by case basis. There are no hard and fast descriptions of what constitutes such behavior. However, in *Richardson v. City of Pompano Beach* (1987), the court provided some direction when it held that whenever the actions of an employee are more reprehensible and unacceptable than mere intentional conduct then they are engaged in behavior that is said to be willful and wanton.

An illustration of the application of 768.28 (9) to a public school setting is found in *Stephenson v. School Board of Polk County* (1985). In that case, the Second District Court of Appeal affirmed that a lower court had properly interpreted and invoked Subsection (9) when it relieved the School Board of Polk County from liability for the acts of two of its employees whose actions were, as the court noted, "at best, committed within the scope of their employment." Although the facts of the case were not disclosed, the appellate court made it clear that the actions of the teachers were of such a grievous nature as to be considered to have been "committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." As such, the court went on to explain, the teachers themselves would have to assume the liability for their behavior even though their actions might somehow have been construed to be "within the course and scope of their employment."

Both components of Section (9) were addressed in a south Florida case, *Willis v. Dade County School Board* (1982), in which the father of a child brought suit against the school district for the malicious assault and battery of his daughter by a physical education teacher during regular school hours. Even though an explanation of what precipitated the assault and battery was not provided, the court ruled that the Dade County School Board could not be held liable for these actions of the teacher. It was obvious to the court that the physical education teacher was not acting within the course and scope of his/her employment the moment the assault and battery of the student began. The teacher had effectively stepped out of the role of a physical educator under the direction of the school district and assumed the role of a self-governing individual who must be responsible for his/her own actions. Just as important, the court went on to declare that even if it had been decided that the teacher was somehow acting within the course and scope of his/her employment, the malicious nature of the attack would immunize the school district and again place liability on the teacher.

It is apparent from the preceding analyses that the Florida legislature sought to provide fair and reasonable expectations of protection from tort liability to both school districts and their employees when they enacted Section 768.28. Both have been provided with some vestiges of sovereign immunity. Consequently, as noted in *Comunitzis v. Pinellas County School Board* (1987), legal actions against school districts and actions against individual employees are now mutually exclusive.

School districts assume tort liability for their employees only when those employees are acting within the course and scope of their employment. While, on the other hand, individual employees personally assume liability in tort for any acts that are committed:

1. outside the course and scope of their employment.
2. within the course and scope of their employment but committed in bad faith,

with malicious purpose, or in manner exhibiting wanton and willful disregard of human rights, safety, or property.

It is certainly prudent for the physical educators, athletic coaches, and athletic trainers in Florida's public schools to know and appreciate what their liability status is when they take to the fields of play. Having an understanding of the parameters set forth in *Florida Statute* 768.28 will help dispel the many myths and half truths that surround the law and the threat of lawsuits connected with injuries in sport and play.

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