

# School Announcement Series



**A CIRMA Risk Management Services Publication**

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## Managing Bullying Events in Schools

### Background

The victim, a transgender female high school student, was repeatedly harassed over the course of two academic school years by a fellow classmate. Each incident was more severe than the last, resulting in the ultimate expulsion of the aggressor.

### Scenario

Throughout the Scenario, let the aggressor be known as *Student A* while the person who was bullied be known as *Student B*. The first critical incident occurred in the spring of the school year when *Student A*, a female high school student, approached *Student B* in the cafeteria during lunch period. A verbal confrontation ensued for reasons undetermined through post-incident investigations. Staff separated the students accordingly during that period; however, subsequent investigation concluded it to be unlikely that this incident would lead to any retaliation or further disruptions. Both students were made aware that such behavior was unacceptable and would be met with disciplinary actions if it happened again. The ongoing bullying led to a second incident, which took place in early September of the following school year. *Student A* observed *Student B* walking alone in the hallway after school was dismissed and began yelling and pushing her. This incident lasted about two to three minutes, and was mostly captured on video with a bystander's cell phone. The students were again separated and an investigative process ensued, which lasted five weeks. Once the investigation was concluded in mid-October, *Student A* was notified that she would be receiving a three day out-of-school suspension. While waiting for the bus on that same day, *Student A* again confronted *Student B* and engaged in a variety of hostile and insubordinate behavior, including pushing *Student B*, striking a staff member, damaging school property, and defying administrators. *Student A* was ultimately expelled following an investigation and expulsion hearing.

### Lessons Learned

- School staff failed to conduct a proper investigation that identified the cause of the first incident.
- The school did not notify the designated Title IX Coordinator or Law Enforcement of the potential bullying of a student in a protected class.
- The Board of Education failed to implement a safety plan to ensure the emotional health and physical safety of *Student B* during and following the investigative process.
- School did not follow its safe school climate plan, which is mandated under Connecticut Public Act No. 11-232.

### Recommended Best Practices

**CIRMA recommends the following best practices:**

- Schools must follow Public Act No. 11-232 – An Act Concerning the Strengthening of School Bullying Laws, which mandates that “each local and regional board of education shall develop and implement a safe school climate plan to address the existence of bullying in its schools...”.
- Continue to train faculty and staff on how to identify the warning signs of bullying and appropriate ways of intervening.
- Schools should communicate to all faculty the roles and responsibilities of school staff, the Title IX Coordinator, and Law Enforcement, as each should play specific roles in their respective investigative and disciplinary processes.
- Schools should consider training all faculty and staff on the Restorative Practices method or another behavioral management technique, including asking the following questions in the interview process:
  - What happened?
  - What were you thinking at the time?
  - What have you thought about since?
  - What has been affected by what you have done? In what way?
  - What do you think you need to do to make things right?

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Seasonal Employee Safety

### Background

Seasonal employment programs often hire high school and college-aged young adults on a temporary basis to assist with projects throughout the organization. They are mutually beneficial to the employee, who gains valuable work experience, and to the employer, who gains an expanded workforce throughout the busy summer months. Although they are only employed with the school district for a short time, seasonal employees can pose a significant Workers' Compensation exposure if they are misused or unsupervised. An analysis of seasonal-employee injuries indicates that there are areas of improvement and measures that public schools can take to prevent injury to seasonal staff.

### Scenario

The claimant is a 21 year-old, part-time seasonal custodial employee with the school district. On the day of the incident, the claimant and his co-worker were directed by their supervisor on-site to sit against large, heavy tables in the back of a box truck while another co-worker drove the vehicle to another job site a mile down the road. While en route, the truck took a sharp right turn, causing approximately six or seven tables, with an estimated total weight of 600 pounds, to fall onto the claimant. The claimant's body folded in a forward flexed position with the weight of the tables on top of him, pinning him for several seconds.

**Damages.** The claimant, who had no prior history of injuries or illness, was taken to the hospital the next day where it was found that he suffered a compression fracture of the L4 vertebrae. The injury resulted in a four-month period in which the claimant was totally disabled from work at his school district job and at his concurrent employment with a private landscaping company. Although surgery was not performed, the claimant received extensive medical treatment and was ultimately assigned a 10% permanent partial disability rating to his back. Claim costs totaled \$157,000.

**Key Recommendations.** By implementing the programs below, municipalities will be able to reduce preventable accidents and exposures.

### Lessons Learned

**Do not allow passengers in the back of trucks during transport.** Industry best practice is to never allow passengers to ride in the cargo area while the vehicle is moving. Instead, secure the load in the back of the truck with appropriate equipment, as necessary. Consider creating a policy that employees must secure equipment in transit and regularly train all employees to this policy.

**Identify areas of improvement at the supervisory level.** This incident is partially the result of a lack of judgment from the on-site supervisor. Continue to train and educate supervisors on how to effectively communicate with and manage staff. Hold supervisors accountable.

**Train seasonal employees.** Seasonal employees often go through an accelerated orientation program compared to full-time staff. This, coupled limited work experience, often leads to a lack of understanding on the how's and why's of employee safety. It is important to train all staff on department policies and procedures, including the program on vehicle use.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Cyber Phishing Scam

### Background

Tax time is a period of increased computer hacking and email phishing scams due to the amount of personal and financial information being handled. Cybercriminals have increasingly targeted municipalities because they are considered high value targets that hold a significant amount of personal identifiable information that can be stolen and sold, and because they are often soft targets. A cyber phishing scam at a CIRMA member resulted in a data breach of personal information and a significant liability loss.

### Scenario

The incident occurred in February when an employee in the Finance Department received an email that appeared to be from a coworker. The email asked for the W2 forms of all employees throughout the municipality. Without verifying the identity of the coworker or the nature of the request, the employee forwarded over 1,900 W2 forms in a reply email. It was later discovered that the email request was not sent from a coworker, but by a cybercriminal posing as a coworker by “spoofing” the coworker’s email address. Once the breach was discovered, the CIRMA member notified local authorities and CIRMA’s claims department.

Damages. Once CIRMA was notified, CIRMA’s cyber liability carrier was able to begin its forensic investigation. It was discovered that, out of the over 1,900 W2 forms that were released, 98 fraudulent tax returns were filed. Under Connecticut Public Act 15-142, the employer is responsible for providing credit monitoring to all employees who have been affected by a data breach for two years following the incident. CIRMA’s cyber liability carrier was able to assist the Town in establishing this program almost immediately, which provided ease of mind to the Town and their employees. However, due to the number of fraudulent tax returns that were filed, there was a potential for \$600,000 in exposure. The claim was ultimately closed for \$72,000.

Key Recommendations. By implementing the programs outlined below, the municipality will have a better understanding on how to limit preventable accidents and minimize exposures.

### Lessons Learned

- Verify the source of E-mail requests, especially those that ask for personal identifiable information.
- Encourage staff to report all suspicious cyber activity following with the department’s internal reporting procedures.
- Contact local law enforcement and CIRMA if there is suspicion of a cyber-attack.
- Develop, implement, and provide frequent training to all staff on the municipality’s Cyber Policy.
- Provide frequent training to all employees on current and emerging cyber trends.

### Resources:

- CIRMA’s Understanding the Basics of Cyber Security Training Program
- CIRMA’s Cyber Tips & Alerts E-Publications
- CIRMA’s *Cyber Security* white paper

For more information on this topic, please contact your CIRMA Risk Management Consultant.



## Pollution

### Executive Summary

While it is impossibility to completely eliminate all risks in an operation, Public Entities have come a long way in minimizing the potential effects of owning and operating fuel tanks. Although intentions are good, there may exist inefficiencies in a system or miscommunication between parties that can lead to damages. Learning from these events allows us to almost constantly analyze and potentially change our current behaviors in an effort to mitigate future losses.

### Scenario

On December 27th, a leak was observed in the above ground diesel storage tank located at a CIRMA Member's Bus Garage. Diesel was observed to leak into a nearby brook and surrounding areas. When the leak was discovered, the Member notified CIRMA, DEEP, and Connecticut Tank Removal to begin with damage assessments, cleanup, and containment. CIRMA then informed its Master Pollution Carrier, who provides the pollution coverage, to assist with these efforts and respond to the claim.

### Investigation and Damages

The Town owns and is responsible for the fueling of the tank; however, the School District is the sole operator, as they use the tank to fuel their school bus fleet. It was undetermined if the Town or the School District was responsible for implementing and following a preventative maintenance program or spill plan, as this information had not been formally documented. Upon further investigation, it was determined that the leak had been occurring for quite some time, potentially for many months. The Town was unable to pinpoint an exact date when the leak had started due to the lack of a formalized inspection program that included testing of the tank alarm.

The Pollution Carrier accepted coverage for the first party pollution loss under the CIRMA Master Pollution policy. Due to the widespread environmental impact of this claim, it was immediately classified as a large loss with \$3 million in reserves. Ultimately, due to the excessive amount of cleanup and containment costs, the member exposure totaled \$2.6M. The Town was able to reduce their \$2.6M exposure down to \$1.6M, by having a pollution policy that paid its policy limits of \$1M towards it.

### Lessons Learned

- **Develop a Memo of Understanding (MoU).** If the Owner and Operator of the tank are separate entities (i.e. the Owner is the Town and the Operator is the School District), develop an agreement that formally identifies who is responsible for monitoring fuel deliveries, preventative maintenance, spill prevention program, subsequent repairs/cleanup, etc.
- **Spill Prevention Program.** Create and implement a spill prevention program, which may include assessments and testing, such as overflow valve testing. Elements of this program may be contracted out to a third party. The municipality's legal counsel should review all third party contracts to ensure necessary liability is appropriately transferred to the third party.
- **Engineering Controls.** Consider ensuring that the fuel tank has an alarm that will sound if a spill or leak is suspected. Also, ensure that the tank has double wall containment to reduce the likelihood that a spill will contaminate the surrounding area.
- **Training.** Train staff annually on the Spill Prevention program. Furthermore, the municipality may want to train employees on general hazard identification, how to identify warning signs of a spill, and who to report issues to.
- **Signage.** Consider posting signage near the tank that notifies individuals who to call in the event of a suspected incident.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Emotional Support Animals

### Background

Animals have long been used to provide companionship and aide to those who need it most. Throughout the past decade, this practice has expanded through various programs and, simultaneously, protections have been more clearly defined through legislation. However, not all animals are treated the same under the law. While service animals are protected under the Americans with Disabilities Act (ADA), emotional support animals are not always protected. Therefore, schools should be prepared to handle these unique exposures in order to limit potential liability.

