

THE RISK OBSERVER

FOUNDED 2006 — VOL. CLXI

PROFESSIONAL UNDERWRITERS

DAILY 5 CENTS, SUNDAY 15 CENTS

DEFENSIVE SUPERVISION

Appropriate supervision is frequently the key to the successful defense of a claim of negligence when a pupil is injured while at school.

What is appropriate supervision? Appropriate supervision is characterized by an effective use of personnel in a way that minimizes the possibility of pupil harm or injury and maximizes learning. It has elements of quantity and quality and its appropriateness is based on the pupils to be supervised, the activity being supervised and the environment in which the activity takes place. The knowledge, skill and actions of the supervisor are also important.

We will look at each of these factors and discuss how they affect supervision. First, however, it should be absolutely clear that regardless of the quality and quantity of supervision provided, pupils would get hurt. You cannot, nor are you expected to, wrap each individual student in a cocoon of care. You are expected to do what a professional would reasonably do to prevent injury or harm to the pupils to the extent possible under the ordinary circumstances of operating a school.

PUPIL CHARACTERISTICS

One of the most frequently mentioned causes of action against a school when a pupil is injured is the lack of adequate supervision in relation to the age and experience of the child. The courts have consistently held that the younger and less experienced or knowledgeable a person is the greater the degree of care with which that person must be supervised. This is why for example that a separate kindergarten playground area is useful. Not only is the equipment in the separate kindergarten playground of the appropriate size and type, but also more supervision can be brought to bear on the activity of these very young learners.

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This yardstick for measuring “adequate supervision” is not as stringent for older students as for kindergartners. A senior in high school can be held contributory negligent when injured, if it can be proven through documentation by lesson plans and tests, that the student possessed an understanding of the dangers involved in an activity and a knowledge of correct procedures to be followed.

ACTIVITY CHARACTERISTICS

The nature of an activity also determines the degree of supervision necessary. When teaching a student to use a table saw in a technology class, the teacher has to be standing next to the student while



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explaining the dangers, the use of guards and guides, the right technique with a push stick and stopping procedures, and then watching and guiding the student performing the task. The courts have frequently held that power machinery found in the technology education laboratory is inherently dangerous. Sound teaching techniques, reinforced by court decisions, suggest a strong need for very close supervision while showing pupils how to operate these machines.

If the possibility of injury or harm is foreseeable, then you are obligated to act to protect all the students who are exposed to this possibility of harm.

On the other hand, the rehearsal or a performance by the school chorus requires alert but minimal supervision in terms of numbers of participants. Frequently, the music teacher will be the only supervisor present. This is appropriate if there has been no history of conflict or poor behavior on the part of these students. Under these latter circumstances, prudence would suggest the removal of the offending pupils or adding adult supervision so the activity can be carried out safely. If the possibility of injury or harm is foreseeable, then you are obligated to act to protect all the students who are exposed to this possibility of harm.

ENVIRONMENTAL CHARACTERISTICS

In general, the smaller the space in which an activity is carried out, the safer it is because it is easier to supervise. There are some exceptions. Technology education and science labs and gymnasiums become more dangerous if they are too small for their programmed activities. Indoor activities are easier to supervise than outdoor activities because pupils are confined within walls and it's somewhat easier to give directions and be heard indoors. On the other hand, the back of the school bus, a very confined space, is difficult to supervise by the driver alone. Teaching away from school almost always requires greater supervision because both teacher and pupils may be in an unfamiliar place with its own rules that differ from those of the school. Field trip destinations should be selected carefully to match the quantity and quality of supervision, which can be afforded to keep the students safe from harm.

SUPERVISORY CHARACTERISTICS

Virtually every adult who works at a school site can be said to have some pupil supervisory responsibility, if only because of being an adult. Those who are hired to do jobs that specifically encompass pupil supervision should have certain qualifications or characteristics. These are:

1. Physical vigor
2. Full sensory ability including taste and smell
3. Knowledge of the pupils, activities, environment and rules of behavior
4. Knowledge of the procedures for emergencies and discipline



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5. Knowledge and ability to use techniques appropriate to circumstances.

KNOWING HOW TO SUPERVISE CAN BE TAUGHT AND PRACTICED

The teacher or monitor who stands in a doorway talking with other adults while “supervising” a playground has not been taught how to do that chore and, of equal importance, why it should be done in a specific way. The physical education teacher who stands in the middle of the gym while separate activities are taking place all around him or her has not learned appropriate supervisory techniques. The bus driver who has not learned to listen to the sounds behind him or her or who finds it necessary to out shout the passengers has not learned the vital skills of supervision that create a safe environment.

The district has the responsibility to instruct, validate and reinforce supervisory skills of its employees.

What about volunteers and substitutes? The district is especially vulnerable to claims of negligence if injuries occur while these people are in charge or assisting and have not been taught what to do! If fully qualified substitute teachers can't always be available, then you should consider special lesson plans that reduce the exposure to hazards under these circumstances. You don't have this option, however, for bus drivers. Either they are or they aren't currently qualified!

The use of pupils as helpers or supervisors can be rewarding and pleasant. However, they should never be left alone with other pupils or expected to do an adult job. The use of pupils as gymnastic spotters, for example, can have disastrous consequences if the spotter is unprepared or otherwise not qualified to do what should be done by a teacher. In other words, using pupils in this fashion can be helpful but should never be relied upon as a defense against claims for accidental injuries.

In the final analysis, it is the building or program administrator who must determine how much and what kind of supervision a given activity requires. There would be fewer problems if resources permitted the application of the appropriate staff whenever needed. Resources are rarely sufficient and we find ourselves balancing between as broad a program for children as possible and their safety in that program. For the well being of children, you are urged not to overreach your resources.

