

THE RISK OBSERVER

FOUNDED 2006 — VOL. CLXI

PROFESSIONAL UNDERWRITERS

DAILY 5 CENTS, SUNDAY 15 CENTS

AGGRESSION IN OUR SCHOOLS

We have always had bullies in our schools. The cost of bullying in the elementary grades has been higher than we realize in terms of educational opportunity lost by the victims, psychological damage, and the impact on cultural norms at the secondary school level. Physical injury, theft, extortion, and sexual harassment are all acts of aggression whose roots lie in bullying at early ages.

Student-on-student aggression is fast becoming the source of negligence suits against school districts based on the belief of parents that the school has a duty to protect its students from harm. Recent shootings in school settings have left educators and parents nervous about the potential for violence in their schools. The perception is that violence is on the rise in schools, and parents are understandably concerned.

There is evidence that reality differs significantly from perception. In a report titled "Violence and Discipline Problems in U.S. Public Schools, 1996-97," the National Center for Education Statistics (NCES) surveyed a representative sample of 1,234 school principals. The most frequently cited problems were less violent behaviors such as tardiness (40%) and absenteeism (25%). Twenty-one per cent (21%) cited physical conflicts between students, 9% cited drug use, 5% cited gangs, 2% cited possession of weapons, and 2% cited physical abuse of teachers. The NCES report found that violent crimes occurred at an annual rate of only 53 per 100,000 students. Significantly, comparisons of the data with results from a 1991 survey show virtually no changes across the spectrum from minor misbehavior to more serious infractions.

While this data indicates that students haven't really become more violent, it is nevertheless true that physical conflicts between students were the third most frequently cited concerns of principals in both surveys. Ample reason for all school personnel to be concerned about aggression.

Recent shootings in school settings have left educators and parents nervous about the potential for violence in their schools.

Aggression generally starts among elementary age children and frequently at school. Most bullies are boys, but as children grow older, girls begin to exhibit aggression at the middle school level. Bullying at young ages tends to be gender neutral, but at the middle school level often becomes gender aware. There seem to be no ethnic or economic factors as determinants of bullying. Bullies react to the perceived aggressiveness of others toward them and the need to control their environment. When bullying works, it develops into a life-long pattern of behavior.

The cost of aggressive behavior and the effect on victims is mostly indirect and uncounted. No one, however, suggests that it is insignificant. We are seeing a value placed on victimization by juries as more and more parents bring charges of negligence against school districts for the injuries, pain and suffering experienced by their children at the hands of their classmates.

In general, the basis of most victims' rights suits center on foreseeability and the duty owed the injured pupil by the school. The duty to provide a reasonably safe environment is self-evident because the school presumably exercises almost total control of its premises. This is strongly



THE RISK OBSERVER

FOUNDED 2006 — VOL. CLXI

PROFESSIONAL UNDERWRITERS

DAILY 5 CENTS, SUNDAY 15 CENTS

reinforced by compulsory attendance laws requiring attendance at school at certain times by minors of certain ages. Foreseeability is somewhat more difficult to define and also to prove, but teachers, pupil personnel staff and administrators are considered to be professionals trained and experienced in the ways of childhood, and are expected to be considerably more knowledgeable than the average citizen or parent. The testimony of a playground monitor about breaking up a fight between one pupil and a number of others, or about the intimidating behavior of a pupil goes a long way toward establishing foreseeability. The testimony of other children and their parents may likewise confirm what was general knowledge about the behavior of a bully-in-the-making. Plaintiff attorneys are highly skilled at eliciting this kind of information from a variety of sources. Parents seeking redress for perceived wrongs even have a choice of forum to which to appeal. Ordinary tort liability can quickly turn into a civil rights issue to be tried in federal court at great expense.

What can school districts do to prevent the victimization of students and teachers by the aggressive student?

First, the matter must be viewed for what it is: a K-12 problem that has both educational and legal elements. Your first duty is to protect the students and staff in your care and then you can think about protecting the district from loss. In any event, taking care of the first priority really takes care of the second.

You almost certainly need a good knowledge of what is happening in and around your schools. Many victims do not report being assaulted to any persons of authority, either out of fear or retaliation, or the perception that nothing will change the outcome. Children must be led to believe that the adults in their school are concerned and will help them when they have a problem. Staff members at all levels must be sensitized to acts of aggression going on around them, and must understand the necessity to take action.

Respect for the rights of others and conflict resolution strategies should be taught and internalized in the elementary grades. Clearly spelled out rules of behavior and consequences for violations must be developed, and communicated frequently to students and parents. Consistent enforcement is essential to a clear understanding of consequences as well as a defense against liability for pupil injury. **Faculties who are concerned about “discipline problems” eventually realize that their first and most effective strategy is consistent enforcement by all members of the faculty, as well as the administration.**

An effective reporting system is needed, and data should be reviewed by administration and the building safety and security committee so that the nature, extent, and trends can be understood.

If an aggressive act is serious enough, it may be necessary to call for public safety assistance. School administrators have been reluctant to involve police agencies and the courts in school related crime. Most authorities consider this to be a mistake. The police have the training, protocols and experience to deal with juvenile criminals in a lawful manner. They are the experts in the law of probable cause and search and seizure. They are not insensitive to the needs of children and they work well with the other elements of the justice system and families. The knowledge, for example, that one of your pupils may be carrying a concealed handgun calls for special expertise.



THE RISK OBSERVER

FOUNDED 2006 — VOL. CLXI

PROFESSIONAL UNDERWRITERS

DAILY 5 CENTS, SUNDAY 15 CENTS

This raises the interesting cases of who does what and when. The answers to these questions should be found in district policy and regulations written to specifically address the issues of aggression and criminal behavior in the schools. Such a set of policies and regulations will not only spell out the hoped for outcome, but the means to be used and the staff members who will be responsible for that outcome and how the success of the policy will be measured.

Interestingly, police are trained to diffuse conflict in hostile situations; teachers who are dealing with the same young adults as the police are generally not trained in conflict diffusion. Sometimes, teachers contribute to the escalation of conflict through attitude, words or action. **Clearly, the district has a duty to provide conflict diffusion training for staff as a measure in assuring their safety as well as that of the students.**