### Scenario

On March 8th, a student arrived at school with his emotional support animal: a medium-sized male Dalmatian K9. The student entered the school and began his educational day. At approximately 9:30 am, the student was walking in the hallway and encountered another student in the hallway and they began to talk. At this time, the emotional support dog started to growl and bear its teeth at the other student. The other student asked several times if the dog was going to bite him and he assured that the dog would not bite. After several minutes, the dog lunged forward and bit the other student on the hand, causing lacerations and puncture injuries and a dislocated thumb.

### Investigation and Damages

Investigation determined that, in the student's first period, the emotional support dog was becoming agitated and barking in the classroom. The teacher asked the student to take the dog out into the hallway and try to calm the dog down. It was discovered that this was not the first time that the dog has created a disruption in class, and the technique of bringing the dog in the hallway tended to be successful in the past.

While in the hallway, the handler and dog encountered another student and the two students began speaking. At this time, the dog began to growl and bear its teeth to the other student. The handler communicated to the student that the dog would "calm down" if the student put his hand out in front of the dog's nose, which would allow the dog to sniff the student and indicate that he is not a threat. When the student did this, the dog lunged forward and bit the other student on the hand, causing significant injuries. The injuries sustained by the student resulted in medical expenses, lost days from school while recovering, missed time from his part time job, lost sports scholarship money as a result of missing high school basketball games, a development of anxieties, and a fear of dogs. The student's family retained legal counsel and ultimately filed a Notice of Intent to File Lawsuit.

At this time, the district defended their actions by stating that their Emotional Support Animals Standard Operating Procedures (SOP) indicated that the school required 24 hour advance notification before an animal will be brought into school; in this case, the handler's parents followed these procedures. However, there were no requirements for ensuring that emotional support animals have been socialized, trained, or properly vaccinated. Also, in this case, it was determined that the school principal had received several previous complaints from teachers, other parents, and students regarding this particular animal related to exposure to animal waste, aggressiveness, and disruptive behavior.

The claim was ultimately settled out of court for \$168,828; which included medical expenses, lost wages, estimated lost scholarship awards, and non-economic factors.

### Lessons Learned

- Consider reviewing and updating of Emotional Support Animal SOP to require that the animal owner provides the school district with adequate documentation including:
  - Training records
  - Copy of adequate insurance limits
  - Verification of veterinary vaccinations
  - Certificate of insurance from the animal's owner
- Consider working with the district's legal counsel and Title I and Title II coordinators to further amend the Emotional Support Animal SOP to clearly define what is to be considered an Emotional Support Animal.
- Consider requiring animal owners to sign a Hold Harmless Indemnification Agreement to protect the school district.
- Consider implementing a review process regarding received complaints about a specific animal.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Chronic Sexual Misconduct

### Background

School districts are responsible for the safety and well-being of students in their care, even during after-hour extra-curricular activities and tutoring sessions. Schools can be held liable when it is determined that they or a member/members of its faculty breach that duty of care.

### Scenario

A student was sexually assaulted by her high school history teacher during the beginning of her junior year. The teacher and the student engaged in a pattern of sexual contact, including kissing and inappropriate touching. The student stated that the sexual contact and assaults continued throughout the school year. During deposition, school staff revealed that multiple teachers and staff members knew about the relationship and abuse, however, failed to report it to the school district's leadership or to the State of Connecticut Department of Children and Families (DCF).

### Investigation and Damages

- The male teacher had been teaching at the high school for three years prior to the incident and, during this time, had developed a friendly relationship with the principal.
- In early May, a parent sent an email to the male teacher, and copied in the principal, which stated to "keep his hands off" of her daughter (**Student One**).
- The principal immediately contacted the parent of **Student One** and advised her to contact the police; however, she insisted that the police not be involved. The principal then confronted the teacher, who stated that he grabbed **Student One** by the arm in an effort to get her to stop touching him. The principal advised the teacher to be more professional, **yet no other investigation or disciplinary follow up was conducted.**
- In late May, teacher's union representative and the accused male teacher went to the principal to discuss concerns that someone was spreading a rumor around the school about a relationship between the male teacher and a female student (**Student Two**). The principal admitted that he had heard of the rumors.
- The principal then contacted the Director of Human Resources and Deputy Superintendent, who advised the principal to conduct an investigation.
- A few days later, the investigation was initiated and it was discovered that the teacher and **Student Two** had texted each other on a few occasions to discuss how **Student Two** was doing following some traumatic events that occurred in her life. Both the teacher and **Student Two** denied any misconduct.
- As a result of this investigation, **no disciplinary action was taken**; however, the teacher was advised that he should change his cell phone number and refrain from giving his personal number out to students.
- Later that month, a third female student (**Student Three**) met with the principal and reported that she was concerned because one of her friends alleged that she had been kissing the male teacher.
- The principal told **Student Three** that she was basing her claim on hearsay and additional evidence needed to be provided before he acted on a potential rumor.
- In June, **Student Three** became so concerned about her friend's relationship with the teacher that she contacted the vice principal as well and told him what she reported to the principal the month prior.
- The next week, a gym teacher and history department chair reported to the vice principal that they had disturbing information regarding the male teacher and **Student Two**, specifically regarding rumors of an inappropriate relationship between the two parties. The gym teacher admitted to not reporting the incident in a timely manner due to fears of being wrong.
- Following the vice principal's meeting with the gym teacher and history department chair, he spoke with the Superintendent and Assistant Superintendent to advise them of the situation. These individuals consulted with the district's legal counsel, who advised them that they need not make a report to DCF and could wait until the following Monday to investigate the rumor further.
- Over the weekend, the police were notified by the gym teacher and history department chair. The local Police Department commenced their investigation.

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- The School Board refrained from any further investigation on their part so as to not taint the police investigation.
- During the police investigation, **Student Two** admitted that she had kissed the teacher multiple times during the school day and in the classroom. **Student Two's** old cell phone was found and voluntarily given to the police. On the phone, police found multiple inappropriate text messages sent by the male teacher.
- After about a two-week police investigation, law enforcement applied for and was granted a warrant for the arrest of the male teacher.
- The teacher ultimately pled no contest to two charges, for which he was sentenced to two years' probation and two years suspended sentence. He was also required to register as a sex offender, surrender his teaching license, and undergo psychiatric evaluation and treatment.
- The principal clearly erred in not investigating the possibility of an inappropriate relationship between the male teacher and **Student Two** when the incidents were first reported to him.
- There was a 30-day period that passed from when **Student Two** reported the second alleged incident to the Principal and when the school actually started their internal investigation. As part of civil proceedings initiated by the victims' families against the school district, **CIRMA was responsible for paying a claim that ultimately settled for \$400,000.**

## Lessons Learned

- Establish and communicate policies and protocols to all staff on a regular basis on the importance of reporting suspected misconduct or allegations of misconduct.
- Establish and communicate a Code of Professional Responsibility to all staff, including:
  - A staff Code of Ethics
  - An Administration Code of Ethics
  - A policy on Student & Staff Relations
- Educate staff on the parallel investigation protocol that incorporates internal (district) and external (law enforcement and DCF) parties.
- Provide staff with required Mandated Reporter Training as required by Connecticut General Statute 17(a)-101.
- Create and promote a culture where misconduct and inappropriate relationships are not acceptable.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## School Trip Abroad

### Background

Students learn in a number of ways; school field trips are useful tools that allow young people to develop hands-on experience and learn outside of a traditional classroom setting. They can also ignite a student's passion for learning that they may not have had the inspiration for in the classroom. However, school trips provide unique exposures that may not be as commonly experienced in the classroom and, thus, additional planning may be required.

### Scenario

- On the last night of a school trip abroad, students were attending a dance that the program had arranged for them. The event was held at an outdoor facility on the campus of the University where the students were lodging.
- The dance was attended by all 23 students and 3 chaperones. During the event, claimant was dancing barefoot on the dance floor with a chaperone located "approximately 10 feet away."
- Claimant stepped on a shard of glass. Investigation was unable to determine how the glass got on the dance floor or for how long the glass was there.
- The chaperone who observed the incident instructed two nearby students to grab paper towels from the bathroom and to notify the lead teacher. One student returned within a minute with paper towels from the bathroom; the lead teacher arrived about 4 minutes later.
- After approximately 25 minutes, the lead teacher determined that the student should be brought to the infirmary at the University. Claimant, the lead teacher, and another student arrived at the infirmary approximately 35 minutes after the incident.
- The nurse on staff at the infirmary cleaned the wound and applied 2 butterfly band aids to the laceration. Claimant was released from the infirmary that night; however, **claimant's parents were not notified of the incident.**
- Claimant woke up in extreme pain in the middle of the night, when it was identified that the wound had reopened. The lead teacher was notified, who then escorted the claimant to the nearby hospital.
- At the hospital, it was determined that the laceration required 14 stitches. Claimant was discharged early that morning; however, **claimant's parents were not notified of the incident.**
- During the flight home later that day, the student continuously complained about significant pain and discomfort in her foot and shin area. There was swelling and noticeable bruising in this area.
- Upon landing, EMS was notified and responded. EMS recommended transporting claimant to the local hospital.
- The Emergency Room doctor found that the student had developed a blood clot that was lodged in a main vein in her lower leg.
- School administration notified the claimant's parents of what was happening approximately 2 hours after the claimant was admitted into the emergency room.

### Liability Assessment

Total expenses for the incident, which included multiple hospital visits, medical procedures and treatments, equaled \$17,375. In addition to the direct costs associated with this claim, the claimant's parents also alleged that the school violated its responsibility of attempting to notify the parents of the incident. The parents ultimately decided not to file a notice of intent to sue against the district. Instead, the parents made the decision to enroll their child in a private school within town for the remainder of the student's high school career.

### Lessons Learned

- **Emergency Action Plan:** Develop an Emergency Action Plan that addresses what to do in emergency situations, resources available during the trip (such as local hospitals/infirmarys), best practice of transporting students during emergency situations, process for notifying parents/guardians, etc.
- **Chaperone Program:** Develop a training protocol that chaperones would be required to take before going on a school trip. This training can include the rules of the trip and the Emergency Action Plan.

Ensure that the chaperone-to-student ratio is sufficient for the trip. Schools should keep in mind that this ratio may change if a chaperone must escort a student/students away from the group in an emergency situation.

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- Notification: Notify the student's emergency contact, as indicated in the child's Emergency Information Card, as soon as possible following a medical event or emergency situation. Inform parents / guardians of this process beforehand and ensure that chaperones understand these expectations.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Student Mental Health

### Background

Educators are continuing to recognize the impact that a student's mental health has on learning and achievement, as well as the importance of understanding a student's home- and school-life. The National Association of School Psychologists (NASP) subscribes to this more highly accepted concept; specifically, mentally healthy children are more successful and that a focus on student mental health supports the mission of schools: learning.

