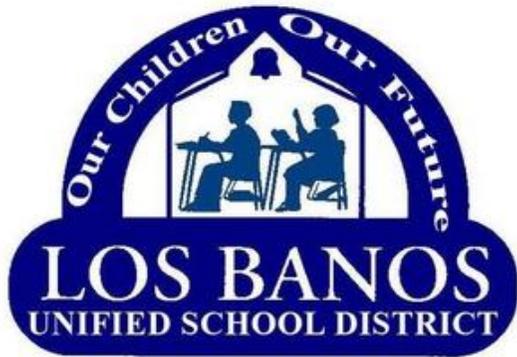


Student Altercations Legal Guidelines

November 10, 2021



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Outline

- Duty to Supervise Students
- Legal Parameters for Intervention
- Immunity, Defense, and Indemnity
- Best Practices

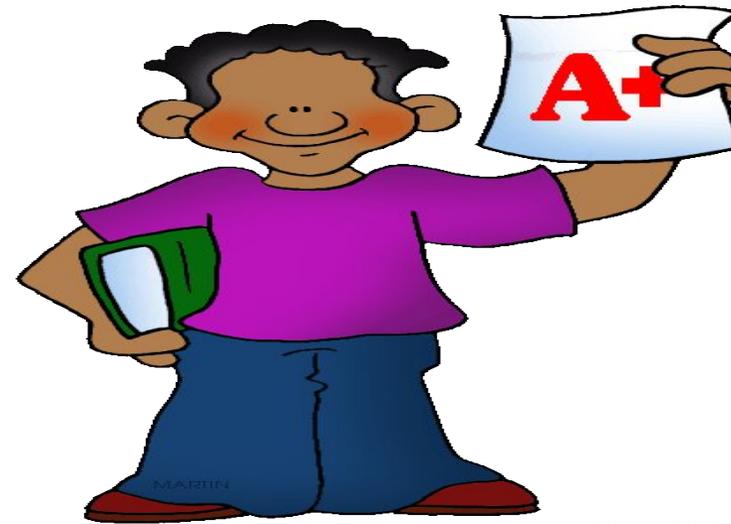


I.

Duty to Supervise Students

Constitutional duty to provide safe schools

- California Constitution, Article 1, section 28 states:
- “All students and staff of public primary, elementary, junior high, and senior high schools ... have the inalienable right to attend campuses which are safe, secure and peaceful.”



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Duty to Supervise

Ed. Code Section 44807

- “Every teacher in the public schools **shall hold pupils to a strict account for their conduct** on the way to and from school, on the playgrounds, or during recess.”



Responsibility for Supervision

- Under Title 5, California Code of Regulations, sections 5551 and 5552, a school principal is responsible for the supervision and administration of his or her school, and if playground supervision is not otherwise provided, the school principal shall provide certificated employees to supervise the conduct and safety of the pupils of the school who are on school grounds before, during, and after school.



Seth's Law

- Seth's Law (A.B. 9 (2012)) requires that if school personnel witness an act of discrimination, harassment, intimidation, or bullying, they **shall take immediate steps to intervene when safe to do so.** (Education Code § 234.1(b)(1))



Duty to supervise

“While school districts and their employees have never been considered insurers of the physical safety of students, California law has long imposed on school authorities a **duty to supervise** at all times the conduct of the children on the school grounds **and to enforce those rules and regulations necessary to their protection.**” (*Taylor v. Oakland Scavenger Co.* (1941) 17 Cal.2d 594, 600.) (Emphasis added.)

“A special relationship is formed between a school district and its students resulting in the imposition of an **affirmative duty on the school district to take all reasonable steps to protect its students.**” (*Rodriguez v. Inglewood USD* (1986) 186 Cal.App.3d 707, 714-15) (Emphasis added.)

Duty to Supervise

- Courts have established the legal standard of care imposed upon school employees in carrying out the legal duty to supervise students:
 - The standard of care imposed upon school personnel in carrying out the duty to supervise is identical to that required in the performance of their other duties. This uniform standard to which they are held is **that degree of care which a person of ordinary prudence, charged with comparable duties, would exercise under the same circumstances**. Either a total lack of supervision or ineffective supervision may constitute a lack of ordinary care on the part of those responsible for student supervision.
 - (*M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508; *Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747.)

