

The ABC's of School Liability in California: A Primer For Lawyers, School Districts and Educators

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INTRODUCTION

Each year school districts in California spend millions of dollars on settlements and judgments arising from injuries to students. School-related injuries to students occur in classrooms and school yards under a wide range of circumstances, from horseplay and scuffles with other students, to athletic training and competition, to criminal assaults by non-students. They occur before, during and after school hours, during supervised and unsupervised activities, inside and outside the classroom, on campus as well as off. Injuries to students are frequently the result of a number of contributing factors, which unfortunately can include negligence or other misconduct on the part of teachers and school district employees.

While it is unrealistic to expect that school-related injuries to students can be completely eliminated, it is not unreasonable to believe they can be substantially reduced in number. This article will present an overview of California law relating to school liability, and discuss several significant cases which illustrate the controlling legal principles involved and the policies behind their application. These can be helpful not only in identifying causal factors and failures which commonly lead to injury, and ultimately liability, but in recognizing unreasonable risks of harm and areas for potential improvement on the part of school districts and their employees.

GENERAL DUTY TO PROTECT AND SUPERVISE

California law imposes upon school districts a duty to carefully supervise stu-

dents while they are on the school premises during the school day, and districts may be held liable for injuries caused by the failure to exercise such care. (*Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 513.) Public employees, including school teachers, principals and administrators, are liable for injury caused by their own acts or omissions to the same extent as a private person, and public entities, including school districts, are liable for injuries caused by acts of omissions of their employees within the scope of employment. (Cal. Govt. Code §§ 820(a) and 815.2(a).)

Due to the special relationship between a school district and its students and their families, there is an affirmative duty on the district to take all reasonable steps to protect its students. This duty is based in part on the compulsory nature of education. (*Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 714-715.) Although a school district is not an insurer of its pupils' safety (*Taylor v. Oakland Scavenger Co.* (1938) 12 Cal.2d 310, 317), students have an inalienable right to attend safe, secure and peaceful campuses in order to promote learning. (Cal. Const., art. I, § 28, subd. (c).) As the California Supreme Court stated in *In re William G.* (1985) 40 Cal.3d 550:

[T]he right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. The school premises, in short, must be safe and welcoming. (*Id.* at p. 563.)

Safe Environments



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Since students spend most of their time in classroom under the supervision of teachers, the burden to provide a safe and peaceful environment falls on their shoulders. As employees of a school district, public school teachers have a statutory duty to supervise their students in order to maintain this safe and welcoming environment. (Ed. Code § 44807; *Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 741, 747.) Teachers are required to "hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess," and may impose reasonable necessary physical restraint in order to maintain a safe environment. (Ed. Code § 44807.)

The "safe and welcoming environment" extends to areas outside the classroom as well. One of the most important areas that must be continually and conscientiously supervised is the playground, where students who have been confined in a chair for hours are suddenly free to move about, and may interact in more aggressive ways. Courts have noted that such supervision is required so that discipline may be main-

tained and “precisely because of the commonly known tendency of students to engage in aggressive and impulsive behavior which exposes them and their peers to the risk of serious physical harm.” (*Dailey, supra*, at pp. 747-748.) If a teacher is not available, the duty falls to the site administrator present at the time (including the principal, vice principal, or lead teacher), to assure that students are supervised and that playground activities are safe. (Cal. Code of Regs., title 5, § 5552.)

Standard of Care

The standard of care imposed upon school district employees is that degree of care “which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances.” (*Hoyem v. Manhattan Beach City Sch. Dist., supra*, at p. 513.) Either a total lack of supervision or ineffective supervision may constitute a lack of ordinary care. (*Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 806-807.) Thus, it is not enough to be merely present; care must be taken to foresee and avoid any situation that could be potentially dangerous, even if the precise injury has never occurred before. (*Ziegler v. Santa Cruz City High Sch. Dist.* (1959) 168 Cal.App.2d 277, 284.) Moreover, even if there have been no prior injuries or acts of violence at a particular location, if school authorities are aware of threats of violence, they must take reasonable preventive measures. (*Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1460.)

The extent of the duties owed by a school district will vary with the age and maturity of students involved. “High school students may appear to be generally less hyperactive and more capable of self-control than grammar school children. Consequently, less rigorous and intrusive methods of supervision may be required.” (*Dailey, supra*, at p. 748.) Likewise, the necessary degree of care may vary with the type of student involved. Special education students may have unique vulnerabilities rendering them subject to risk. Therefore, a school district has heightened responsibilities in connection with the special needs of these students. (*M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508.)

