

# School Safety Alert

## School Districts Must Address Unique Liabilities

Business Insurance  
September 30, 2002  
by Judy Greenwald

*"Although such traditional exposures as playground injuries and school bus accidents remain primary concerns, schools must address a host of other liability issues"*

School districts face a wide range of potential liabilities.

Although such traditional exposures as playground injuries and school bus accidents remain primary concerns, schools must address a host of other liability issues. Some are the same risks any business owner or public entity faces, while others are unique to schools.

### **Discrimination, sexual harassment and bullying**

"There seems to be an increase in employment-related claims, particularly those that claim emotional distress," said Jim deSpelder, risk manager for Okemos, Mich.-based Middle Cities Risk Management Trust, an insurance pool and risk management organization.

Employment liability accounts for 25% of the costs at Cerritos, Calif.-based Alliance of Schools for Cooperative Insurance Programs, said Donna Abersman, director of administration and risk services for the risk-sharing pool. "It's an expensive area," she said. "Even if there is no apparent liability, the defense of such cases is extremely expensive," and it is "frequently easier to buy your peace" through a settlement.

In addition, court decisions involving sexual harassment are "coming down all the time," said Martin Semple, an attorney with Denver-based Semple, Miller, DeLay & Mooney, who represents school districts. Students claim sexual harassment either by other students or by teachers, and they charge that the school either should have known about the harassment or did know about it and did nothing, Mr. Semple said.

Barry Wasson, account executive in middle-market programs for Schaumburg, Ill.-based Zurich North America, said, "Certainly, the problems the Catholic Church has had recently have brought that into the real forefront of issues." Schools have to pay a lot more attention to sexual harassment now, "because if you have something go to litigation, it's going to be pretty expensive."

One new area of litigation that may grow involves suits filed by teachers claiming harassment by students. In March, teacher Janis Adams won a \$4.35 million jury verdict in a suit against the Los Angeles Unified School District after she charged she was the target of an obscene and harassing publication circulated by high school students.

The judge in the case decided to grant the school district a new trial, in part because he had made numerous errors in his jury instructions, said Ms. Adams' attorney, Gloria Allred of Allred, Maroko & Goldberg in Los Angeles. A new trial date has not been set.

Ms. Allred said she believes Ms. Adams' case was the first of its kind in the country, but she expects more such litigation. "Teachers want to teach, and they're not willing to suffer sexual harassment either from supervisors or from coworkers or from students," she said.

### **Special-needs children**

Litigation involving the federal Individuals with Disabilities Education Act, whose most recent amendments were made in 1997, is a "huge area" of activity, said Mr. Semple. The IDEA guides how states and school districts provide special education and related services to more than 6 million children with disabilities.

"The claims for special ed or IDEA are very substantial," said Lee Lloyd, vp of underwriting and chief actuary at Chevy Chase, Md.-based United Educators, a Reciprocal Risk Retention Group. "That is a very litigious area. You have parents who are very passionate about their children getting an education and getting the quality which they feel their children should get."

Laws have been established to provide these children with ad-

ditional resources, "but the reality is, it's a very difficult thing to implement, and emotions often override" pragmatic concerns about resources and "the type of progress that some of these children can hope to achieve," said Mr. Lloyd.

"The probability of threatening and pursuing lawsuits is much higher than in any other education population" in kindergarten through 12th grade, said Mr. Lloyd.

### **No Child Left Behind Act**

Another new area of concern is the federal No Child Left Behind Act. The Act, which was signed into law in January, imposes new testing requirements and accountability standards on public schools.

Such testing to determine whether children are receiving an adequate education may become an area "fraught with legal problems," said Liz Chanzit, principal with Tillinghast-Towers Perrin in Boston.

Middle Cities' Mr. deSpelder said, "It's just unclear at this point how, what and how much liability will come out of this legislation."

### **School violence, terrorism and security**

In addition to schools being held potentially liable for actual incidents of school violence, another concern is situations involving preventive actions that lead to charges that schools violated students' rights, Ms. Chanzit said.

Terrorism is another area that has become a much larger concern in recent months, said Zurich's Mr. Wasson. "The larger the school, the larger the campus, the more worrisome it is."

Mr. Wasson said another potential liability concern is school security, and whether schools have policies and procedures to control who is coming into the building and whether they are escorted once inside. Schools should also have policies to react to problems once they occur. Such problems range from "a simple fight to how they're going to deal with something like Columbine," said Mr. Wasson, referring to the 1999 shootings at Columbine High School in Littleton, Colo.

### **Mold**

Mold is another potential problem area, say observers. "Schools certainly in Texas and Florida should be worried about it, but we're starting to see it in some other states as well," said Ms. Chanzit.

"We think mold is a very significant exposure, and we want to know before we go on a risk that we don't have mold problems there, and frankly we want to help them avoid them in the future," Mr. Wasson said.

There have already been situations in Michigan where schools have been closed temporarily because of "building sickness" that may or may not have been caused by mold, said Mr. deSpelder. "We are still exploring what the true risk is here and what are the true implications to our policy as well as a potential exposure."

Mold claims may become particularly important in the workers comp area, said Matt Hansen, director of business and risk management at San Diego Unified School District.

### **Construction**

Construction is an issue "that wouldn't necessarily appear to be a core business for school districts," said Mr. Hansen. However, after San Diego voters approved \$1.5 billion in school construction funds in 1999, one "unintended consequence" was that although the district entered into multiple contracts with contractors and subcontractors, it never obtained an owner controlled insurance program or established a safety, compliance and contract-review system.

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