### Scenario

Late in the school year, tragedy struck a Connecticut High School when a student, a gay 17-year-old male athlete, committed suicide at his home. The student was beloved by many in the school community, as he had been in the district since moving to Connecticut in the first grade and was well-known. The student had mostly maintained grades of As and Bs, until his grades began to decline into the high-D to mid-C range in the second half of his senior year. The student had never been disciplined in his high school career. The student was a former member of the school track and field team, staying on the team between freshman year, until he quit the team in the middle of his senior season. He stated that his father lost his job, and therefore, needed to get a job to help his family which prevented him from spending time participating in extracurricular school activities. The student had previously been in a long-term relationship with another boy, who moved out-of-state at the conclusion of their junior year. This relationship ended near the end of the fall semester, as friends of the student cited difficulties in the long-distance relationship. Staff was made aware of this by the student and the student's friends before the incident.

During the summer following the student's death, the student's parents filed a notice of intent to sue the district and the high school. The parents alleged negligence by the school, the district, and school staff. The suit alleged deficiencies in the district's Suicide Prevention Program caused the school to not identify the student as at risk through the district's Suicide Prevention Policy, failure to train staff on the warning signs of suicide, and failure to protect the student.

### Liability Assessment

The investigation found that there were several precipitating events and actions of which staff was made aware before April (listed below).

The district has a policy for Youth Suicide Prevention and Youth Suicide Attempts, in accordance with Connecticut General Statutes (CGS) Section 10-221. In this policy, the school contains a list of possible risk factors for suicide. Discovery found that the following factors were explicitly mentioned in the district's Suicide Prevention Policy as possible suicide risk factors, and staff was aware that these factors were present in the student prior to the incident date:

- **Periods of unusual family stress**
  - Student's father had been recently laid off from his job
- **Loss of significant relationship**
  - Breaking up with his boyfriend of four years
- **History of alcoholism in immediate family**
  - Student's father suffered from alcoholism and was receiving treatment
- **Sexuality conflicts**
  - Student was part of the gay community, which has a higher-rate of suicide than heterosexual youths
- **Academic problems**
  - Student's grades were declining throughout his senior year
- **Fear of major change in life**
  - Impending graduation

Furthermore, during the student's senior year, he began writing in essays and homework assignments increasingly vague and disturbing texts. In one instance, the student wrote the following in a personal essay in his creative writing class,

*"I have many flaws that will eventually be the end of me. The tragedy that might be the end of me, like selfishness or other things like that. Riding around being selfish and not thinking of others. I'm scared for myself that I might do something actually harmful for others. I really messed up. There's no way I'm gonna finish."*

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## Liability Assessment - *continued*

The student received a high grade on the assignment, with the teacher's comment stating that the student "really captured the essence of" his character. The teacher who graded the assignment, when asked about possible warning signs of suicide and the district's policy, stated that she did not take this as a warning sign and that she was "relatively unfamiliar" with the district's policy. The student's parents were unaware of this assignment.

The district defended its efforts by providing training records that satisfy CGS 10-220a(a) and curriculum records that satisfy CGS 10-16b.

Following months of discovery, the school district settled the lawsuit out of court with a No Admission of Fault or Liability clause for **\$525,000**.

- Continue to educate staff (**CGS 10-220a(a)**) and students (**CGS 10-16b**) on the prevention of and response to youth suicide. Training can include:
  - Possible warning signs and red flag indicators of thoughts of suicide, *and*
  - The district's Suicide Prevention Policy;
- Consider establishing a Student Assistance Program aimed at identifying at-risk students and communicating possible treatment methods;
- Due to the fact that adolescents are vulnerable to suicide contagion, consider the following immediately after an incident:
  - Notify the school community in an appropriate manner with respect to the family and friends of the deceased student. It may be appropriate to notify staff and immediate friends of the deceased first,
  - Offer emotional assistance to staff and students as soon as possible,
  - Allow the school community time to process the information and the opportunity grieve and talk about their emotions,
  - Utilize the "*After a Suicide: A Toolkit for Schools - 2nd Edition*" document, or contact the National Association of School Psychologists (NASP) for further assistance.

For more information on this topic, please contact your CIRMA Risk Management Consultant.



## Student Head Injuries - Concussions

### Background

A self-reported study published in 2018 by the Centers for Disease Control and Prevention (CDC) estimated that 15% of high school students reported having at least one concussion within 12 months of taking the survey.<sup>1</sup> While most accidents cannot always be avoided, school districts have a duty of care to do everything reasonably possible to protect their students from foreseeable harm, injury or death.

### Scenario

In 2016, a precedent court case was decided holding a school district liable for the injuries sustained by a seventh-grade student while playing field hockey during a physical education (PE) class. The court found that the PE teacher, who was also the school's football coach, fell below the standard of care as the student lacked both the experience and the proper instruction to play this particular sport.

The student sued the school district for negligently failing to progressively teach and coach him in the necessary skills to play field hockey. In doing so, the student argued that the school exposed him to being struck in the face by another student's stick during the course of a game, causing him to fall to the ground and strike his head resulting in a concussion.

The school district argued that it had met the necessary standard of care in instructing and supervising the student during his scheduled PE class. In addition, the school district also argued that even if the teacher did fall below the standard of care, the student's level of dysfunction were not caused by the accident but were a combination of pre-existing conditions. The courts dismissed this claim and ultimately ruled in favor of the plaintiff.

### Investigation

The seventh-grade student had a history of chronic absenteeism. He had missed over one-third of the school year at the time of the incident. In particular, the student had missed the entire three-week long field hockey educational rotation. Despite missing three weeks of instruction, the PE teacher encouraged the student to join the class and participate in the day's activities. The teacher later stated in his deposition that he thought this would be a good opportunity for the student to participate in the PE class and would help the student obtain a passing grade for the school year.

Prior to this incident, the student had no field hockey experience. The student did, however, have a background in ice and floor hockey. At trial, several experts for both the defense and plaintiff testified to whether having a background in any hockey-type sport would have provided enough knowledge of the basic set of skills the student would have needed to play field hockey. **The court found that the student did not have the basic requisite skills to play field hockey.**

On the date of the incident, the PE teacher divided the students into four relatively equal teams. Prior to the start of the "round-robin" tournament, the teacher reminded the students about the four basic rules of the game:

1. Not using the back of the stick;
2. Not using their feet;
3. Not lifting the sticks above their knees; *and*
4. Not checking from behind.

When the tournament commenced, there were two games played at the same time. Being the only teacher for the class, the PE teacher assumed a position in the middle of the gym to supervise the two games. During one of the games, one student had a breakaway towards the goal, and the plaintiff student began to give chase. As he got close enough to the other student, he attempted to check her from behind – this was a violation of the fourth basic rule of the game. As the plaintiff engaged in the back check, the other student swung her stick and struck the plaintiff in the face and head. The plaintiff immediately fell to the ground and was observed to have a small amount of blood coming from his nose.

The PE teacher did not notice what happened until another student approached him and pointed in the direction of the plaintiff. At this time, the teacher approached the plaintiff and began assessing him. The teacher later testified that the student seemed to be "out of it" for a few seconds but recovered after few minutes. The plaintiff was told to sit on the first row of the bleachers

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<sup>1</sup> [https://www.cdc.gov/mmwr/volumes/67/wr/mm6724a3.htm#:~:text=Overall%2C%209.1%25%20of%20high%20school,the%20survey%20\(Table%201\).](https://www.cdc.gov/mmwr/volumes/67/wr/mm6724a3.htm#:~:text=Overall%2C%209.1%25%20of%20high%20school,the%20survey%20(Table%201).)

## Investigation - *continued*

until he felt well enough to participate. The teacher then returned to the middle of the gym and resumed the two games. After about 5 minutes the plaintiff approached the teacher in the middle of the gym floor and explained that, while he had a minor headache, he wanted to keep playing. The PE teacher allowed the plaintiff to continue to participate until the end of the class. The student was never sent to the nurse and no incident report was ever filed by the teacher.

After school, the student went home and complained to his parents that he was having weakness and had a bad headache. A short time later, the student began vomiting. This prompted his parents to bring the plaintiff to the emergency room, where the plaintiff explained to his parents and doctor what occurred at school that day. He was subsequently diagnosed with a concussion, facial abrasion, and a fractured nose.

## Liability Assessment

The court found that the actions of the PE teacher were unreasonable in that the PE teacher failed to “progressively train and coach” the student in field hockey and, as a result, the school district was liable for the student’s injuries. The court also held that, based on the statements made by the PE teacher and other student witnesses, the teacher was not able to adequately supervise two field hockey games concurrently and, in doing so, did not provide the proper supervision to prevent the injury from occurring. Additionally, since the teacher was the school’s football coach, he should have been knowledgeable of the signs of concussions and notified the school nurse and/or the plaintiff’s parents based on the school’s policy regarding student head injuries.

The jury in this case awarded \$1,365,000 in damages, which included \$1,000,000 for future loss of income earning capacity, \$65,000 for future medical and physiological costs and \$300,000 for the parents’ lost wages.

## Lessons Learned

- Effectively Communicate Safety Standards. Students should participate in the classroom in a progressive way that ensures they understand the safety standards of the activity, game or sport to safely participate in the activity. In the event these building block skills are lacking, the teacher should not allow the student to participate. This decision shows that even when the student is at risk of failing the class that will result in not being promoted to the next grade, safety is the paramount consideration when it comes to participation in PE class.
- All teachers should follow their current district’s policies regarding head injuries. This may include contacting the nurse and notifying the students’ parents.
- Communicate the responsibility of all staff to follow protocols in accordance with their level of training and district policies. The courts found that the Physical Education teacher owed the students a high duty of care based on his certification as a coach, and the subsequent training he received to identify the signs of a concussion. The teacher’s failure to assess the student based on his knowledge and level training was outside of what a reasonable person in the same situation would have done, thus placing the student at risk and may have increased the severity of the student’s injuries.
- Ensure that plans for supervision of the physical activity is part of all lesson plans. While the degree of supervision is dependent upon the situation, physical activity planning should include how the educator will monitor the actions of the students.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Bullying and First Amendment Rights

### Background

Bullying on school property is unfortunately not a new occurrence. Furthermore, bullying through online platforms involving students is an additional exposure that Connecticut school districts have focused additional attention on in recent years. A 2020 report by the National Center for Education Statistics (NCES) estimated that 15% of public schools experience a cyber-bullying incident at least once a week.<sup>1</sup>

### Scenario

All students involved were part of a high school hockey team at the Hopkinton Public School District in Massachusetts. On February 4<sup>th</sup>, 2019, Student A alleged that other members of the hockey team (Students B thru I, or 8 students in total) had been bullying Student A repeatedly. The bullying incidents alleged by Student A included exclusions from “team events” and the taking of videos without Student A’s consent that would then be distributed in a Snapchat group containing Students B thru I. To provide further context, the following was alleged by Student A:

- Sneaking photos and videos of Student A on the bus and at team spaghetti dinners,
- Sharing these photos and videos of him on Snapchat with lewd and vulgar captions, often times homophobic in nature, *and*
- Whispering about him in his presence.