NEGLIGENT SUPERVISION

Outside the Classroom

At recesses and breaks students are most likely to engage in prohibited activities, requiring extra vigilance on the part of educators. *Dailey, supra*, illustrates a common scenario: the failure of an administrator to assure that students were supervised, and the failure of a classroom teacher to exercise due care by 1) assuring that the students knew expected behaviors, 2) being physically present to make sure they followed these expectations, and 3) intervening immediately when students engaged in inappropriate behavior.

In *Dailey*, a 16-year-old high school student suffered fatal injuries while engaging in “slap-boxing,” a prohibited activity, in a school gym during lunch hour. The California Supreme Court cited evidence of negligence by district employees, including failure by the responsible department head to develop a comprehensive schedule of supervising assignments and instruct his subordinates as to what was expected of them while they were supervising. The Court also noted that the instructor ostensibly on duty at the time of the accident had remained inside an office during the entire lunch period, eating, talking on the phone and preparing future class assignments.

Duty to Warn of Violent Propensities

The general duty of a school district to protect students under its charge may also include a duty to warn teachers and other staff members of known violent propensities of specific students. Education Code section 49079 provides that “a school district shall inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in” a number of unlawful acts described in the Education Code, including attempts or threats to cause physical injury, willful use of force or violence, possession of weapons, possession, use or being under the influence of controlled substances, and harassment, threats, or intimidation, directed against school district personnel or pupils. The statute further provides that the district shall provide to teachers such information

going back three school years, based upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency.

In *Skinner v. Vacaville Unified School District* (1995) 37 Cal.App.4th 31, a high school student was attacked by another student during a PE volleyball game. He alleged that his assailant had been suspended four times in one semester for fighting, instigating a fight, and deliberately bumping into another student. The assailant also had other disciplinary incidents involving truancy, refusal to work, harassing another student, and being defiant, disruptive, and disrespectful in class. However, the court of appeal held that because the confrontation had developed with no prior warning and was stopped almost immediately, the teacher had provided adequate supervision. The court also concluded that although the evidence would support a finding that school administrators had breached their duty of care under section 49709, the teacher’s independent prior knowledge of the assailant’s volatile nature which had prompted her to keep an eye on him, rendered the information “superfluous or nearly so.” (*Id.* at pp. 42-43.)

Duty to Suspend

Although school personnel have the option of suspending a student to prevent a potential assailant from causing injury, a student may not be suspended unless it is determined that an emergency situation exists. (Ed. Code § 48911, (c).) In *Thompson v. Sacramento City Unified School Dist.* (2003) 107 Cal.App.4th 1352, a high school student was injured when he was punched by another student. The assault occurred the day after the assailant had threatened to hit another student and was suspected of having set fire to a poster on a school bulletin board. The court of appeal held that the district did not owe a duty to the plaintiff to suspend the assailant on the day before he injured the plaintiff, and that where the conduct for which a suspension allegedly should have been imposed is wholly unrelated to the plaintiff, no liability will attach. The court also found there was no basis to conclude that there was a special duty of care, because of the rapidity of the assault, which occurred within one-and-a-half to two min-

utes in which the assailants and the victim were out of view of a patrolling campus monitor.

Special Education Students

Some students may have vulnerabilities which necessitate a greater degree of caution on the part of school districts and their employees. In *M.W. v. Panama Buena Vista Union School Dist.*, *supra*, a 15-year-old boy with mental retardation, who had the mental age of a third grader, was sexually assaulted by another student in a school restroom before school hours. The evidence showed that despite the fact the school's gates were unlocked at approximately 7:00 a.m., no adult was charged with the specific responsibility of supervising the students until 7:45.

The court of appeal held that under the circumstances, the district owed a duty of care to the plaintiff, and that "Given the unique vulnerabilities of special education students, the District knew or reasonably should have known that the minor was subject to the risk of an assault." (*Id.* at p. 520.) The court also found it relevant that within the district two other junior high schools required students who arrived early to congregate in a common area supervised by an adult, instead of allowing them to roam the campus without any supervision.

