



MEMBER ALERT

STUDENT SAFETY CONSIDERATIONS

Due to budgetary and staffing concerns, as well as certain recent judicial opinions, Members have raised questions regarding their legal obligations to protect students from harm (a) before, during and after school hours, while students are on Member-owned or controlled property, and (b) when students are coming to/leaving school, when they are not actually on Member-owned or controlled property. This Student Safety Considerations Alert outlines the certain principles for analyzing Members' obligations, including concepts that may help address budgetary and staffing concerns, while still allowing Members to implement prudent risk management protocols. It should be freely shared by Members with their employees

I. BASIC PRINCIPLES AND CONSIDERATIONS

In 1982, the "Right to Safe Schools" provision was added to the State Constitution, stating: "All students and staff of primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." *Cal. Const., Art. I, § 28, subd. (c)*. Members are required to prepare comprehensive school safety and emergency plans that identify appropriate strategies and programs to provide for a high level of school safety,¹ to engage in programs promoting school safety,² and to affirmatively take steps to combat racism, sexism, and other forms of bias against students.³

These Constitutional and statutory requirements, however, do not mean that Members are guarantors of their students' emotional or physical safety or create independent.⁴ While Members must adopt, teach, and promote safety and anti-discrimination programs or procedures, they need only take reasonable steps to supervise and protect students while on school grounds. When students are not on Member-owned or controlled property, there is generally no duty to protect them from harm unless (a) the Member placed them at risk for off-site injury due to a negligent act committed while the student was still under the Member's supervision or control, or (b) the Member was or should have been supervising the student during a Member-sponsored off-site activity.

Members may also unintentionally create liability exposures or enhanced legal obligations. A Member representing that it will provide supplemental or special protective services with respect to a particulate site or circumstance must do so. A Member providing supplemental safety or security services beyond what is legally required must do so consistently and competently. Failure to do so may create unexpected legal exposures financially jeopardizing the Member and the NBSIA risk pool. Consequently,

¹ *Education Code §§ 32280, et seq.*

² No Child Left Behind and the Safe and Drug-Free Schools and Communities Acts require such programs to be promoted in order to obtain federal funds under those programs. *20 USC § § 7115 and 7161.*

³ *Education Code § 51101.*

⁴ *E.g., Hoff v. Vacaville USD* (1998) 19 Cal.4th 925 (1998) [adopted safety or path of travel recommended standards are insufficient to create a basis for liability] and *Guerrero v. South Bay USD*. (2003) 114 Cal.App.4th 264 [written policies providing for after school supervision of students on school grounds, and addressing procedures for managing children not picked up by parents, did not create duty of care to students waiting for parent pick-ups off-campus]. However, as noted in *Brownell v. Los Angeles USD* (1992) 4 Cal.App.4th 787, Members must enforce adopted standards governing their own safety inspections, processes, and procedures.

Members must carefully evaluate these exposures, including NBSIA in discussions regarding any changes to their safety or security staffs, processes, or procedures as they address pressing budgetary and safety concerns. By including NBSIA as a partner in discussions on these topics, the Member and NBSIA can better protect against avoidable and costly claims.

II. ON-CAMPUS OBLIGATIONS

While the level of student supervision may vary based on age and grade level considerations, Members must adequately supervise students while they are on school grounds, whether before, during or after school hours.⁵ This duty extends to students participating in Member-sponsored after school or extra-curricular activities, such as after school clubs/organizations/activities, although this duty terminates after a reasonable time after school when students are expected or intended to leave campus for home.⁶

Members have a duty to timely and properly intervene in circumstances where a student may potentially become physically or emotionally injured. This includes circumstances involving aggressive or unsafe horseplay, observed misuse or inappropriate use of facilities or equipment, or threatening, abusive, taunting or discriminatory behaviors.⁷ Members must also ensure that they properly train students in safe practices and procedures regarding their use of Member property and equipment, such as weight lifting equipment, Bunsen burners, or stoves.⁸

While only a general duty of care exists with respect to routine student safety considerations, a “special duty of care may arise where a person makes a specific threat against a specific person or otherwise presents a foreseeable danger to a readily identifiable potential victim.”⁹ Moreover, “[i]n an appropriate case, a special duty may arise where a school is aware that a particular location that has become dangerous,” whether that knowledge is developed from students, staff, parents or other sources.¹⁰ In these circumstances, Members must thoughtfully consider and implement additional special protective measures, such as seeking professional or law enforcement advice or intervention, and further including the issuance of information or warnings to students or parents.