Potential Liability for Student Injuries

- Since a school district has a mandatory legal duty to take reasonable steps to protect its students from injury, a school district may be liable for a student injury if it failed to discharge this duty.
- Stated differently, a school district could be liable if its staff fails to use reasonable physical force or restraint to protect a student if that failure leads to a student injury.
- “California courts have long recognized that **a student may recover for injuries proximately caused by a breach of this duty to supervise.**”
(*M.W. v. Panama Buena Vista USD* (2003) 110 Cal.App.4th 508, 518)
(Emphasis added.)

Charonnat v. San Francisco Unified School Dist. (1943)

- This incident took place at an elementary school in San Francisco. During the lunch hour, two boys had a five-minute altercation on the playground which involved shoving, kicks, and blows. One boy grabbed the plaintiff's leg and twisted it until it broke.
- The boys were talking "above a normal tone" and when the first boy twisted the plaintiff's leg, plaintiff screamed as loud as he could, three or four times, until his leg broke.
- The vice principal testified that she did not hear or see any part of the altercation and that she did not know about the altercation until she heard the plaintiff scream.

Charonnat v. San Francisco Unified School Dist. (1943)

- The school district was found **liable for negligent supervision** of its students.
- The school only had one teacher on yard duty for 150 students.
- If more than one teacher had been assigned to yard duty, it is likely that one of them would have seen or heard the fight going on and stopped it before it resulted in serious injury.
- The law imposes a legal duty on school districts to supervise students on school grounds during school hours, and the negligent discharge of that duty can create liability.

Dailey v. Los Angeles Unified Sch. Dist. (1970)

- During lunch hour, a student was engaged in a “slap fight” with another student for 5-10 minutes. Suddenly, after being slapped, the student fell backwards, fracturing his skull, and died.
- The teacher who was supposed to be supervising this area was in the gym eating lunch with his back to the windows, engaged in class preparation.
- The court noted that a failure to prevent injuries caused by the intentional or reckless conduct of the victim or a fellow student may constitute negligence.

Dailey v. Los Angeles Unified Sch. Dist. (1970)

- The court held that a jury could reasonably conclude that **those employees who were responsible for providing supervision failed to exercise due care** in providing supervision, which was the proximate cause of the student's death.
- The head of the department did not inform his subordinates what his expectations were with regard to supervision.

II.

Legal Parameters for Intervention in Student Altercations

Protection from Corporal Punishment

- Education Code section 49000 protects students from corporal punishment while they are under the control of the public schools.
- Section 49001 defines “corporal punishment” as “the willful infliction of, or willfully causing the infliction of, physical pain on a pupil,” and states that “no person employed by or engaged in a public school shall inflict, or cause to be inflicted corporal punishment upon a pupil.”

Protection from Corporal Punishment

- However, section 49001 specifically carves out the following exemption from the definition of corporal punishment:
 - An **amount of force that is reasonable and necessary** for a person employed by or engaged in a public school *to quell a disturbance* threatening physical injury to persons or damage to property, for purposes of *self-defense*, or to *obtain possession of weapons or other dangerous objects* within the control of the pupil

Reasonable and Necessary Force

Education Code section 44807 further provides:

- A teacher, vice principal, principal, or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of **the same degree of physical control over a pupil that a parent would be legally privileged to exercise** but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning.

Reasonable and Necessary Force

- Reasonable and necessary force may be used with a student for the following purposes:
 - To protect the *health and safety* of individuals, including other students.
 - To quell a *disturbance threatening physical injury* to individuals.
 - To quell a *disturbance threatening damage to property*.
 - For *self-defense*.
 - To obtain possession of *weapons or other dangerous objects* within the control of a student.
 - To maintain *order*
 - To maintain *conditions conducive to learning*

Reasonable and Necessary Force

- Whether the intervention used by the staff member would be considered “reasonable and necessary” force is determined on a case by case basis.
- If a “reasonably prudent person” exercising due care under the circumstances would agree that the intervention used, including the use of physical force, was reasonable and necessary given the specific circumstances, then such intervention or force would be justified.