Assaults by Non-Students

School districts and their individual employees may also be liable for injuries to students resulting from foreseeable criminal assaults by non-students. In *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, a member of a wrestling team filed suit against the school district, the high school principal, and the coach, for injuries sustained when he was assaulted by a non-student in an unsupervised school restroom. The plaintiff alleged the defendants knew or should have known that members of the team were changing clothes before practice in the unsupervised restroom, the restroom was unsafe for students, and attacks were likely to occur there.

In holding that the plaintiff had no obligation to show that prior acts of violence had occurred at the location, the court of appeal found the allegations sufficiently

stated that the harm was reasonably foreseeable in the absence of supervision or a warning. "[S]chool authorities who know of threats of violence that they believe are well-founded may not refrain from taking reasonable preventive measures simply because violence has yet to occur." (*Id.*, at p. 1459.)

ATHLETIC ACTIVITIES

Injuries frequently occur in the course of school related athletic activities, whether in intramural or interscholastic competitions, or during physical education programs. A school district's duty of supervision, and the extent of its liability, will depend upon the nature of the activity and the type of student involved. In considering school and district liability for students injured in athletics, courts differentiate between sports that are school-sponsored and those deemed recreational.

Intramural Sports and Recreational Activities

Intramural teams differ from formal athletic teams in that they are informal and their members are usually students at the same school. In *Ochoa v. California State University, Sacramento* (1999) 72 Cal.App.4th 1300, a student who was struck in the jaw by an opponent during a college intramural soccer game filed an action against the university, alleging that the CSUS expressly took responsibility for supervising the event, thus creating a special relationship and duty to participants.

Relying on Government Code section 831.7, which immunizes public entities and their employees for injuries arising out hazardous recreational activities, the court of appeal held the action was barred. The court drew a distinction between recreational activities and school sponsored extracurricular sports programs, commenting that the latter may give rise to liability while the former will not. (*Id.* at p.1308.) The court also distinguished minors from adult students, holding that because colleges and universities have no duty to supervise the activities of their adult students, the duty of supervision required of school districts which would ordinarily override section 831.7 was inapplicable.

Interscholastic Athletics and Practice Activities

Regardless of whether the injury results from a recreational activity or a school-sponsored extracurricular sports program, the duty of supervision arising under Education Code section 44807 does not modify the common law doctrine of assumption of the risk. Under the circumstances where a student is injured due to risks inherent in a particular sport or activity, primary assumption of the risk may be a bar to recovery.

In *Lilley v. Elk Grove Unified School Dist.* (1998) 68 Cal.App.4th 939, a junior high student member of an after school wrestling program fractured his arm while practicing with his coach, who was demonstrating a wrestling technique. The court of appeal affirmed summary judgment in favor of the defendants, concluding that the risk was inherent in the sport of wrestling and that section 44807 does not preclude application of primary assumption of the risk to injuries suffered by a student while participating in extracurricular school sports. (See also *Fortier v. Los Rios Community College Dist.*, *supra*, 45 Cal.App.4th 430, 435-437 [football]; *Regents of University of California v. Superior Court* (1996) 41 Cal.App.4th 1040 [mountain climbing class].)

Duty to Avoid Increasing Inherent Risks

Even though participants must assume the inherent risks of athletic practice or competition, a coach or athletic instructor owes a duty to students not to increase those risks. If a student is asked to perform beyond his or her capabilities, the district may be liable. In *Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, a member of a high school junior varsity swim team broke her neck when she executed a practice dive into a shallow racing pool. The plaintiff alleged the coach had failed to provide her with any instruction on how to safely dive into a shallow racing pool, and that she had been inadequately supervised. She also alleged that the coach had breached his duty of care to her by insisting that she dive at the swim meet despite her objections, lack of expertise, fear of diving, and a previous promise from the coach to exempt her from diving.

The California Supreme Court held that if, as alleged, the defendant coach had directed the plaintiff to perform a shallow racing dive in competition without providing any instruction, he ignored her fears, and made a last-minute demand that she dive during competition – in breach of a previous promise that she would not be required to dive – a jury could properly determine that such conduct was reckless in that it was totally outside the range of the ordinary activity involved in teaching or coaching the sport.

NEGLIGENT HIRING, SUPERVISION AND RETENTION OF EMPLOYEES

Vicarious liability

Not all conduct of employees during working hours will subject an employer to liability. School districts are not liable for an employee's malicious or wrongful conduct if the employee substantially deviates from the employment duties for personal purposes. Stated another way, "[i]f an employee's tort is personal in nature, mere presence at the place of employment and attendance to occupational duties prior or subsequent to the offense will not give rise to a cause of action against the employer." (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1003, 1004-1005.)

