

New York Injury Cases Against Schools Dismissed - No Liability When Students Hurt in Fights on School Grounds

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Parents are always telling their kids before they go off to school: study hard, obey the teachers and behave. Good advice, of course. But what happens when the little darlings do misbehave? When they fight with other schoolkids? And serious injuries result? Why, the parents "lawyer up" and sue the school district, naturally! But these cases are losers and the schools are winning dismissals repeatedly.

In the latest of these cases, [MacNiven v. East Hampton Union Free School District](#), a fight broke out among high school track team members. Standing 20 feet away was another team member, soon to be plaintiff Cory MacNiven. Instead of going for help or just staying out of it, young Cory "jumped in" to the fight and kicked a teammate in the head. Then, surprise, Cory was punched in the face and injured.

Would you run towards a fight, or away from it?



In his ensuing lawsuit (technically, the parents' lawsuit because under New York's [CPLR Article 12](#), when an injured party is under the age of 18 years, it's the parents who sue for him), **plaintiff claimed that the school district was negligent in failing to properly supervise the team during practice. The appeals court disagreed and dismissed the case this week** repeating the oft cited rule that

liability for injuries resulting from a fight between two students cannot be predicated on negligent supervision if the plaintiff was a voluntary participant in the fight.

The same **voluntary participation in a fight on school grounds bars a lawsuit against the school** district rule has been applied for many years:

- [Williams v. City](#) (2007) - inadequate supervision claim dismissed in a fight between elementary school students in an auditorium because of voluntary participation in the fight by plaintiff

- [Danna v. Sewanhaka Central High School District](#) (1997) - school could not have anticipated fight in music class between 12 year olds, especially where plaintiff voluntarily entered the fight and struck the first blow (a kick in the shin)
- [Ruggiero v. Board of Education of the City of Jamestown](#) (1969) - suit by 17 year old high school senior for injuries from a fight over unassigned locker dismissed because plaintiff voluntarily squared off with another student and chose to expose himself to the dangers of a fistfight.

If you square up, you lose your case against the school.



You'd think that parents of kids who start fights at school (or voluntarily jump into them) would be reluctant to start a lawsuit. Maybe it's bad advice from lawyers who don't know the state of the law, who haven't read up on these types of cases. Now, I know that facts unknown at the beginning can develop, change or surface that may account for why some of these dumb cases were started. But when it's perfectly clear that a student started a fight at school, or on his own decided to join one, then the New York courts will routinely dismiss the lawsuit.

Many argue that there are too many lawsuits like the ones discussed above, they are frivolous and there should as a result be a loser pays system. That's the type of system in effect in England and other countries where the loser of these types of lawsuits is required to pay the legal fees of the winning party.

The **push for a loser pays system** has been ongoing for some time now. An [important study in favor was released recently by The Manhattan Institute's Marie Gryphon](#), supported by many including, of course, her think tank colleague [Walter Olson of Overlawyered fame](#). Standing opposed to the loser pays system are trial lawyers representing plaintiffs, for example [Atlanta attorney Ken Shigley here](#) and [Boston attorney Robert Feinberg here](#). Trial lawyer organizations such as [American Association for Justice](#) (formerly known as American Trial Lawyers Association) and [New York State Trial Lawyers Association](#) argue that there is no need for such a system as do blogs such as [Tort Deform](#).

The battle lines are being drawn and there's a great deal of money being spent pro and con. **The loser pays system may become the law in the U.S.**

- Would a loser pays system be beneficial for all concerned?

- What form would it take?
- Could it be successfully challenged as unconstitutional?

These issues will continue to be discussed and even fought over as the push for loser pays intensifies.