

04/03/02 "See News Release 028 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

NO. 2001-C-1779 C/W 2001-C-1780

LEONARD W. WALLMUTH, ET AL.

VS.

RAPIDES PARISH SCHOOL BOARD, ET AL.

WEIMER, J., dissenting.

I agree with much of the majority opinion, however, I respectfully dissent from the finding that there is no liability on the part of the school board. There is a factual basis for finding that the school board, through its employees, was notified of the physical confrontations in the locker room and did not take adequate steps to stop the violence.

Significantly, on a couple of occasions the plaintiff told Coach Brasher that someone had gotten hurt as a result of locker room violence, but the coach advised him not to worry about it. The coach testified that there had been five fights that year in the gym or locker area. Nathaniel Smith testified there was no supervision in the locker room. Smith, David Zeno, and Chris Davidson all had prior discipline reports involving incidents in the locker room or the gym. The assistant principal did recall receiving calls from parents regarding daily fights in certain gym classes although he testified that he was never informed of daily fights in the physical education class in which the plaintiff was injured. Seventh graders in another of Coach Brasher's physical education classes testified about fights in the locker room every day. After one of these students was struck in such an incident, his mother complained to the school board and was advised the problem would be addressed.

Although this court properly applied a *de novo* review, noteworthy is the finding of the trial judge to whom the liability of the school board was tried: “By failing to adequately supervise, the incident complained of here, was allowed to happen, and in fact, was invited to happen.”

While there was no duty to post a coach in the locker room constantly, there was a duty to adequately respond to complaints of students and parents. The school apparently did not take minimal steps to end the violence. The kick inflicted in this incident is not so far removed from the types of actions about which the school was warned such that the kick was unforeseeable.

The particular kick which injured the plaintiff may have been unexpected, but the atmosphere of violence which was tolerated made some type of injury inevitable. While in no way condoning the behavior of the student who inflicted the injury on the plaintiff, under the facts and circumstances of this case, I would apportion fault 80% to the intentional actor and 20% to the school board.