

School Supervision Problem Areas

This insert addresses a few specific school supervision issues brought to our attention by member districts, including before and after school hours, unlocked rooms, and halls. Before getting into specifics, some background is necessary in order to understand how the duty of supervision is established, and how negligence related to this duty can be assessed.

What Creates Liability?

Negligence creates potential liability. Negligence is the failure to use that degree of care that is considered to be a reasonable precaution under the given circumstances. It is the unintentional doing (commission) or not doing (omission) of something which causes injury to another. Negligence involves four elements, and all four must be present to be found negligent in a court of law:

- Duty - an official or reasonable expectation
- Breach of duty - the expectation was not met
- Proximate cause - that initial action which set in motion a sequence of events resulting in the accident
- Damages - the accident caused someone to be hurt or something to be damaged

Negligence is determined on a case-by-case basis and is a question of fact for a jury in a court of law.

A school district's duties are established in several ways:

1. Statute and law (RCWs and WACs)
2. District policy (or other school documents)
3. Accepted safety standards
4. Common practice (how other schools handle similar situations)
5. Through "foreseeability" (the predictability of accidents based upon the experience and knowledge of the observer)

School districts have the duty:

- to warn and inform
- to provide proper instruction
- to condition participants properly
- to provide proper supervision
- to provide safe facilities
- to provide safe equipment
- to provide prompt and appropriate post-injury care

When those duties are not fulfilled, the district could be held liable for a student's injury or damage caused to others.

The District's Duty to Supervise

Providing a safe environment for students means a school district has a duty to exercise reasonable care to protect students from

reasonably foreseeable dangers by controlling the conduct of its students while they are in school or engaged in school activities.

Students under a school's care, custody and control may be unable to protect themselves due to mental or physical limitations, or inexperience (not be knowledgeable enough to understand the potential dangers). Supervision of students is required on school grounds when students are present during school hours.

A school district is liable for the tortious acts of its officers, agents, or servants, according to the normal rules of tort law. The general rule for student supervision is that schools have a duty to protect students in their custody from reasonably foreseeable harm. However, that does not mean that schools are the insurers of the safety of pupils. Instead, a school district has a duty to anticipate reasonably foreseeable dangers and to take precautions to protect the children in its custody from such dangers. Schools have "custody" of children and a duty to supervise, when the child is at school during the school day or at a school sponsored activity.

Protecting Students from Assault and Criminal Acts

A growing concern involving supervision in schools is the issue of criminal acts by one student towards another. Criminal acts such as assaults, fights, or rape by one student towards another may be foreseeable by a school district.

Two legal cases helped clarify the duty to protect students from assaults and other criminal activity committed by other students. In one case, a student was raped in an unlocked room in a school gym during a noon recess. The court held that the district should have foreseen that such a room may be accessed by students, and that unsupervised students might engage in indecency. In another, a young male student was raped by another student in a restroom during recess. The court reasoned that the generalized field of danger - harm to a student by another student - flowed from inadequate supervision (one supervisor for 300 students), and the presence of an accessible and unsupervised restroom.

The duty of supervision increases when a school district has specific knowledge of assaultive propensities of a student. In the second case mentioned, teachers had documented several incidents of aggressive and disruptive behavior in school that seemed to be escalating, and the student had become

a "focus of concern." The student was observed pulling other students' hair, poking students with pencils, pushing students, and being physically aggressive towards other students. The court found that such evidence created a fact issue for the jury to decide as to whether the school's knowledge of such behavior created a foreseeable risk of the student ultimately harming another student.

Supervision Before and After School

The New Encyclopedic Dictionary of School Law states that "it is foreseeable that an injury will occur if a large group of students are gathered without supervision."

Both district policy and common practice establish the school's duty to provide before and after school supervision. Establish a board-approved policy on the times that supervision is and is not provided, and notify parents of those times.

This required supervision is necessary 10-30 minutes before school begins and after school is released. For students who are bused, the duty to supervise on campus begins upon arrival to campus. When buildings are unlocked for students to enter, ensure supervision upon admittance.

If there are before or after school programs, the district has the duty to supervise the students involved in that program.

Supervision in Hallways

School staff has an affirmative duty to take reasonable precautions to safeguard students in their custody against foreseeable dangers. It is up to the school district to provide a safe environment within which the student can learn. This includes the supervision of hallways, especially when students change classes.

Supervising hallways poses interesting challenges. Students have been known to be involved in illegal or harassing behavior in hallways, especially at the junior and senior high school level. The district has the legal obligation to supervise students in its halls, even if it cannot staff for this. The school must do its best with the available resources, and make informed decisions regarding supervision.