In *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, a 14-year-old student alleged he had been sexually molested while at a math teacher's apartment participating in an officially sanctioned extracurricular program. The California Supreme Court held that the school district could not be held vicariously liable for a teacher's sexual misbehavior with a student, finding that the connection between the authority conferred on teachers to carry out their instructional duties and the abuse of that authority to indulge in personal, sexual misconduct is simply too attenuated to deem a sexual assault as falling within the range of risks allocable to a teacher's employer.

Direct Liability

Although a school district is not vicariously liable for conduct such as sexual molestation of students, a district may still

be held liable for its own negligence in hiring, supervising and retaining such employees. If individual district employees responsible for hiring or supervising know or should know an employee poses a foreseeable risk of harm to students, they owe a duty to protect students from such harm, and the district can be held directly liable for a breach of that duty.

In *Virginia G. v. ABC Unified School District* (1993) 15 Cal.App.4th 1848, a junior high school student alleged she was sexually harassed and then sexually assaulted by a teacher. The court held the plaintiff could proceed with her action for negligent hiring and supervision, and that if the individual district employees responsible for hiring and/or supervising teachers knew or should have known of the prior sexual misconduct, and thus, that the teacher posed a reasonably foreseeable risk of harm to students under his supervision, the employees owed a duty to protect students from such harm.

INJURIES OFF SCHOOL PREMISES

School districts generally do not owe a duty of care to students not on school grounds. Education Code section 44808 provides that a school district and its employees are not "liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property." However, under some circumstances, a school district's breach of the duties owed to pupils on school grounds may result in injury off the premises, which can result in liability to the district and its employees.

Children Leaving School Early

School employees have a duty to ensure that students who are expected to be on campus (during the school day and before or after school hours as required) are adequately supervised. This includes making sure that a child who decides to leave campus prematurely may not do so. In addition, reasonable precaution must be taken when students do leave campus after school hours to assure that they will safely leave the premises. In *Hoyem v. Manhattan Beach City Sch. Dist.*, *supra*, a 10-year-old boy attending summer school left school grounds without permission

before the end of scheduled classes and sustained serious injuries when he was struck by a motorcycle at a public intersection. Even though the injury occurred off school grounds, the California Supreme Court held that the district could be held liable if the plaintiffs could prove that the student's injuries were caused by the district's allegedly negligent supervision of the student in permitting the child the freedom to leave the campus unsupervised. (See also *Perna v. Conejo Valley Unified School Dist.* (1985) 143 Cal.App.3d 292 [students kept after hours by teacher to grade papers and were struck by vehicle while walking home, could pursue a claim for negligent supervision against the teacher who knew or reasonably should have known that a school crossing guard would be gone].)

Children Waiting to Be Picked Up

While required supervision of students may in some circumstances extend beyond school hours and beyond the campus itself, school staff are not required to provide supervision beyond that which is reasonable. In *Guerrero v. South Bay Union School District* (2003) 114 Cal.App.4th 264, a six-year-old girl was injured when she was struck by a car on a street next to school. She alleged that while waiting with her siblings to be picked up from school, she followed her brother across a street, and was hit while returning to the side of the street where the school was located. In finding that the district did not owe a duty of care to the plaintiff, the court of appeal noted that the student was out of school on a public street awaiting her parent, and the school had provided crossing guards and notified the parents as to the location to pick up children.

Dangerous Conditions of Public Property

Injury off school premises may also occur as a result of a dangerous condition of public property. A public entity is liable for injury caused by a dangerous condition of its property if the dangerous condition created a reasonably foreseeable risk of the kind of injury sustained, and the public entity had actual or constructive notice of the condition a sufficient time before the injury to have taken preventive

measures. (Govt. Code § 835, subd. (b).) Government Code section 830, subdivision (a), provides that a “dangerous condition” is “a condition of property that creates a substantial ... risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.”

In *Joyce v. Simi Valley Unified School District* (2003) 110 Cal.App.4th 292, a 13-year-old girl who was struck by a car in a marked crosswalk on her way to school alleged that an open gate through which students entered the school yard was a dangerous condition of public property, in that it encouraged students to use a crosswalk with no signals on a busy street. The evidence also showed that the parents and district employees had complained about the intersection prior to the accident, and that the school was aware of screeching brakes and “near misses.” The court of appeal upheld a verdict for the plaintiff, finding the evidence supported a finding that the open gate was a dangerous condition of public property and the district had failed to take reasonable action.