While Students H and I did not directly take the videos of Student A, Students H and I were part of the Snapchat group where the videos were circulated.

Two assistant principals at Hopkinton investigated the allegations, and all interviews for the investigation were conducted between February 4<sup>th</sup> and 6<sup>th</sup>. The contacting of the parents of the investigation targets occurred on the night of February 4<sup>th</sup>. Part of this investigation involved obtaining one of the student’s cell phones to access the Snapchat group where the videos were shared. School staff was able to view and preserve the messages on the platform that had not been automatically deleted. The Snapchat screenshots showed extremely derogatory comments by three of the students regarding Student A’s appearance, voice, and play on the ice. It was discovered that Students H and I both discussed Student A in the Snapchat group, though to a lesser extent.

While speaking to the assistant principals, members of the team said the purpose of taking photos and videos of Student A was “for laughs” and that much of the content of the Snapchat group did not involve him. While several members of the group stated that they did not realize Student A felt excluded, two students stated “we pick on [Student A]” and that he was “targeted,” respectively.

Hopkinton has adopted an internal Bullying Prevention and Intervention Policy and abides by a district-wide Bullying Prevention and Intervention Plan. Part of the school’s policy includes language defining that an “Aggressor/Perpetrator” is someone “who engages in behavior defined as bullying, cyber-bullying, or retaliation.” Furthermore, the policy notes that cyber-bullying can “include the distribution by electronic means of a communication... if the distribution or posting creates any of the conditions enumerated in the definition of bullying.”

The two assistant principals concluded, as a result of their investigation, that all eight students (Students B thru I) had engaged in “bullying” as defined by school policy and the applicable Massachusetts law. They found that “the purpose was to make fun of [Student A],” and that such “conduct caused emotional harm to [Student A], created a hostile environment for him during school sponsored events and activities and infringed on his rights at school.” Additionally, they found that the Snapchat group included:

- a) Photos of [Student A] taken without his consent
- b) Videos of [Student A] taken and posted without his consent
- c) Photos of [Student A’s] parents with disparaging comments on their appearance
- d) Disparaging comments regarding [Student A’s] appearance, voice, and anatomy
- e) Attempts to get [Student A] to say inappropriate statements and record him doing this

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<sup>1</sup> [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_230.65.asp](https://nces.ed.gov/programs/digest/d19/tables/dt19_230.65.asp)

As a result of the bullying investigation, all eight members of the Snapchat group were suspended from the hockey team for the remainder of the 2018-2019 season. The school principal held individualized suspension hearings for the eight students in February 2019, issuing Student H a three-day suspension and Student I a five-day suspension. The other students received suspensions of one to five days. Later that year, Student I lost his position in the National Honor Society as a result of his disciplinary record.

After the investigation, Student A received support from the school's Student Therapeutic Academy Resource Team (START), declined to try out for another sports team in the spring, and entered formal mental health treatment. He departed Hopkinton at the end of the 2018-2019 academic year to attend school in Canada.

The parents of Students H and Student I filed a notice of intent to sue Hopkinton District School and its administrators, alleging that they violated their sons' First Amendment Rights to Free Speech under state and federal law. Per the case report, *Doe v. Hopkinton Pub. Sch.* (Massachusetts) "is a case about the limits of a school's ability to discipline bullying" and "is not a case about whether a school's decision to discipline two students" who were engaged in bullying was proportional or fair.

## Court Ruling

The court ruled in favor of Hopkinton Public School. The following was highlighted in the case conclusion:

*"This Court recognizes that [Students H and I] feel their punishment is unjust. Undoubtedly, their involvement in [Student A's] bullying was minimal compared to the other students in the [Snapchat group]. Nevertheless, school officials have broad discretion to protect students from bullying, and if in the course of their investigations they sometimes draw in students at the periphery of the group, that does not mean they have violated those student's constitutional rights. In this case, a reasonable official could have found the members of the [Snapchat group] had invaded [Student A's] rights through their collective bullying. As members of that group, who encouraged the other members, [Students H and I] were appropriately subject to discipline.*

*"For these reasons, and because the Massachusetts bullying laws are neither so overbroad nor so vague as to require this Court to find them unconstitutional, the Students' prayer for relief is DENIED and judgement on the case stated enters for the School."*

Furthermore, the court ruled, "[Speech] may be regulated only if it would substantially disrupt school operations or interfere with the right of others."

## Lessons Learned

**Bullying Policy.** Consider reviewing and revising the school's bullying policy in accordance with Public Act 11-232 to ensure that it is current. Aspects of particular interest include references to cyber-bullying.

**Acceptable Use of Networks.** Create or update the school's policy on acceptable use of school equipment, network and technologies, including software that may assist in distance learning (e.g. Google Classroom).

**Staff Training.** Continue to communicate the responsibility of all staff to follow protocols in accordance with the school's bullying policy, in accordance with Public Act 11-232.

**Community Engagement.** Communicate appropriate school policies, such as those related to bullying prevention and acceptable use of network, to students and parents / guardians.

For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Remote Learning Technology Liability

### Background

The FBI has seen a rise in attempts by cyber predators to target children since the start of the pandemic. According to the FBI's Crimes Against Children and Human Trafficking Task Force, "These individuals are well aware that kids are spending more time on their devices and computers right now and see it as a target-rich environment to exploit." As schools continue to distribute technology to allow students to learn remotely, staff must also develop and implement plans to monitor student activity on school-owned equipment.

### Scenario

The incident involved a female middle school student (Victim) attending the Collingswood Public School District (NJ). Victim (12-years old) was provided and used a school-issued laptop to assist with completing class assignments, homework and other projects. The school-issued computer did not have proper limitations or controls installed by the school which should have prevented the victim from accessing unauthorized or inappropriate sites or from preventing outside third parties from contacting the victim.

The 23-year old assailant, a Florida resident, contacted the victim through a search engine known as "Discord," where he had created an anime page for fans some time during the 2017-18 school year. The assailant and the victim communicated with each other every day. The assailant regularly urged the victim to provide him with "sexually provocative images of herself" and repeatedly expressed a desire to enter into a sexual relationship. After frequent online chats, the assailant told the victim he was traveling to New Jersey and wanted to meet with her and that if she would not meet with him, he would hurt himself.

After manipulating and coercing the victim, the assailant met the victim on March 29, 2019 in a local park. At this time, the assailant kidnapped the victim and took her on public transportation to a hotel in Philadelphia, where he sexually assaulted her over the course of 36 hours. After not returning home for the evening, the victim's parents contacted local law enforcement and reported her missing.

After an extensive search and with the cooperation of several public and private partners, law enforcement was able to "track" the victim's cell phone to the hotel where the victim was being assaulted. Law enforcement responded to the hotel, rescued the victim and transported her to a local hospital where she was cared for and reunited with her parents. The assailant was arrested and charged. Assailant later pleaded guilty to all charges and sentenced to 15 years in prison. As part of the sentencing order, the assailant will be required to be supervised by the court system and law enforcement for life, according to the documents released.

### Damages

The parents of the victim brought forward a lawsuit against the school district alleging:

- The district failed to limit or monitor students' usage of school-issued computers.
- The school-issued computer did not have the "proper limitations or control" installed to prevent students from accessing unauthorized or inappropriate websites and that it failed to prevent third parties from contacting students.
- The district failed to have safety policies that address e-mail and chatrooms and failed to adopt county, state or federal internet safety protocols.
- That a guidance counselor at the school was aware of the student's contact with the assailant and never notified the parents or called the police.
- That school district officials ignored their requests to see their daughter's online browser history before she was kidnapped, attacked, or assaulted.

On the advice of the district's legal counsel, the school district entered into a settlement with the victim and her parents resolving all allegations against the school district, the school board and the guidance counselor for \$950,000, in addition to compensating the victim and her family for legal fees. The district agreed to pay the settlement in the following manner:

- \$650,000 in structured payments to the victim
- \$300,000 to her parents for emotional distress

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## Lessons Learned

**Implement a District Internet Security Policy.** Set all school-owned technology to block inappropriate sites, unauthorized chat rooms, and unauthorized social media platforms. Limit the ability for third parties to communicate with students on district-owned devices.

**Implement a District Internet Monitoring Protocol.** Establish the ability to monitor sites visited by students when using school-issued devices remotely. This may include notifying teachers, administration or IT personnel when inappropriate content, sites or platforms are visited by those using the device.

**Update Device Security Settings.** Ensure that school-owned devices' privacy settings are set to the strictest level possible for online usage. Students should not have administrator access and should not be able to change security settings.

**Develop a Technology Use Agreement.** Require parents and guardians to sign and return the agreement prior to the device being issued to the student. The agreement should inform and educate them on the device settings, security, and expected use behaviors of the user (students). Parents and guardians should be expected to sign the technology use agreement understanding the protections that the school district has in place, their expected roles, and consequences for not enforcing the expected use policy.

**Enforce Mandated Reporting Laws.** Ensure that all staff are properly trained, as required by state law, on their role as a mandated reporter, reporting requirements, and the district's internal reporting protocols. Implement consequences and discipline in accordance with current collective bargaining agreements of those identified as mandated reporters who do not follow state law and/or district policy.

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For more information on this topic, please contact your CIRMA Risk Management Consultant.

## General Housekeeping

### Background

One of the leading causes of work-related injuries in schools occurs during routine housekeeping, such as setting up and taking down classrooms, opening and closing windows, and waxing or washing the floors. Many CIRMA-member school districts see a spike in claim reporting and the severity of Workers' Compensation claims during the spring and summer months; often times, these claims are avoidable.

### Employee Demographics

<b>Age:</b>	75 year old
<b>Occupation:</b>	Part-time custodian with the school district
<b>Tenure:</b>	Employed by the school district for 13 years
<b>Biology Notes:</b>	Right handed
<b>Medical Notes:</b>	Recently returned to work after having right hip replacement surgery

### Incident Description

- Incident occurred in May 2017 on the first floor of a CIRMA-member school district middle school.
- Part of the injured employee's job responsibilities include making sure all doors and windows are shut and locked.
- On the date of the incident, the employee observed a high window that was open and needed to be closed.
- The employee pulled over a nearby Director's chair. A Director's chair is one with a cloth back and seat.
- The employee climbed up on the chair, placing both knees on the seat of the chair. The employee reached up, closed and locked the window.
- While the employee was descending off of the Director's chair, the chair tipped and fell, causing the employee to fall backwards and land to the right with the chair.
- The tipped chair caused the employee to strike the right side of his head on the chair, and he proceeded to fall to the ground onto his right arm, right shoulder, and right hip.
- While still on the ground, the employee called over to a coworker who was within earshot but who could not see the incident. The employee asked the coworker to finish closing and locking the windows while the injured employee was getting up off of the ground.
- The injured employee stayed at work and finished the shift. The injured employee did not notify a supervisor of the fall on the date of the incident.
- The next day, the injured employee returned to work complaining of arm, hip and leg pain (all right side). The injured employee was displaying a noticeable limp and had multiple abrasions on his head, arm, and leg.
- The injured employee reported what had happened the day earlier to his supervisor, who then engaged the school nurse to fill out the necessary work-related injury paperwork, per the school district's protocol. The school nurse immediately instructed the injured employee to seek a medical evaluation.

