



## MEMBER ALERT

### PHYSICAL ALTERCATIONS

The Sacramento Bee and other local and national news reports have recently focused attention on the question of when school district employees should intervene in physical altercations involving students or other parties. Videos posted on YouTube, showing teachers standing quietly by as students engage in physical fights, have led to public outcries for changed district policies that would require school district employees to physically intervene in such situations. Employees and their representatives have responsively expressed concern regarding employee safety and an absence of training in appropriate methods to deal with such situations. Given these competing legal and safety considerations, this Member Alert provides guidance to school districts and their employees on meeting their important duties to help protect students in a safe and responsible manner.

#### **I. LEGAL OBLIGATIONS**

The duty to prevent or intervene in physical altercations involves three different legal issues:

##### **A. Duty to Supervise.**

School districts have a duty to supervise students while on district property<sup>1</sup> and while participating in off-campus, district-sponsored events (field trips, extra-curricular activities). *Ed. Code Sections 44807 & 44808; 5 CCR § 5552; M.W. v. Panama Buena Vista USD*, 110 Cal.App.4th 508 (2003). While the level of supervision varies based on age, grade, safety and security concerns, and student behavioral issues, the supervision must be “adequate” or “reasonable” under all existing circumstances. The duty exists so that school districts can enforce their rules and regulations and regulate student conduct in order to avoid injuries. *Panama, supra; J.H. v. LAUSD*, 183 Cal.App.4th 123 (2010).

The mere fact that a fight breaks out between two students is generally insufficient, by itself, to establish a claim for negligent supervision. While Courts have suggested that they may assume that the District has breached its duty of supervision in such situations, the courts have also stated that they will not find liability unless evidence also exists showing that greater or different supervision would have anticipated the altercation in time for additional protective action to be taken that would have prevented the fight. *Thompson v. Sacramento USD*, 107 Cal.App.4th 1352 (2003). Absent such facts, the fight will generally be seen as an unavoidable incident for which no liability exists.

##### **B. Duty to Warn.**

There is no duty to warn students or parents of commonly understood or preexisting off-campus safety concerns (i.e., general knowledge that a school is in a high-crime area). A duty to warn may arise, however, when the district becomes aware of a specific threat against a student or student population or the exposure arises from a location under the District’s control that is known to present potential safety hazard. *Peterson v. San Francisco Community College Dist.*, 36 Cal.3d 799 (1984). Even generalized knowledge of a student’s dangerous propensities will not create a duty to warn absent additional information that the student has targeted or made a threat against a particular student.

While recognizing these older authorities, new laws effective January 1, 2012, note the importance of proactive identification and action with respect to potentially harmful situations, whether that harm be physical or emotional. *E.g., anti-bullying laws contained in AB 9 and AB 1156*, which create certain legal rights and obligations, and may involve a duty to warn or provide advice regarding potential options for effectively dealing with such situations.

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<sup>1</sup> The duty of supervision begins a reasonable time before the school day once the campus is opened (which may need to take into account situations involving special needs students or others needing additional care during these times) and ends (i) a reasonable time after the school day, when students are expected or intended to have left the campus, or (ii) when the students have physically left the campus and are no longer under the district’s supervision.

### C. Duty to Intervene and Protect.

The duty to protect is most succinctly stated in *Rodriguez v. Inglewood Unified School Dist.*, 186 Cal.App.3d 707, 715 (1986): “a special relationship is formed between a school district and its students so as to impose an affirmative duty on the district to take all reasonable steps to protect its students.” *Searcy v. Hemet Unified School Dist.*, 177 Cal.App.3d 792, 804 (1986), also notes: “The special relationship doctrine may serve as the basis for establishing negligence and liability on the part of a school district for breach of the long-established duty of schools to supervise students in their charge and protect them against harm from others on school premises during the school day”.

New Education Code Section 234.4(6) (AB 9), now also imposes a mandatory, affirmative duty “on all school personnel who witness an act of discrimination, harassment, intimidation, or bullying” to take immediate steps to intervene “when safe to do so.” The statute does not further define the term “intervention.”

Given existing authorities, it is evident that the duty to protect involves proactive and affirmative efforts to prevent harm. However, no statute, regulation, or case authority holds that an employee must physically intercede in fights in order to meet this obligation. The duty to protect also does not require an employee to place himself/herself at risk of personal physical harm unless an approved job description (such as the potential job description of a SRO or safety officer) imposes such an obligation. In fact, by interjecting himself/herself into an altercation, the employee may be violating other duties by (1) being unable to prevent other students from becoming involved in the fight or becoming injured bystanders, and (2) intervening in a manner which may cause additional harm or injury to a student, placing the employee at risk for adverse employment or civil actions.

## II. ANALYSIS OF COMPETING DUTIES AND BEST PRACTICE RECOMMENDATIONS

Members should regularly provide training to employees to ensure that they understand District policies and procedures for addressing altercations or intrusions by unknown parties. To the extent the District has not reviewed and updated those policies, recognizing that AB 680 (Ed. Code Section 32281) no longer requires Site Council involvement in developing such policies, and AB 9 now imposes certain duties to “intervene” to prevent bullying, it may be an appropriate time to review and update those policies and train/retrain employees accordingly. In undertaking such tasks, the following guidelines and suggested practices should be considered:

- Upon discovery of an actual or anticipated altercation, the employee should promptly attempt to contact the Site Administrator (or the Administrator’s designee) who should manage communication with SROs, law enforcement officers, and/or parents after quickly assessing the situation. The Site Administrator (or designee) should also provide additional guidance to the involved employee, whose primary focus should remain on immediate incident management activities. If there is insufficient time to contact the Site Administrator, the employee should attempt to obtain other employee assistance through verbal requests for help or the employee should dispatch a student(s) to seek additional assistance. It is not a best practice to attempt to deal with such situations without additional support and/or employee witnesses.
- The involved employee should calmly, loudly, clearly, and repeatedly (if necessary) give verbal directions to the combatants to cease the altercation and go to a specific, separate locations. The involved employee should also direct bystanders not to intervene and to move back into a classroom or other area away from the incident. While providing these directions, the employee should continue to observe the situation and make further reports to the Site Administrator (or designee) as may be needed. Other employees or volunteers may also be used to provide such updates. At all times, the employee should be seen as acting proactively and positively in attempting to manage the situation, and preventing it from escalating further, while not becoming physically engaged in the dispute.
- Fighting, and associated actions, are expected to result in discipline, potentially including suspension or expulsion as circumstances may warrant. The employee needs to be prepared to complete and submit a full and accurate Incident Report immediately after the incident while the situation is still fresh in his/her memory, documenting events leading up to the incident (to address “Supervision” issues) and events associated with the incident (evidencing “Protection” activities).