Restraint and Seclusion

- **Education Code 49005-49005.8** prohibit the use of behavioral restraints unless necessary to control student behavior that poses a clear and present danger of serious physical harm to the student or others, and that harm cannot be immediately prevented by a response that is less restrictive.
- Restraint and seclusion of students **should be used as a last resort** and may never be used as discipline, convenience, or retaliation by staff.

Restraint and Seclusion

- Education Code section 49005.8 also prohibits the following:
 - Using a restraint technique that obstructs a pupil's respiratory airway or impairs the pupil's breathing or respiratory capacity, including placing pressure on a pupil's back, placing body weight against the torso or back, or using an item to cover the pupil's face.
 - Placing a pupil in a facedown (i.e., prone) position with the pupil's hands held or restrained behind the pupil's back.
 - Using a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the pupil or others.

Restraint and Seclusion

- A **physical behavioral restraint** is defined to mean “a personal restriction that immobilizes or reduces the ability of a pupil to move the pupil’s torso, arms, legs, or head freely.”
- NOTE: “physical restraint” specifically excludes:
 - **Physical escorts**, meaning a temporary touching or holding of the hand, wrist, arm, shoulder, or back for moving a pupil to a safe location
 - **Use of force by peace officers or security personnel** for detention or for public safety purposes

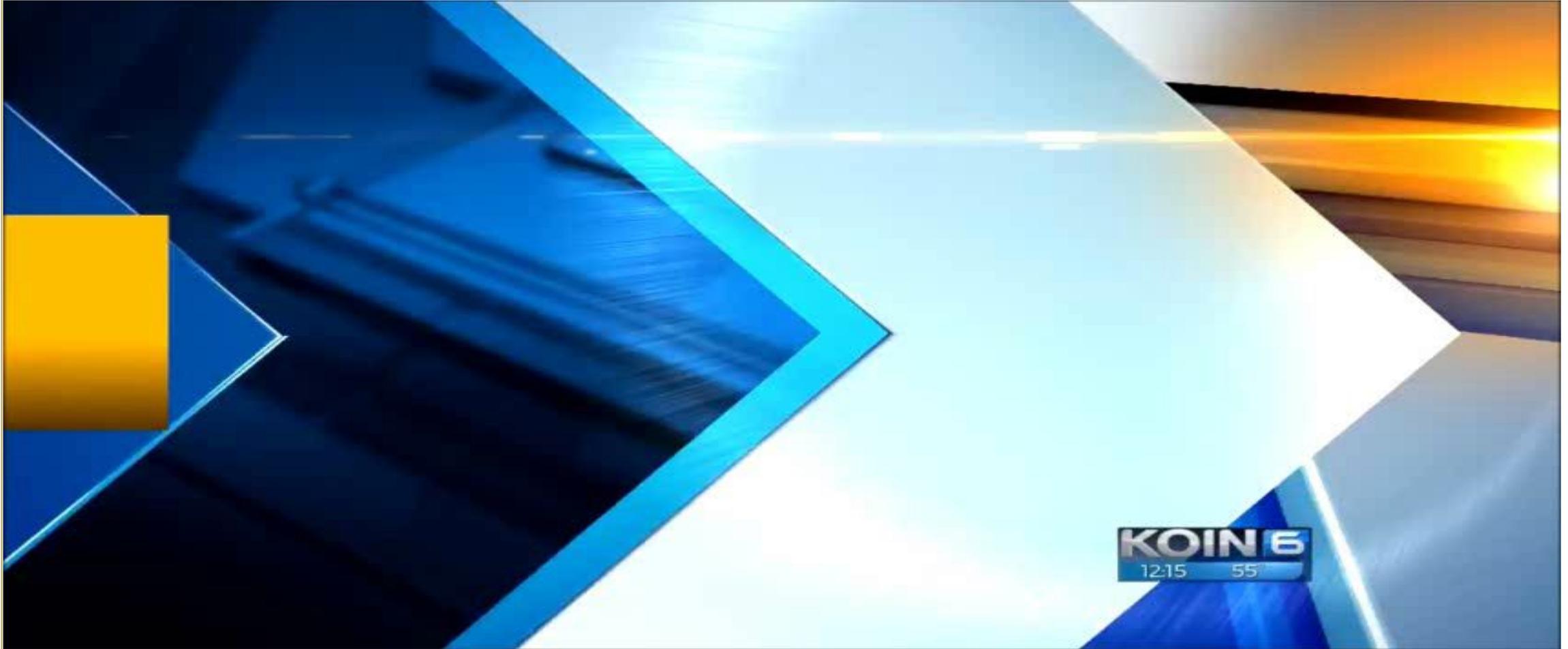
Reasonable and necessary force?