III. OFF-SITE LIABILITY

Section 44808 states that teachers “shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess.” Despite the breadth of this language, actual Member liability exposures are limited to three primary circumstances.

⁵ *Ed. Code §§ 44047 and 44807; M.W. v. Panama Buena Vista USD* (2003) 110 Cal.App.4th 508; *Dailey v. LAUSD* (1970) 2 Cal.3d 741 [“Supervision during recess and lunch periods is required,” although the level of supervision may lessen as students age and become more able to manage their affairs]. Difficult budgetary times, requiring reductions in staff or security services, can be argued by Members on a case-by-case basis as a basis to limit or negate claimed duties of care. *Leger v. Stockton USD* (1988) 202 Cal.App.3d 1448, 1460, and cited cases.

⁶ *Dailey, supra; Panama Buena Vista, supra; Acosta v. Los Angeles USD* (1995) 31 Cal.App.4th 471; and *Iverson v. Muroc USD* (1995) 32 Cal.App.4th 218.

⁷ *Leger v. Stockton USD, supra* [“school authorities who know of threats of violence that they believe are well-founded may not refrain from taking reasonable preventive measures”]

⁸ Regarding duties to warn/instruct students about chemicals, protective devices, or safe use of equipment, see *Calandri v Ione USD* (1963) 219 Cal.App.2d 542; *Ahern v Livermore UHSD* (1930) 208 Cal.770; *Ridge v Boulder Creek UJSHSD* (1943) 60 Cal.App.2d 453; *Lehmann v Los Angeles City BofE* (1957) 154 Cal.App.2d 256

⁹ *Thompson v. Sacramento City USD.* (2003) 107 Cal.App.4th 1352, 1369.

¹⁰ *Ibid; Also, Brownell v. Los Angeles USD, supra.*

A. **General Rules on Going/Coming of Students.**

Members generally have no duty to protect students while they travel to and from school.¹¹ This rule of nonliability extends to risks immediately surrounding the school,¹² with Members only obligated to take special protective measures when a specific and unusual risk of harm is brought to their attention.¹³ Liability may also arise when a Member's onsite supervision of a student creates enhanced safety risks when the student ultimately leaves the campus.¹⁴

B. **Provided Transportation.**

A Member providing bus (or similar) transportation to students to or from school, or as part of field trips or other excursions, must do so reasonably. Aside from safety during the actual transportation of the student, drivers of students must ensure that students engage in safe practices getting on/off the bus/vehicle,¹⁵ although no liability exposure generally arises from events associated with bus stops locations, including the selection of sites.¹⁶ Further, although the Member has a duty to safely transport students, injuries sustained during field trips trigger no civil liability due to statutory immunity.¹⁷ The Member must, however, still provide or pay for the student's medical care expenses unless applicable Board Policies shift some or all of that cost to students or their parents.

C. **School-Sponsored Activities.**

If the Member sponsors an off-site activity, meaning a formal event requiring attendance and for which attendance credit may be given, the Member is responsible for the safety of students when they are or should be under a Member's supervision, including transportation to and from the event.¹⁸

¹¹ The Court in *Joyce v. Simi Valley USD* (2003) 110 Cal.App.4th 292 held that the Member could be held potentially liable for injuries caused when a student was struck while improperly crossing a street in order to enter the campus through an unlocked gate that "enticed children to cross [the street at a] dangerous intersection" rather than a safer intersection. All later Courts, including the Third DCA that resolves appeals in the Sacramento/El Dorado/Yolo/San Joaquin areas, have rejected *Joyce* and its suggestion of potential liability in such a situation.

¹² As noted in *Searcy v. Hemet Unified SD.* (1986) 177 Cal.App.3d 792, schools have a discretionary right to hire crossing guards, but no obligation to do so, nor can they be held liable for not hiring or maintaining crossing guards because public streets are not district owned or controlled property. Yet, if crossing guards are provided, their negligence can create Member liability. See also, *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340.