### Damages

The injured employee went to Occupational Health, per the school nurse's instructions. The employee had x-rays of his right shoulder and right hip as well as a CT scan of the head. Subsequently, a bone scan was ordered.

It was determined that the employee experienced a fracture of the right calcar region (right femur); thus, in August 2017, the injured employee underwent aspiration of the right hip. In September 2017, the injured employee underwent removal of the right total hip replacement and replacement of an antibiotic spacer, as a result of his development of MRSA. On the day following the September 2017 surgery, the injured employee experienced a stroke.

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CIRMA is 100% responsible for this work-related injury and subsequent diagnoses causally related to the initial work-related injury. All in all, the total direct cost of this claim, including medical expenses, equaled \$160,000.

## Lessons Learned

**Hazard Identification.** “One of the ‘root causes’ of workplace injuries, illnesses, and incidents is the failure to identify or recognize hazards that are present, or that could have been anticipated.”<sup>1</sup> Employers should have accurate and current Job Hazard Assessments completed, indicating risks and mitigation efforts, such as proper equipment, policies, procedures, and staff training.

**Regular and Ongoing Training.** Ensure that staff is appropriately trained on the equipment and techniques required to perform their duties. In many cases, this is accomplished by regular and ongoing training, rather than a “one and done” training session. For tasks that require a ladder, ensure that staff is trained on ladder safety (*reference OSHA 29 CFR 1910.23*).

**Incident Reporting.** Failure to report an employee injury promptly can have downstream financial implications and reduce employee morale. Regularly communicate to staff to report Workers’ Compensation claims immediately, even when the employee believes no medical treatment is required.

<sup>1</sup> <https://www.osha.gov/safety-management/hazard-identification>

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For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Progressive Discipline Comparative Analysis

### Objective

The objective of this risk management review is to analyze recent national court decisions involving families suing their child's school districts for failure to adequately supervise and protect their child. This will allow the School District Advisory Committee to develop specific risk management best practices, products and services to either prevent or mitigate future losses for Connecticut school districts based on lessons learned.

### Descriptions of Dextraze v. Bernard<sup>1</sup> and Gambrill v. Bd. Of Educ. Of Dorchester Cnty<sup>2</sup>

Incident	Dextraze v. Bernard	Resulting School District Action	Gambrill v. Bd. Of Educ. Of Dorchester Cnty	Resulting School District Action
1	Between October 2020 and January 2011, Student A was the aggressor in a "number instances of misbehavior, including conduct that violated the school's sexual harassment and anti-bullying policies."	Student A received no progressive punishment beyond detention.	On October 25 <sup>th</sup> , S. was attacked by two students while in class with a substitute teacher. The attack resulted in a concussion to S. and, during this time, S. also told school administrators that she was having issues with two other students as well.	The school completed a Student Behavior Report for each of the two aggressors in the attack, ultimately resulting in in-school suspensions. School administration also met with S. and her parents to change S.'s schedule to minimize contact with the students S. identified.
2	In January 2011, another complaint was filed against Student A.	Student A received a suspension from school.	In late November, one of the violent aggressors of the October 25 <sup>th</sup> attack "walked out in the hall without permission to verbally attack [S.] who was standing in line across the hall ... saying, 'come on and fight me' and other inappropriate words."	School administration again issued the student an in-school suspension and also arranged for external mediation between S. and the student, at which both students' mothers were present.
3	In April 2011, Student A was exhibiting significant behavioral problems, including involvement in a fight during this month.	No behavioral plan was developed for Student A.	In mid-December, another student grabbed S. by the neck and flipped her backwards. S. struck her head on a table, resulting in another concussion.	This happened under the supervision of another substitute teacher who, according to S.'s family's complaint, "ignored it because [he] was complaining of a headache."
4	In November 2011, Student A pushed a student in the hallway.	Student A received a three-day suspension.	When S. returned to school on December 19 <sup>th</sup> , she yelled at the student from the previous incident and "ran up and punched [the student] in the face."	School administration completed behavior reports for both students and issued each a two-day out of school suspension. On December 20 <sup>th</sup> , S.'s parents notified the Board of Education of their concerns regarding S.'s safety at school. To ensure S.'s safety going forward, the administration (1) issued S. a "flash pass" that she could use to immediately go to guidance or administration if she felt a conflict may escalate; (2) changed her locker location upon the parents' request; (3) changed her schedule as requested; and (4) continued to pursue external mediation as a possible solution.
5	January 2012, Student A assaulted Student B in the hallway, breaking Student B's jaw in two places and dislocating his teeth.	The school referred Student A to support services in the form of a school psychologist.	On January 17 <sup>th</sup> , another student reported that S. threatened to fight her and bumped into her on purpose.	School administration spoke to both students and issued a school-based "cease and desist."
6			On January 23 <sup>rd</sup> , nurse's records indicate that another student hit S.	Unknown.
7			On January 25 <sup>th</sup> , S. was sent to the school nurse after eating lip balm and hand sanitizer. S. claimed that students dared her, but the teacher who sent S. to the nurse said that she "didn't believe anyone dared [S.]. I believe [S.] did this all on her own to get attention. [S.] was causing a major disruption, and unfortunately, she was enjoying every bit of it."	None.

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<sup>1</sup> Dextraze v. Bernard, [https://casetext.com/case/dextraze-v-bernard?q=Dextraze%20v.%20Bernard&PHONE\\_NUMBER\\_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=&resultsNav=false](https://casetext.com/case/dextraze-v-bernard?q=Dextraze%20v.%20Bernard&PHONE_NUMBER_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=&resultsNav=false)

<sup>2</sup> Gambrill v. Bd. Of Educ. Of Dorchester Cnty., [https://casetext.com/case/gambrill-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrill%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE\\_NUMBER\\_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=](https://casetext.com/case/gambrill-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrill%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE_NUMBER_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=)



## Descriptions of Dextraze v. Bernard and Gambrill v. Bd. Of Educ. Of Dorchester Cnty - *continued*

Incident	Dextraze v. Bernard	Resulting School District Action	Gambrill v. Bd. Of Educ. Of Dorchester Cnty	Resulting School District Action
8			On February 3 <sup>rd</sup> , S. went to the nurse after an altercation with the same student who instigated <b>Incident 3</b> . S.'s parents allege that no one notified them of this incident and, later on February 3 <sup>rd</sup> , S.'s father sent an email to the district expressing his disappointment.	The district responded to S.'s father's email saying, "[School administration] is still conducting the investigation ... At the same time, I have also talked to a couple of students and there was 'no creditable evidence' of any assault on the student." School administration's investigation then concluded that no teachers had witnessed the alleged incident.
9			Later in February, a student smashed a cupcake on S.'s face after S. was following her and others around, calling them names.	School administration issued the student an in-school suspension.
10			On May 8 <sup>th</sup> , the student from <b>Incident 2</b> ran out of her classroom, attacked S., and a full-blown fistfight ensued.	The student was suspended with a recommendation of expulsion, and law enforcement was notified.

Key Factors and other notable information Case #1

Key Factors and other notable information Case 2

## Comparative Analysis

The On May 10th, S.'s parents filed a five-count Complaint with the Circuit Court, alleging:

1. Violation of S.'s State constitutional right to a "thorough and efficient" education.
2. Violation of S.'s State constitutional right to due process.
3. Pattern of improper conduct.
4. Negligent hiring, training, retention and supervision.
5. General negligence against the teachers and their employer.

Counts 1 and 3 were voluntarily dismissed by the parents; the Circuit Court granted summary judgment as to the remaining counts, citing the Paul D. Coverdell Teacher Liability Protection Act of 2001.

The two scenarios discussed in this risk management review exhibit a dichotomy of approaches that school staff took to appropriately maintain order and discipline students for their behavior. The courts found that the school district in Scenario 1 had prior knowledge of the "poor conduct" of Student A, failed to adequately supervise him and intervene in a timely manner, and that this failure to supervise constituted a proximate cause of the subsequent assault.

Conversely, the school district in Scenario 2 were determined to take reasonable steps to increase supervision of S. and the other students involved in the ongoing harassing conduct and progressively disciplined the parties involved.

The Paul D. Coverdell Teacher Liability Protection Act of 2001, cited in Scenario 2, provides that no teacher in a school shall be liable for harm caused by an act or omission on behalf of the school if the teacher was acting within the scope of employment or responsibilities relating to providing educational services, subject to specified requirements and exceptions. This also limits punitive damages and liability for non-economic loss.<sup>3</sup>

The ruling in Scenario 2 explained that "the purpose of [the Paul D. Coverdell Teacher Liability Protection Act of 2001] is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment ... No reasonable jury could conclude that the Defendants were negligent in supervising [S.] and other students ... [N]o reasonable jury could find that the ... defendant ... breached [its] duty to protect her from foreseeable harm."<sup>4</sup>

## Key Recommendations/Action Item

CIRMA Risk Management is seeking feedback from the School District Advisory Committee on the two scenarios presented, as well as on recommendations and best practices that Connecticut school districts can utilize to manage their liability. Following the meeting, any additional thoughts or comments should be directed to Ian Havens at [ihavens@ccm-ct.org](mailto:ihavens@ccm-ct.org).

For more information on this topic, please contact your CIRMA Risk Management Consultant.

<sup>1</sup> <https://www.congress.gov/bill/107th-congress/senate-bill/316>

<sup>2</sup> Gambrill v. Bd. Of Educ. Of Dorchester Cnty., [https://casetext.com/case/gambrill-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrill%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE\\_NUMBER\\_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=](https://casetext.com/case/gambrill-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrill%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE_NUMBER_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=)



## Waivers of Subrogation - Restroom Renovation Project

### Objectives

The objectives of this large loss claim review are to:

- Examine a CIRMA property loss resulting from a waiver of subrogation;
- Discuss CIRMA's contract review deliverable; and
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

### Incident Background

The member entered into a contract with a third-party contractor; a plumbing company, to complete renovations of several restrooms and shower areas within the high school. After completing work on the date of the loss, one of the bathroom's newly installed supply lines became disconnected and caused water to flow freely overnight. While the morning custodial staff conducted their daily walk through they noticed significant water present over the gym floor. Once the source of the water leak was identified and turned off they began trying to dry out the gym floor. After several hours it was observed that the gym floor had significant bowing, curling, and warping; making the gym unusable.