Transportation

Just because a student has left the school premises does not mean the district’s obligations have ended. If a district has undertaken to provide transportation from the school, the duty of care may extend beyond the door of the school bus until children have been discharged to a place of reasonable safety. In *Farley v. El Tejon Unified School Dist.* (1990) 225 Cal.App.3d 371, 376-377, the parents of a 7-year-old killed while crossing a street after disembarking a school bus alleged that prior to the accident the school principal was aware children being discharged at the bus stop customarily crossed a road to meet family members. The plaintiff also alleged that the driver had instructed children not to cross the road until the school bus was out of sight, and the bus driver should have supervised their safe crossing. The court of appeal held that the district could be liable for failure to exercise reasonable care, and that it “had an obligation to supervise the children during that transportation and a duty to provide a reasonably safe system.” (*Id.* at p. 380.)

Criminal Assaults

A school district’s general duty of supervision may require taking reasonable precautionary measures to prevent foreseeable assaults upon students by third parties. In *Brownell v. Los Angeles Unified School Dist.* (1992) 4 Cal.App.4th 787, 791-792, a student who was shot by a gang member while standing in front of a high school after class alleged that the school had failed to provide adequate security in a neighborhood heavily impacted with gang presence. The court of appeal reversed a jury verdict in favor of the plaintiff, holding the school district had taken reasonable precautions to minimize gang-related problems, including the prohibition of gang colors and confiscation of weapons. The court also found that “there was no advance indication to school personnel of potential gang violence pertinent to the incident” involving the plaintiff. (*Id.* at pp. 796-797.)

School-Sponsored Activities

Another potential area of liability exposure involves activities related to or sponsored by school districts. Although Education Code section 44808 provides a general immunity for injuries off school property, that same section does allow for liability if the district or employee “has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances,” and the pupil is or should be under the immediate and direct supervision of an employee of the district. If a student is injured while off campus for a school-sponsored activity, which is defined as an activity “that requires attendance and for which attendance credit may be given” (*Castro v. Los Angeles Bd. of Education* (1976) 54 Cal.App.3d 232, 236), the student’s injury is treated, for liability purposes, in the same manner as an on-campus injury.

Field Trip Immunity

Unlike off-campus school-sponsored activities in which attendance is taken, dis-

tricts are usually not liable for field-trip related injuries. If a student is injured while on a “field trip or excursion in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities” the student is deemed to have waived all claims against the district for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. (Ed. Code, § 35330) This so-called “field trip immunity” protects school districts as well as their employees. (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 183 [action against teacher by special education student who nearly drowned on field trip barred by field trip immunity statute].)

A “field trip” is defined as “a visit made by students and usually a teacher for purposes of first hand observation (as to a factory, farm, clinic, museum).” “Excursion” means a journey chiefly for recreation, a usual brief pleasure trip, departure from a direct or proper course, or deviation from a definite path. (*Barnhart v. Cabrillo Community College* (1999) 76 Cal.App.4th 818, 828.)

Off Campus Programs

The fact a school district recommends an off campus program for students or assists students in participating in such a program, does not necessarily bring the activity within the exceptions to the immunity of Education Code section 44808. In *Ramirez v. Long Beach Unified School Dist.* (2002) 105 Cal.App.4th 182, the mother of a high school student who drowned at a camp which had been recommended to him by school district employees, brought suit against the district for failure to investigate and warn of the dangers associated with the camp. The camp, run by a non-profit organization, was designed to provide leadership skills to low income, at risk youths. Although the district, through its administrators and faculty, had identified potential candidates for the Camp, advertised, recruited, encouraged, and convinced students and parents to participate in the program, the appellate court held that the immunity of section 44808 precluded liability, since the district neither supervised nor controlled the activities of the camp.

CONCLUSION

Since Jefferson founded public education for the citizens of the United States, schools have been charged with the safety of children in their care. School districts and their employees must be ever vigilant in their efforts to provide a safe environment for their students, and must maintain a constant awareness of potential dangers. This starts with an understanding of not only their professional and ethical responsibilities, but their legal obligations as well. If administrators, educators and other school district employees maintain an awareness of the duties imposed by California law, and the standards by which their conduct will be judged, they will be in a better position to fulfill their obligations and take reasonable and necessary measures to reduce the risk of injury to their students. ■