



MEMBER ALERT:

STUDENT SAFETY CONSIDERATIONS

This Alert provides the current legal standards, as well as prudent risk management considerations, that relate to Members' 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 from school, or when they are not actually on Member-owned or controlled property.

I. BASIC PRINCIPLES AND CONSIDERATIONS

The State Constitution states, "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)*). As a result, 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 at Members' sites,ⁱ
- Engage in programs promoting school safety,ⁱⁱ and
- Affirmatively take steps to combat racism, sexism, and other forms of bias against students.ⁱⁱⁱ

These requirements do not mean Members are guarantors of their students' emotional or physical safety.^{iv} While Members must adopt and promote safety and anti-discrimination programs and procedures, they need only take reasonable steps to supervise and protect students while on school grounds or while they are under their supervision or control. When students are not on Member-owned or controlled property, there generally is 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 unintentionally create liability exposures. For instance, a Member providing supplemental safety or security services beyond what is legally required must do so consistently and competently. Failure to do so will create legal exposures jeopardizing the Member and risk pool. Consequently, Members must carefully evaluate these exposures and include NBSIA in discussions regarding any changes to their safety or security staff, processes, or procedures as they address 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.^v This duty extends to students participating in Member-sponsored after school or extra-curricular activities, such as after school clubs/organizations/activities. This duty terminates after a reasonable time after school, when students are expected or directed to leave campus.^{vi}

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.^{vii} 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.^{viii}

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 particular person or otherwise



presents a foreseeable danger to a readily identifiable individual.”^{ix} Moreover, “[i]n an appropriate case, a special duty may arise where a school is aware that a particular location has become dangerous,” whether that knowledge is developed from students, staff, parents or other sources.^x In these circumstances, Members must thoughtfully consider and implement additional protective measures, such as seeking professional or law enforcement advice or intervention, and issue information or warnings to students and/or parents as circumstances might warrant.

III. OFF-SITE LIABILITY

Section 44807 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 regarding student accountability, actual Member duties of care are limited to three primary circumstances.

A. School-Sponsored Activities

If Members sponsor an offsite activity, meaning a formal event requiring attendance and/or 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/from the event.^{xi}

Member-sponsored events cover a variety of activities, including “instructional work experience” programs.^{xii} They may also include activities associated with special events, such as homecoming events (offsite building of floats, where students are released from classes to engage in such activities) and fundraisers, 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.

B. To/From School – No Transportation Provided

Members generally have no duty to protect students while they travel to and from school.^{xiii} This rule of non-liability extends to risks immediately surrounding the school,^{xiv} with Members only obligated to take special protective measures when a specific and unusual risk of harm is brought to their attention.^{xv} Liability may also arise when a Member’s onsite supervision of a student creates enhanced safety risks when the student ultimately leaves the campus, such as in cases of delayed releases when protective measures at a site may no longer be present.^{xvi}

C. Provided Transportation

Although no liability can generally arise from events associated with bus stop locations, including the selection of sites,^{xvii} a Member providing transportation to students to/from school, or to/from field trips or other excursions (i.e., volunteer drivers in personal cars), must do so reasonably. Aside from safety during the actual transportation of the student, drivers must ensure that students engage in safe practices getting on/off the bus/vehicle.^{xviii} While Members have a duty to safely transport students, injuries sustained during field trips trigger no civil liability due to statutory immunity.^{xix} The Member must, however, still provide or pay for the student’s medical expenses unless applicable Board Policies shift some or all of that cost to the parents.

ASSUMPTION OF NON-LEGAL RESPONSIBILITIES

In addition to the identified statutory obligations, Members may create additional exposures when they promise parents or students that they will undertake additional or supplemental protective or security



measures beyond what the law requires. Yet, the Courts have sought to ensure that exposures under this doctrine are limited, applying it only when Members specifically promise to undertake the supervision or protection of students at a particular location and for a particular time.^{xx}

One area of particular concern is when Resource Officers or employees acting 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). However, intervening in offsite activities without the benefit of legal authority or jurisdiction, or without the existence of a legal duty to act, may result in a loss of key legal defenses. This includes “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.

IV. CONCLUSION

Even when Members employ sound risk management principles, injuries to students can still trigger costly claims. NBSIA is prepared to respond in such circumstances. In an effort to avoid or minimize such exposures, it is important that Members (a) seek to meet their legal obligations to reasonably supervise students while they are on their property or under their supervision, but (b) not assume new protective or security obligations or procedures without involvement of NBSIA and the assistance that can come from outside perspectives. Engaging NBSIA early and often can help ensure that any such efforts are properly considered and implemented.

ⁱ Education Code §§ 32280, et seq.

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

ⁱⁱⁱ Education Code § 51101.

^{iv} *E.g., Hoff v. Vacaville USD* (1998) 19 Cal.4th 925 (1998) [adopting safe paths of travel insufficient to create liability] and *Guerrero v. South Bay USD*. (2003) 114 Cal.App.4th 264 [policies providing for after school supervision 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]. As noted in *Brownell v. Los Angeles USD* (1992) 4 Cal.App.4th 787, however, Members must still enforce adopted standards governing their own safety inspections, processes, and procedures.

^v *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

^{vi} *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

^{vii} *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”]

^{viii} 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 BoJE* (1957) 154 Cal.App.2d 256.



- ix *Thompson v. Sacramento City USD*. (2003) 107 Cal.App.4th 1352, 1369.
- x *Ibid*; Also, *Brownell v. Los Angeles USD*, *supra*.
- xi *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 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.”
- xii *John R v. Oakland USD* (1989) 48 Cal.3d 438 [student at teacher’s personal residence, participating in IWE program, entitled to same protective duty of care as an on-campus student].
- xiii *Cerna v. City of Oakland*, (2008) 161 Cal.App.4th 1340, 1356-1357. The Court in *Joyce v. Simi Valley USD* (2003) 110 Cal.App.4th 292 held that the Member could be potentially liable for injuries caused when a student was struck while improperly crossing a street 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 have rejected *Joyce* and its suggestion of liability in such a situation.
- xiv 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*, *supra*.
- xv In *Brownell v. Los Angeles USD*, *supra*, 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 if it was safe for students to walk home. Before a duty could arise, the school needed to have specific advance notice of an increased or imminent risk of harm to students, which did not occur. See also, *Searcy*, *supra* [School had no duty to inspect student’s route to/from school for dangerous conditions and to warn other public entities of any danger discovered.]
- xvi 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].
- xvii *Torsiello v. Oakland USD* (1987) 197 Cal.App.3d 41; *Bassett v. Lakeside Inn* (2006) 140 Cal.App.4th 863.
- xviii *Farley v. El Tejon USD* (1990) 225 Cal.App.3d 371.
- xix *Myricks v. Lynwood USD* (1999) 74 Cal.App.4th 231.
- xx *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*, *supra*. [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.]