### Investigation and Damages

- This was a capital improvement project to update the girls and boy's locker rooms
- Each locker room consisted of multiple bathroom stalls, and sinks
- Each locker room also consisted of a large shower area with multiple shower stalls.
- The locker rooms are connected to the gymnasium, and are accessible from the gym area and hallway.
- The shower areas within the locker rooms each share a common wall with the gymnasium.

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- The gymnasium polyurethane wood floor was the original for installed when the school was built in the 1970's
- It was determined that the mastic used to secure the wood floor contained asbestos.
- The plumbing contractor was working on the boy's locker room the day prior to the loss.
- The contractor had installed new copper supply lines to the shower fixtures.
- The supply lines where installed by soldering the fittings together.
- After completing the soldered fittings, the plumber tested the lines to determine if there was a leak present.
- After only a brief period of time of observation the plumber left for the day without turning off the main water supply.
- At some point after the plumber left and school was emptied, one of the fittings failed, and since the water supply was not turned off, the water was allowed to run freely until the morning.
- It was determined that the fitting failed because it was not properly inserted and the pressure of the water supply forced the joint apart.

## CIRMA Liability Assessment

CIRMA is 100% responsible for the damage caused by the water to the gym floor. The school district signed and entered into a contract with the third-party plumbing contractor without reviewing all sections of the contract. It was determined that the contract contained a waiver of subrogation within the "insurance / indemnification" section of the contract.

**Definition -- A *Waiver of Subrogation*** is an endorsement that prohibits an insurance carrier from recovering the money they paid on a claim from a negligent third-party.

The language in the contract was clearly written, and stated;

*"The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each or the other, and (2) the plumbing contractor, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by water or other causes of loss to the extent covered by property insurance obtained pursuant to this agreement or other property insurance applicable to the work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The owner or Contractor, as appropriate, shall require of the plumbing contractor, separate contractors described in this agreement and any sub-subcontractors, agents and employees of any of them by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall require waiver by endorsement or otherwise."*

This language within the signed and executed contract prevented CIRMA's Subrogation Team from financially recovering from the third-party plumbing contractor. In addition, the original project was delayed as a result of this incident.

As a result, the claim cost approximately **\$300,000** inclusive of their deductible.

## Key Recommendations/Action Items

CIRMA Risk Management is seeking feedback from the School District Advisory Committee on the recommended best practices to prevent these incidents from occurring.

- Consider utilizing CIRMA's Contract Review service prior to signing and executing third-party agreements.
- Remove / amend "waiver of subrogation" language from agreements prior to signing.
- Utilize CIRMA's Risk Management Best Practices Guide on Risk Transfer as a reference when creating and drafting third-party agreements.

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For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Student Injured During Field Day Activities

### Background

According to the Centers for Disease Control and Prevention (CDC), regular physical activity can help children and adolescents improve cardiorespiratory fitness, build strong bones and muscles, control weight, reduce symptoms of anxiety and depression, and reduce the risk of developing serious health conditions. In fact, students who are physically active tend to have better grades, school attendance, cognitive performance (e.g. memory), and classroom behaviors.<sup>1</sup> Because physical education is so important to a student's development, school districts will typically have a greater appetite for risk when it comes to these types of activities. This increased appetite motivates school districts to engage in the risk management process on a regular basis. First identifying and examining the risks and implementing sound strategies to ensure the safety of the participants.

### Scenario

The incident occurred during the school's scheduled and approved student field day. On the date of the incident, the weather was 73 degrees and partly cloudy with winds at 6 mph from the southeast. The field to be used was dry and had been recently mowed. The field day was part of the end of school year celebration and consisted of several scheduled events, including the "Dizzy Izzy" activity.

"Dizzy Izzy" is defined as an outdoor party activity where a cane or stick is given to the first player on each team. Upon the signal to go, the player places the end of the stick upon the ground, holding the stick in a vertical position, and places the center of the player's forehead on the upper end of the stick. In this position, the player circles around the stick three times and then runs forward to the distance line and returns, handing the stick to the next player behind the base line. The second player places their forehead upon the stick and repeats the performance of the first, as does every player on the team. "Dizzy Izzy" is recommended to be played in a large grassy area without any obstructions around for safety and players may wish to wear bicycle helmets for extra safety.

Each Field Day event was intended to be staffed by at least two (2) staff members. On the date of the incident, several staff members were "out of the office" and not in attendance. This resulted in staff levels being changed, specifically only one (1) staff member was assigned to the "Dizzy Izzy" activity. In addition, despite mild outdoor conditions, it was decided to move the game indoors to the school gymnasium.

The claimant was next in line and was handed the stick by another student. The claimant placed the stick on the ground, placed his head on the stick, and spun around the stick 10 times. After the tenth spin, he began to run to the "distance line." Being disoriented, the student veered off and began losing his balance, at which time he directly impacted the collapsed bleachers inside the gymnasium. The claimant was in immediate pain and was unable to get up. He was then transported by ambulance to the local emergency room, where he was treated for his injuries.

### Injury and Damages

As a result of participating in the "Dizzy Izzy" activity, the claimant (student) ran into the front of the collapsed gymnasium bleachers. The resulting impact caused the claimant to suffer the following injuries:

- A black eye
- A moderate concussion
- A fractured knee that required surgery

The claimant's surgery did not produce a good result and his recovery was difficult. Additional surgeries and physical therapy were required. Prior to the incident, the claimant was very physically active; since the incident, he has been unable to participate in athletic activities. The claimant and his family filed suit against the school and the school district for negligence with an initial demand of \$600K.

### Lessons Learned

The recommendations listed below can be included in your School District's Risk Management Program.

Consider the following:

- Conducting a complete review of the proposed activity and any recommended rules prior to including the activity as part of a field day or physical education curriculum.

<sup>1</sup> <https://www.cdc.gov/healthyschools/physicalactivity/facts.htm>

- Establishing guidelines for when an activity should not be used.
- Creating a process to evaluate and maintain proper supervision.
- Creating a process to evaluate and ensure that the space for the activity is within the recommended rules / area setup.

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For more information on this topic, please contact your CIRMA Risk Management Consultant.

## Student's Behavior Leads to Injured Staff Members

### Objectives

The objectives of this risk management claim review are to:

- Examine a recent Workers' Compensation claim related to a student's behavior;
- Understand the impact of these types of injuries;
- Develop specific risk management best practices to either prevent or mitigate future losses for Connecticut school districts based on lessons learned.

### Background and Incident Description

- On the date of the incident the student was stated to be visibly extremely upset. Based on statements from other staff members this was not something out of the ordinary as this student tended to be very vocal and emotional yet had never behaved violently prior to the incident.
  - The student did not have an established Individualized Education Plan (IEP) or 504 Plan.
  - The student was not been placed on or considered to need a Behavioral Management Plan
- On the date of the incident, the school district did not have any behavioral analysts on staff. There was only one school psychologist on staff.
- A para-professional observed the student in the hallways yelling and screaming at their locker. Seeing this behavior the para-professional approached the student from the side.
- The para-professional called the student by their name and asked if everything was okay, and if they needed any help.
- The student turned and faced the para-professional and began glaring at her.
- The para-professional again asked the student if they needed any help or would like to talk about what was bothering them.
- The student began screaming at the para-professional, at which time the para-professional requested that the student calm down. The student responded by kicking the para-professional directly in the stomach.
- After being kicked, the para-professional fell to the floor gasping for air. Once on the floor, the student repeatedly kicked the para-professional in the stomach, yelling and screaming at her.
- Hearing the para-professionals yells for help, two (2) teachers who were in their classrooms entered the hallway and observed the student kicking the para-professional.
- After calling for the school to lockdown both teachers attempted to intervene and restrain the student.
- During their attempts to restrain the student, both teachers sustained injuries:
  - Teacher A was elbowed in the face causing a bloody nose and black eye,
  - Teacher B was shoved and pulled to the ground by their arm which resulted in a dislocated shoulder.
- The student then entered the culinary classroom adjacent to the incident and grabbed a large kitchen knife and began to wave it around erratically.
- Additional support arrived and attempted to gain control of the student. After 15 minutes they were able to convince the student to put down the knife at which time the student was taken into custody by local law enforcement without any use of force or further violence.
- Emergency Medical Services responded and transported three (3) staff members to a local hospital for treatment of their injuries.
- Further investigation noted that the student was under the care of a psychologist for multiple disorders and had stopped taking their medication. On the date of incident, it was determined that the student had not taken their medications for approximately 10 days.
- There was "constructive" notice to the staff and student body that this particular student could have verbal outbursts and display extreme emotions which often lead to verbal arguments with both staff members and other students.
- The district did not have any intensive or behavioral management plan in place for the student

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## Injury and Damages

- As a result of this incident, three (3) employees were injured:
  - The **para-professional** sustained significant bruising to their abdomen and two (2) broken ribs. They were treated at a local hospital emergency room and released home. The para-professional was out of work for 12 weeks. They ultimately resigned from their position, stating that the ongoing anxiety they felt working with students was too great and contributed to several other long-lasting conditions. **This Workers' Compensation claim was closed for \$55K.**
  - **Teacher A** was elbowed in the face which resulted in a fractured nose which caused disfigurement and required surgical intervention. Teacher A was out of work for 6 months and suffered from anxiety and panic attacks. Teacher A ultimately requested a transfer to a different school within the district which was granted and they returned to work the following school year. **This Workers' Compensation claim was closed for \$250K.**
  - **Teacher B** had been thrown to the ground and suffered a dislocated shoulder which required surgical intervention to reduce the dislocation and repair several soft tissue injuries. Unfortunately, Teacher B did not respond well to initial treatments and intervention, and required several additional surgeries. The resulting effect was an 8% disability rating of their right shoulder. Teacher B returned to work after 12 months. **This Workers' Compensation claim closed for \$350K.**

## Conclusion

Many teachers, administrators, and para-professionals are at risk of being bitten, kicked, scratched, and punched while at work. Since the 2007/2008 CIRMA policy year, the number of physical assault claims experienced by teachers and paraprofessionals has increased exponentially over the past ten years. In addition to the Workers' Compensation claim costs and physical pain that these events cause, staff can suffer from long term emotional stress and trauma, which may affect their personal and professional lives. Through further analysis into the causes of these injuries, CIRMA identified a trend in behavioral issues in those students **who were not** identified by either an Individualized Education Program (IEP), 504 Plan, or other intensive management program. Generally, IEPs, 504 Plans, and other intensive management programs are successful because they help provide necessary information to educators on how to effectively communicate with and plan lessons for those students with behavioral or other needs. However, educators indicate that there is not a similar method of documentation for students who are not identified as needing some form of behavioral management program. Often times, this lack of documentation makes it difficult for faculty to apply appropriate risk mitigation techniques to protect themselves and their students from physical and emotional harm caused by the actions of a few students. Furthermore, it can propagate a bias amongst educators that there are "problem-students" who will continue to act out or are unwilling to change their behavior. School districts throughout the state of Connecticut are investing in new and innovative methods that promote positive school climate to fill the gaps in documentation methods that existed in their previous systems, these methods may include considering;

- Restorative Practices methods as a supplement to traditional disciplinary protocols
- Employing Board Certified Behavior Analysts
- Training on Trauma Informed student interactions
- Problematic Behavior Training
- De-escalation training

Promoting a positive school climate should be the responsibility of the entire faculty. As Halford E. Luccock, a 20th century Yale University professor and minister said, "You can't whistle a symphony; it takes an orchestra to play it." CIRMA considers it a best practice for schools to implement a behavioral management plan / protocol as a tool to foster a safe environment where students feel like they can learn and have a voice.