There are frequently recognized "problem" hallways that the students themselves avoid. Where there is an identified problem area, the school administrator should take action to try to discover and correct the problem.

Once an incident has occurred, the cause becomes the issue in determining liability—would supervision have made a difference in the incident? In many cases, increased supervision may have prevented the incident, as students tend to behave better when under adult scrutiny.

Supervision of Unlocked Buildings and Rooms

Again, students allowed into school buildings should be supervised upon admittance. The level of supervision varies depending on the ages of the students, the activities involved, and the facility itself. Remember that the purpose of supervision is to protect students under the district's care. Adults can discover and act in a timely manner to prevent accident-causing circumstances.

In the first case mentioned, where one student raped another in an unlocked locker room during school hours, liability was assessed, both for failure to supervise the students and for failure to lock the room. The school has a duty to lock unattended rooms. A school's general practice should be to lock rooms when a staff member is not present and to ensure that the room is empty of students before locking it. Remind school staff to remain diligent in this practice.

Secure storage, and equipment rooms, custodial closets, weight rooms, and other rooms that have limited access. Keep in mind that unlocked and unattended areas can provide an opening for intruders too.

Supervision of Bathrooms

What is reasonable supervision in a bathroom? This depends on several factors including the students' age, the bathroom location, the history of incidents in and around the bathrooms, and accessibility to it by the outsiders. Provide some type of (preferably) same-gender adult supervision. In some situations, students should be escorted to and from the bathrooms; in others, occasional, random visits to the bathroom by

a staff member may be enough to discover potential problems. Other systems may work too. Some schools use a pass system allowing only one student at a time to leave the playground to go inside to the bathroom. This limits the potential for students to interact with each other and misbehave.

Supervision of Locker Rooms (Extra-Curricular Events)

An interesting supervision dilemma occurs when the coach is a different gender than the team s/he is supervising. Parts of his/her supervision responsibilities include the locker room where the team changes clothing and showers. It would be clearly inappropriate for a different gender coach to supervise the team in the locker room.

So, if the district does not have the funds to hire a same-gender adult to assist with supervising this activity, what can be done? There are at least two options, keeping in mind that the coach remains responsible for the overall supervision of the team, even when not under his/her direct supervision.

Use a same-gender parent volunteer for that portion of the student supervision. Ensure that the volunteer is screened, trained and approved by the school.

Charge the team captain(s) with monitoring the team in the locker room and reporting problems to the coach. As students supervising other students is usually not a good idea, and should be a last resort, the captain(s) should serve as a conduit of information only, not taking any action him/herself. The coach should make efforts to announce his/her presence before entering the locker room of a different gender in an emergency situation.

Supervision on Field Trips

Supervision needed to help ensure student safety for school-sponsored field trips is dependent on several factors. Specific guidance can be found in our School Field Trip Procedures, found online at www.esd112.org/insurance/resources.cfm.

What A School Can Do To Help Ensure Adequate Supervision

1. Carefully select and screen staff, substitutes, and volunteers.
2. Train teachers and administrators more carefully in their supervision responsibilities, including what can be done to protect the students, themselves, and the district. Discuss areas of past and foreseeable losses. Point out that increased supervision may be necessary in certain cases.
3. Determine when students are within the care, custody and control of the district. Establish reasonable rules and policies regarding the supervision and control of students. Ensure that district policies and school practices are consistent among schools. Provide supervision for students on school grounds during the school day. Consider the adequacy of student supervision before and after school, at lunch, and at recess.
4. Instruct students in school rules, their responsibilities in conduct towards others and school property. Encourage students not to come to school early, and to leave school promptly.
5. Frequently inform parents in writing of supervision-related district policies, such as the hours when students are permitted on school grounds. Notify parents of specific problems, and seek their assistance.
6. Evaluate supervision needs and problems in each school routinely. Make informed decisions and take reasonable action in response to problems. If a problem is brought to the school's attention, investigate it and take immediate action. Although a complete solution may not be immediately available, take some appropriate corrective action.
7. Be aware of areas of unsupervised activity where students could get hurt, such as unlocked rooms that are accessible to students. Lock unattended rooms.

Conclusion

A school district has a duty to exercise care to protect students from reasonably foreseeable dangers by controlling the conduct of students while they are in school or engaged in school activities. After an accident or injury, the basic question to determine whether supervision was adequate is whether the school could have done anything reasonable within its power to protect the student. A jury of your peers will decide that answer.

For more information, please contact a Loss Control Specialist with the Southwest Washington Risk Management Insurance Cooperative at (360) 750-7504.