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III.

Immunity, Defense and Indemnity

Immunity

- Government Code section 820.2 states:
 - Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.
 - “discretionary act” immunity.

Immunity

- “Generally speaking, a discretionary act is one which **requires the exercise of judgment or choice**. Discretion has also been defined as meaning equitable decision of what is just and proper under the circumstances.” (*Nicole M. By & Through Jacqueline M. v. Martinez Unified Sch. Dist.*, 964 F. Supp. 1369, 1389 (N.D. Cal. 1997)).

Defense and Indemnity

- In most cases, a public employer will be required to **defend and indemnify** an employee in a civil action “for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity,” the employer “shall pay any judgment based thereon or any compromise or settlement of the claim or action” (Gov. Code § 825(a).)
- The public employer may only refuse to defend and indemnify the employee if he or she acted outside of the scope of employment, acted with fraud, corruption, or malice, or if defending the employee would create a conflict of interest.

IV.

Best Practices

Appropriate Ways to Take Action

- In every situation, exercise reasonable judgment and make a quick decision.
 - Can you physically stop the altercation and prevent injury to students **and** to yourself?
 - Is it reasonably necessary to physically intervene?
- Based on the circumstances, **determine if it is safe and necessary to physically intervene.**

Factors to Consider

- When determining whether or not it is reasonably necessary **and** safe to intervene in a student altercation, factors to consider include:
 - Do you have training (e.g., CPI training) and/or experience in safe intervention techniques/strategies?
 - Are you physically capable of effectively interceding to stop the altercation?
 - Are there weapons or other dangerous objects brandished or visible?
 - Are other personnel at or near the scene (e.g., Campus Liaison, SRO) who are better equipped to safely and effectively intervene?
 - How many students are involved in the altercation?
 - Do you know any of the students involved?
 - How high is the risk of serious injury absent immediate intervention?

Potential Alternatives

- Depending on the circumstances, it may be appropriate to utilize **non-physical interventions** to stop student altercations. Examples include:
 - Loud verbal commands
 - Use of student names in making verbal commands if known
 - Use of a whistle, bullhorn, or other loud, attention-grabbing device
 - Placing yourself between students as a barrier when they are disengaged to prevent further engagement
 - Using your radio to call for help (administrators, campus liaisons, SRO)
 - Directing bystander students to get help

Best Practices

- School districts should ensure that their employees are appropriately discharging their supervisory duties.
- If employees take reasonable steps to prevent student injuries, it is unlikely that a school district will be held liable for a student injury.
- On the other hand, if an employee completely fails to act or fails to use reasonable and necessary care, **including the use of reasonably necessary physical force where safe to do so**, and such failure leads to student injury, it is possible that the district will be held liable.

Final Thoughts

- School employees should intervene to stop student altercations where it is safe to do so (in the employee's reasonable judgment).
- School employees may use (but not exceed) the amount of physical force reasonably necessary to quell the disturbance and/or take possession of dangerous objects.
- Failure to take reasonable steps to intervene may expose the school district to liability for negligent supervision.
- Employees should be adequately trained in intervention techniques and strategies.
- Students should receive adequate supervision while on school grounds or at a school-sponsored event.

Question & Answer
Session

Thank You

For questions or comments, please contact:



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