## Key Recommendations/Action Items

The below recommendations are proposed to assist CIRMA member school districts in enhancing their efforts to continue to provide safe meaningful environments for staff and students:

- Consider working with Board-Certified Behavioral Analysts to create a behavioral management plan for schools to coincide with their current safe school climate.
- Consider working with school resources to put in place plans for working with students who do not have formal mitigation plans.

- Consider establishing and training staff on protocols for engaging and intervening with students whom seem to be in a mental health crisis.

CIRMA's Risk Management team is seeking feedback from the School District Advisory Committee on the recommendations presented aimed at reducing the likelihood of injuries to students during physical education class. Following the meeting, any additional thoughts or comments should be directed to Joey Barbera at [jbarbera@ccm-ct.org](mailto:jbarbera@ccm-ct.org).

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For more information on this topic, please contact your CIRMA Risk Management Consultant. Visit our training schedule at [CIRMA.org](http://CIRMA.org) for a list of current training programs.

## Student Drop-off/Pick-up Procedures

### Objectives

The objectives of this risk management claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss that occurred during morning arrival
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned

### Incident Background

The incident occurred on a clear, cool day in November. During morning arrival, an elementary school student was struck by a motor vehicle near the drop-off lane at school. The student had just been dropped off by her aunt in the parking lot and began walking across the lot to the student entrance. While attempting to walk across the drop-off lane, a motorist reportedly did not see the student step off of the curb and into his path of travel. The student was struck by the motor vehicle and sustained injuries to her left ankle, right wrist, and right forearm.

### Investigation

- Weather conditions on the date of the incident were good and it was noted to be a clear, cool and dry fall morning.
- The school has a designated bus lane for morning arrival on the east side of the school and a designated drop-off lane for “walkers” on the west side of the school.
  - There is also on the west side of the school an employee parking lot.
- It was discovered that the injured student is usually dropped off by a parent; however, both parents were unable to drop off their child that morning due to extenuating circumstances: the injured student’s mother was home ill and her father was at work.
  - On the date of the incident, the injured student was being dropped off by her aunt.



- Upon arriving to the school campus, the injured student's aunt observed a seemingly parked line of cars – later it was discovered that the aunt thought those cars were parked or waiting. Instead of joining this line of cars – which ultimately turned out to be the student drop-off lane – the aunt turned into the first parking lot on the west side of the building – the employee parking lot.
- It was noted that the school typically has an administrator stationed at the student drop-off area to assist in directing traffic and students; however, the administrator assigned to that area was out sick and a replacement had not been identified.
- The injured student exited her aunt's vehicle and began walking across the employee parking lot towards the student drop-off lane.
- The injured student began to walk across the student drop-off lane when she was struck by a motorist from her left side. The motorist was a parent who was driving at a low rate of speed while looking out of the driver's side window at his child entering the building.

## Injury and Damages

The injured student was transported to the hospital, where she was diagnosed with a fractured tibia near her left ankle, a sprained right wrist, and lacerations to her right forearm near her wrist which required eight (8) stitches. Shortly after the incident, the injured student's parents obtained legal counsel and filed a notice of intent to sue the school district for, among other things, failure to protect their child. After discussions with legal counsel, the CIRMA-member settled this claim for **\$65,000**.

## Key Recommendations/Action Items

The below recommendations are proposed to assist CIRMA-member school districts in enhancing their efforts to continue to provide safe, meaningful environments for both staff and students:

- Consider reviewing the school's plans to ensure adequate monitoring coverage is available during student arrival and dismissal, including times when staff may be absent.
- Consider providing additional reminders of drop-off procedures to parents and guardians.



## Waivers of Subrogation - Roof Replacement Project

### Objectives

The objectives of this risk management claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss that occurred during a roof construction project
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned

### Incident Background

A Connecticut school district hired a contractor to replace a roof on one of their schools. The new roof is a standing seam metal roof, which would be replacing the existing asphalt roof. While the contracted roofing company was using a propane blowtorch torch to adhere flashing to exterior soffits, combustibles behind the soffit and below the roofing caught fire. The fire caused extensive damage to the school building.

### Investigation

- Approximately 13 months prior to the incident, the school district (district) entered into a contract with a roofing construction company (vendor) to complete an approximately \$5 million renovation project.
- A previous incident had occurred approximately 7 months prior to the date of the large loss, which involved a small fire which was caused by the vendor's inappropriate use of a propane blowtorch.
- The incident occurred during the summer when school was out of session.
- While the contracted roofing company was using a propane blowtorch on "hot-installed" flashing material, wood, insulation and other combustible materials caught fire.
  - There is also on the west side of the school an employee parking lot.
- The fire caused substantial damage to the building after heavy smoke and soot were circulated via air vents throughout the entire school and internal sprinkler systems was activated.
- CIRMA Claims responded to the scene immediately after being notified of the loss.
- CIRMA Claims engaged a myriad of leading resources, including roofing construction, forensics, fire cause and origin, and disaster recovery experts, to help gather critical information needed to mitigate further operational interruptions and establish a theory of liability to maximize recoveries through subrogation.
- A review of the contract agreement between the district and the vendor revealed that the school district signed a Waiver of Subrogation, which is an endorsement that prohibits an insurance carrier from recovering the money they paid on a claim from a negligent third-party.

### Injury and Damages

Due to the extensive nature of the damage to the school building and also to the contents inside, as well as the Waiver of Subrogation, CIRMA's liability assessment for this incident exceeds **\$20 million**.

### Key Recommendations/Action Items

CIRMA Risk Management offers a free value-added service to its members regarding contract reviews. This service provides a legal review of the insurance, and indemnification language with all types of contracts. Recommendations are made based on current risk management risk transfer best practices. As a result, CIRMA Risk Management recommends that each member:

- Consider utilizing the CIRMA contract review service prior to signing and executing third-party agreements;
- Remove/amend "waiver of subrogation" language from agreements prior to signing of any agreement or contract; and,
- Utilize the CIRMA Risk Management Best Practices Guide on Risk Transfer as a reference when creating and drafting third-party agreements.

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For more information on this topic, please contact your CIRMA Risk Management Consultant.



## Playground Liability

### Objectives

The objectives of this large loss claim review are to:

- Examine a CIRMA liability loss that occurred at a school district's playground.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned

### Incident Background

The loss occurred on the playground at a Connecticut elementary school. The age of the playground equipment at the time of the incident was approximately 12-years old. On the date of the incident, a 5-year old Kindergarten student lost his grip and fell approximately 9.5 feet from an arch climber. The student sustained several injuries, including a broken right leg and abrasions to his hands and arms. While staff sought medical attention for the injured student, a 7-year old first-grade student with special needs wandered off to a brook behind the school and was missing for about 30 minutes.

### Investigation

- The incident occurred during outdoor recess at an elementary school.
- At the time of the incident, four (4) classes, which included four (4) school staff members and approximately fifty-eight (58) students, were present.
- While outside, a 5-year old Kindergarten student approached the arch climber playground equipment and began to crawl on top of the structure.
- Students who witnessed the event stated that the 5-year old continued to crawl atop the arch climber until he reached the highest point of the equipment (later determined to be approximately 9.5 feet above the protective surfacing), at which point he lost his grip and fell to the surfacing below, landing primarily on his right leg and hands.
- The four (4) school staff members that were present did not witness the event; however, they heard the commotion caused by the other students on the playground, prompting two (2) staff members to respond to the area around the arch climber to assess the situation.
- Upon arrival, the staff members observed the Kindergarten student laying on the ground beneath the arch climber, holding his right knee and crying.
- Although the two (2) staff members could not discern what occurred from the injured student due to his crying, they were informed by the students who witnessed the incident that the Kindergarten student fell from the arch climber and landed on his right knee.
- The school principal and school nurse were subsequently called to the scene and, after a quick assessment of the situation, the staff members made the decision that 911 and the injured student's parents needed to be called. Emergency Services (911) was called approximately ten (10) minutes after the student's fall.
- School staff decided that, in order for the ambulance to have a path to the playground area, that the remaining fifty-seven (57) students must be brought inside to finish recess in their classrooms (in accordance with the school's injured student protocols).
- Approximately twelve (12) minutes after the student's fall, the four (4) school staff members responsible for supervising recess began to line their students up to head back into the school, and all staff members conducted a "head-count" of the students who were lined up.
- At this time, one staff member, a first-grade teacher, observed that one of her students, a 7-year old special needs student, was not lined-up and not visibly seen within the outside student activity areas.
  - Note: there is a wooded area that is seen from the playground.
- The school principal was immediately notified of the missing student and enacted the school's secure building protocol (approximately fourteen (14) minutes following the student's fall).
  - The purpose of enacting the secure building protocol was to conduct a head count in each classroom and office area to determine whether or not the student was accounted for inside the building.

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- Simultaneously, while the inside head count was being conducted, 911 was again called and local law enforcement was notified of the missing student, and immediately responded back to the school.
- While local law enforcement was in the process of responding, the school principal directed school staff to begin searching the wooded area to look for the missing student.
- After approximately fifteen (15) minutes of searching, a school staff member observed the 7-year old student in the wooded area near a brook.
  - It was determined that the brook was approximately .09 miles (430 feet) away from the edge of the playground.
  - Note: this was approximately thirty (30) minutes after the student's fall occurred.
- Upon finding the student, the school staff member texted her principal to notify her that the missing student had been found.
  - Note: the school staff member texted the principal because she did not have her school radio at the time of the incident.

## Injury and Damages

As a result of the events that occurred on the date of the student's fall, two (2) lawsuits were filed by two (2) separate families against the school district, the school, and its officers.

- **Lawsuit 1:**

The parents of the 5-year old Kindergarten student who fell off of the arch climber filed a notice of intent to sue the school alleging a failure to supervise, failure to maintain playground equipment, and unsafe conditions (claiming that the equipment was not appropriate for the age group). The student experienced a broken right leg and abrasions to his hands and arms as a result of the fall, which totaled approximately \$16,000 in medical payments.