¹³ In *Brownell v. Los Angeles USD, supra*, the Court acknowledged that gang members were generally present around the school where a student was shot and killed while walking home. The Court held that the district was under no duty to "scout the neighborhood" to determine whether it was safe for students to walk home. Before any duty of care could arise, the Court held that the school needed to have specific advance notice of an increased or changed risk of harm to students, which did not occur. See also, *Searcy, supra* [School duty had no duty to inspect student's route to/from school for dangerous conditions and to warn other public entities of any danger discovered.]

¹⁴ E.g., *Perna v. Conejo Valley USD* (1983) 143 Cal.App.3d 292 [teacher kept students after school to grade papers knowing that crossing guards would not be available and that the children would have to cross a busy street]; *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 517 [student leaving campus during the school day and suffering injury could state a viable negligence claim against the district].

¹⁵ *Farley v. El Tejon USD* (1990) 225 Cal.App.3d 371.

¹⁶ *Torsiello v. Oakland USD* (1987) 197 Cal.App.3d 41; *Bassett v. Lakeside Inn* (2006) 140 Cal.App.4th 863.

¹⁷ *Myricks v. Lynwood USD* (1999) 74 Cal.App.4th 231.

¹⁸ *Ramirez v. Long Beach USD* (2002) 105 Cal.App.4th 182; *Castro v. Los Angeles BofE* (1976) 54 Cal.App.3d 232. CAC Title 5 § 5531. Supervision of Extracurricular Activities. "All social activities of pupils, wherever held, if

Member-sponsored events can include a variety of activities, including “instructional work experience” programs.¹⁹ They may also include activities associated with special events, such as homecoming events (off-site building of floats, where students are released from classes to engage in such activities), as well as fund-raisers, where students are known or expected to be off-campus. In such circumstances, Members must be vigilant – just like they would be on campus – in making sure that they are aware of the location of all students, at all times, and reasonably supervising all activities to ensure they are being safely performed.

IV. ASSUMPTION OF NON-LEGAL RESPONSIBILITIES

In addition to their identified statutory obligations, Members may create additional duties or liability exposures when they promise parents or students that they will undertake additional or supplemental protective or security measures. Yet, the Courts have sought to ensure that exposures under this doctrine are limited, applying it only when Members specifically undertake to supervise or protect a student at a particular location and time.²⁰

Significant risks exist when Members provide police or supplemental security services normally performed by law enforcement agencies, or when employees or volunteers under the direction of a Member engage in neighborhood patrols or involvement in off-site incidents over which they have no legal authority. There may be community pressure to provide extra-territorial security services (guiding wayward youth home; patrolling parks looking for students who may be engaging in inappropriate acts after school hours). There may also be internal desires to provide additional assistance to at-risk or disadvantaged youths who may not have parents or guardians adequately protecting the safety of students.

Intervening in off-site activities without the benefit of legal authority, or without the existence of a legal duty to act, may deny Members important legal defenses, including “discretionary act” immunities often used to quickly and cost effectively extricate Members from potentially significant Claims. Even when the discretion to act or intervene may exist, doing so without proper training, experience and safeguards may present both practical and legal exposures to Members and their employees.

V. CONCLUSION

Even under the best of circumstances, with Members employing soundest risk management principles, injuries to students can trigger claims involving significant defense costs. That is why NBSIA was formed, providing Members with sound indemnity protection. However, in these difficult budgetary times, it remains important for Members to protect the NBSIA risk pool and their own financial resources by ensuring that (a) they meet their legal obligations to reasonable supervise students while they are on their property or under their supervision, and (b) they do not reduce, modify or assume new protective or security obligations or procedures without involvement of NBSIA and the assistance that can come from outside perspectives regarding Members’ legal obligations and steps that can be taken to best insulate the Member from external criticism or legal exposures.

conducted under the name or auspices of a public school or of any class or organization thereof, shall be under the direct supervision of certificated employees of a district or an office of a county superintendent of schools.”

¹⁹ *John R v. Oakland USD* (1989) 48 Cal.3d 438 [student at teacher’s personal residence, participating in sanctioned IWE program, entitled to same protective duty of care as an on-campus student].

²⁰ *Cerna v. City of Oakland, supra* [generalized promise to provide crossing guards or similar traffic control protections insufficient to create liability]; *Torsiello v. Oakland Unified School Dist.* (1987) 197 Cal.App.3d 41 [teacher’s conversation and investigation of incident with school boys at bus stop, without intervention in incident or offer of protection, created no assumption of liability.]