The investigation determined that the arch climber was appropriate for a playground designed for children ages 5 through 12 years of age. However, further investigation by the school district included a review of the CCTV footage from the playground area, which showed that the four (4) school staff members congregated in a corner of the playground area with their backs turned to the equipment and were talking at the time of the incident. Furthermore, additional findings determined that a preventative maintenance program had not been followed by the school district. This claim settled out of court for \$25,000, inclusive of the student's medical expenses and emotional distress.

- **Lawsuit 2:**

The parents of the 7-year old student with special needs filed a notice of intent to sue claiming failure to supervise and emotional distress. While it was determined that the school district followed its emergency response protocols once the child was observed to be missing, the review of CCTV footage from the investigation into the student's fall created potential concern for defense. Thus, this claim was settled out of court for \$25,000.

**The result of both lawsuits associated with these two incidents created a total severity of \$50,000.**

## Key Recommendations/Action Items

CIRMA Risk Management offers a value-added service to its members regarding playground liability. This service provides playground assessments to enhance the current efforts to maintain the playground equipment. Recommendations are made based on current risk management best practices. As a result, CIRMA Risk Management recommends that each member consider the following:

- Enforcing supervision by staff/faculty to ensure the safety of students. Supervisors should be enforcing playground rules and expected behaviors and should direct users to the age-appropriate equipment.
- Posting signage at accessible entry locations indicating the recommended age appropriateness of the equipment, in accordance with the recommended guidelines contained in CPSC Playground Safety Handbook Section 2.2.5.
- Providing and maintaining the perimeter of the playground utilizing a fence, in accordance with the recommended guidelines contained in CPSC Playground Safety Handbook Section 2.4.2.2.
- Regularly assessing and maintaining equipment, including the surfacing material, to maintain a standard of care and to identify new hazards. in accordance with the recommended guidelines contained in CPSC Playground Safety Handbook Section 2.4.2.2.

- Ensuring proper installation of playground equipment is completed by a qualified individual with knowledge of all current ASTM and CPSC standards in accordance with the manufacturer's recommendations.
  - Consider contracting out the installation of playground equipment to professional installers.
  - After assembly and before its first use, equipment should be thoroughly inspected by a person qualified to inspect equipment for safety.
  - Manufacturer's assembly and installation instructions along with all other materials collected concerning the equipment should be kept in a permanent file.

## Food Safety

### Objectives

The objectives of this large loss claim review are to:

- Examine a CIRMA liability loss that occurred as a result of school district's food storage.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned

### Incident Background

The loss occurred as a result of improper storage of raw chicken. On the date of the loss, a student consumed food from the cafeteria during their lunch period. Throughout the remaining school day, the student began to feel ill and eventually started feeling nauseous and began having stomach discomfort which ultimately resulted in vomiting. The student was taken to his pediatrician where they were diagnosed with salmonella, a type of bacterial food poisoning.

### Incident Investigation

- On the date of the incident the student was a sophomore in high school
- The student entered the cafeteria and selected several items for lunch, including an apple
- The student sat at his normal table with friends and ate his lunch during his scheduled lunch period
- Once his lunch period was over, the student continued on with his day and attended several more classes
- Later in the day, the student began to "not feel well" and instead of going to lacrosse practice the student decided to head home
- After arriving home, the student began to vomit, experience stomach discomfort, and had a significant headache
- The student continued to feel ill for two additional days, at which time his parents brought him to see his pediatrician
- At the pediatrician's office, it was determined through diagnostic testing that the student was experiencing a Salmonella bacterial infection
- When questioned about his symptoms, the student stated that he had not eaten anything out of the ordinary and in fact had not eaten chicken within the last week, but he did mention that his lunch at school the other day "tasted funny"
- The student's parents notified the school principal of what was occurring. They also relayed their sons' statement regarding his lunch of the day of the incident
- The principal met with the cafeteria staff and food services manager and reviewed the lunch specials for the last week. On the date that the student fell ill the cafeteria was serving a chicken teriyaki and rice dish
- The principal and food services manager spoke to the food preparation staff who showed them their temperature logs, and preparation process
- Not seeing anything out of the ordinary, the food services manager took further steps to investigate the food storage and handling of the raw products (chicken)
- During the investigation, the food service manager found that a cardboard box which contained raw chicken was stored in the walk-in cooler over a box of fruit
- The bag containing the raw chicken had been damaged and had saturated the bottom of the cardboard box, eventually dripping raw chicken fluid over the fruit in the bowl
- The fruit in the bowl was discarded and the remaining raw chicken was placed in a leak-proof container and properly labeled and dated
- The food service manager notified the principal of their findings and what they believed to be the cause of the students' illness
- It was determined that identified staff had been trained and certified in food safety through a reputable organization and that there was a specific policy in place regarding proper food storage to prevent cross contamination exposures
- The principal notified the school district's central office and the parents of the sick student

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- The student made a full recovery after approximately seven (7) days later and returned to school

## Injury and Damages

As a result of the events that occurred, the student sustained the following injuries;

- Salmonella poisoning associated with improper food storage and handling
- Dehydration and associated symptoms
- Anxiety
- Depression

The parents of the student filed a *notice of intent to sue* with the school district, the food safety manager, the food preparation staff and the cafeteria staff. Their initial demand for settlement was \$100K. After successful negotiations this claim was ultimately settled for \$15K inclusive of attorney fees.

## Key Recommendations/Action Items

CIRMA Risk Management recommends that each member consider the following:

- **Train:** Regularly train staff on proper food handling and storage.
- **Policy:** Develop, implement and regularly review a policy on food safety standards.
- **Manage:** Ensure that food is properly handled and stored, in accordance with staff training.



## Employee to Student Sexual Abuse

### Objectives

The objectives of this edition of the CIRMA School Announcement Series are to:

- Examine three (3) CIRMA liability losses that resulted from inappropriate relationships between a female educator and three (3) male students.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

### Incident Background

The losses occurred as a result of three (3) inappropriate relationships between an educator and multiple high school students. The female high school teacher (educator), a 14-year employee of the CIRMA Member school district, engaged in a series of communications both online and in-person with three (3) of her current male students over the course of about 9 months. Such communications culminated in an inappropriate physical relationship with one of the students.

### Incident Investigation

- In the spring of 2014, the three male claimants (Student A, Student B, and Student C) were students in the female teacher's (Teacher) high school class, and were also on the high school football team where Teacher served in a coaching capacity.
  - Student A was 14-years old;
  - Student B was 17-years old;
  - Student C was 15-years old
- Sometime during the spring of 2014, Teacher began engaging in a "flirtatious" relationship with Student A and started having one-on-one meetings that took place within the school and then later carried over into social media messaging.
- Over the course of a few weeks, the online messages between Teacher and Student A progressed to more private and sexual topics.
- Throughout the summer of 2014 and into the fall, Teacher pursued Student A by:
  - Paying special attention to him at football practices;
  - Summoning him to her classroom approximately twenty (20) to thirty (30) times;
  - Sending him a bagel with a note attached while he was in another class; and
  - Sending him dozens of sexually explicit online messages and photographs through social media platforms.
- Also during the summer of 2014, Teacher began to develop a similar relationship with Student B, who observed the special attention that Student A was receiving in school and during extracurricular activities.
- During the fall of 2014, Teacher and Student B exchanged social media contact information and began engaging in conversations that were sexual in nature.
  - Student B was also summoned by Teacher at least five (5) times during school hours in the fall of 2014, and conversations revolved around the passing of Student B's father and the Teacher's marriage.
  - At one point during the winter of 2014, Student B received a social media message from Teacher inviting him to her classroom during a free period, during which she closed the blinds, locked the door, kissed him and performed a sexual act on Student B.
- Teacher also began a similar flirtatious relationship with Student C in the fall of 2014. This relationship prompted Student C to be called to Teacher's classroom at least six (6) times during school hours for conversations regarding Teacher's private life, her marriage, and her fantasies.
- Throughout this time, rumors circulated throughout the school regarding the relationship between Teacher and Student A.
  - This prompted at least one occasion where another educator in the same department confronted Teacher directly about the rumors of the flirtatious relationship and one-on-one meetings with students.
  - Further investigation revealed that Teacher would wear revealing clothing during football practice, with at least one other coach testifying that he believed Teacher was trying to get the attention of the male students.

- In the fall of 2014, Student A attempted to end his contact with Teacher; however, Teacher persisted in sending him messages until January 2015.
- In January 2015, Student A and Student B reported Teacher to the high school principal.
- Teacher was arrested and charged with second-degree assault and risk of injury/impairing the morals of a child.
  - Teacher was later found guilty of unlawful restraining, reckless endangerment, harassment and threatening, ultimately leading to a 3-year sentencing.

## Injury and Damages

As a result of the events that occurred, the families of Student A, Student B, and Student C filed negligence lawsuits against the school district, claiming that the students were injured by the defendants' failure, among other things:

- To prevent and/or interrupt Teacher's inappropriate relationship with the plaintiffs and her participation in extracurricular activities involving the physical training of male students;
- To report Teacher's conduct to the proper authorities in violation of their ministerial duties under the board reporting policy and the mandatory reporting statutes, given their "constructive notice" of her conduct because multiple teachers had reasonable cause to believe that she was sexually abusing the plaintiffs;
- To monitor Teacher's social media usage to ascertain whether she was violating policies concerning communications between teachers and students; and
- To properly train and supervise their employees, particularly with respect to the warning signs of inappropriate relationships between students and teachers, and the use of classrooms and hallways.

After a series of negotiations, these claims were ultimately settled for **\$350,000** inclusive of attorney fees.

## Key Recommendations/Action Items

CIRMA Risk Management recommends that each member consider the following:

- **Policies and Protocols:** Establish and communicate policies and protocols to all staff regularly regarding the importance of reporting suspected misconduct or allegations of misconduct.
- **Code of Professional Responsibility:** Establish and communicate a *Code of Professional Responsibility* to all staff, including:
  - A staff Code of Ethics;
  - A policy on Student and Staff Relations
- **Ongoing Staff Training:** Continue to educate staff on recognizing and responding to suspicious patterns of possible abuse or misconduct. Consider utilizing the *Child Sexual Abuse and Prevention (CSAP)* series of trainings available on CIRMA's E-learning portal, powered by Vector Solutions. Reach out to CIRMA Risk Management for assistance in getting staff signed up with online learning credentials.
- **Encourage Reporting:** Consider encouraging students and staff to report warning signs of possible harmful behaviors and potential threats to staff, and consider exploring the availability of anonymous reporting to the student body. Recent studies have highlighted the benefits of making anonymous reporting available to students and integrated into the school culture.<sup>1</sup>
- **Culture:** Create and promote a culture where misconduct and inappropriate relationships are not acceptable.

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<sup>1</sup> <https://www.tandfonline.com/doi/full/10.1080/15388220.2022.2105858>