

THE RISK OBSERVER

SCHOOL LIABILITY FOR PUPIL INJURIES

Although a school district is not an insurer of the safety of its pupils, it is responsible when a pupil sustains injuries as a result of the negligence of the district or its employees. It is therefore necessary to examine the definition of negligence in the context of the school environment.

Negligence is the lack of ordinary care. It is the failure to exercise that degree of care which a reasonably prudent person would have exercised under the same circumstances. Negligence may arise by acting improperly by doing that which a reasonably prudent person would **not have done** under the same circumstances, **or failing to do** that which a reasonably prudent person would have done under the same circumstances. Keep in mind that in these situations, the reasonably prudent person is a trained professional who is assumed to have the expertise to carry out the function for which he or she may be responsible. This involves two areas. The first area of concern is supervision. The second area of concern is that of facilities and equipment. Negligence will be found to exist where there is improper or inadequate supervision. Negligence will also be found if the facilities and equipment are improper, defective or not properly maintained. Both may be found in one event.

When supervision is at issue, the questions that arise relate largely to degree. How much and what kind of supervision is needed? What supervision is adequate? Differing circumstances result in different answers. The degree of supervision required must match the degree of risk to which each student is exposed.

In a typical English class of 25-30 pupils, one teacher could normally provide adequate supervision. A different ratio of pupils to teacher or a different instruction mode would be appropriate for a chemistry laboratory, a metal shop or a swimming pool. Chemicals and lathes are probably more hazardous than Chaucer. Similarly, the degree of supervision required would be greater for the novice learning to use a table saw and for a handicapped child on a playground. The risk of injury is greater in such instances. A 1984 decision of state appellate court made it clear that a greater than normal degree of supervision was required on a playground where mentally challenged children were playing in conjunction with others. The degree of risk determines the degree of supervision required. We must provide that degree of supervision which a reasonably prudent person would provide under the circumstances in view of the hazards that a reasonably prudent person should anticipate.

How much and what kind of supervision is needed?

A high school senior who has been properly trained in the use of a table saw and has been observed using it properly over the years needs less supervision than the seventh grade pupil in his first woodworking class. It is essential to have, use, and maintain lesson plans and records to show that each child has had a sequential program and has demonstrated the ability to work with slight supervision, if in fact, slight supervision is provided. The same concept applies to physical education classes. Children



NEW YORK STATE SAFETY GROUP 491

THE RISK OBSERVER

who have difficulty doing forward rolls should not be left unattended. If a group of pupils are allowed to work out alone with only very general supervision, the records of the class should demonstrate that each pupil has been examined and found competent to work with only minimal supervision. In addition, where physical maturity is a factor, the range of maturity of the individual class members must be considered. This is true especially in competitive situations.

Since the degree of supervision is dependent in part upon the danger of injury, we must also consider the effect of injury; we must also consider the effect of instruction when related to a specific activity.

Can a substitute, even one holding proper certification, supervise this particular activity? The substitute must know the level of achievement of the pupils in woodworking, gymnastics, and even chemistry if supervision is to be adequate. When a child is injured with a power tool or while vaulting and the teacher is a substitute, there is immediate question as to whether the substitute knew enough about the activity and the individual class member's idiosyncrasies to provide proper supervision. Also at issue is the certification and qualification of the substitute. These are separate and distinct and come to bear when a teacher attempts to provide instruction for which he or she may even be certified but not qualified.

A determination must be made by the administration as to the degree of supervision required under varying conditions and circumstances. Policies, regulations, rules and guidelines must be adopted to provide for the appropriate level of supervision. The rules must be adhered to and enforced. They must provide that degree of supervision that a reasonably prudent person would provide under the particular circumstances present.

Indoor and outdoor facilities must be maintained in a safe, usable condition. The playfields and playgrounds must be hazard free. Cans and bottles that are shredded and crushed by lawnmowers and playful pupils must be removed. Ruts in the base paths must be filled in and bases must be properly secured. Soccer and lacrosse goals must be constructed of proper materials and adequately anchored and maintained.

In order to minimize the risk of loss through improper supervision, affirmative steps must be taken to assure adequate supervision.

Who is responsible to inspect the fields before use? How frequently is an inspection made and is there a record of the inspection? A decision must be made as to how these functions are to be carried out. Rules and regulations must be made and enforced if an effective inspection program is to be implemented. Steps must be taken after the inspection to correct the deficiencies. Remedial action must be taken in a timely manner since the district will be held to be negligent if an injury occurs because of unsafe facilities or defective equipment and you knew that the unsafe or defective condition existed. If



NEW YORK STATE SAFETY GROUP 491

THE RISK OBSERVER

the facilities and equipment were under your control or used by you, you will be presumed to have knowledge of the condition which produced or contributed to the injury.

Indoor facility inspection and maintenance is equally important. There may be steam pipes, hot water pipes, and radiators that are not properly insulated. Swimming pool decks get slippery. Not all stage drapes and curtains are properly hung and some may need to be properly fire-proofed. A careful inspection of a building will show many areas that need attention.

If the defects cannot be corrected quickly, the facility or equipment should immediately be taken out of service or made unusable until the matter can be corrected.

The proper guards must be in place and the importance of the guards explained to every pupil. Automotive shops have many tools that must be properly maintained. Something as simple as a compressed air line for inflating tires can cause serious injuries if the controls are not functioning properly.

Not only must there be a regulation requiring the chemicals to be kept in a locked cabinet or area, the regulation must be enforced. Lack of enforcement of this regulation resulted in serious injuries when two young maintenance men took and hid chemicals from an unlocked cabinet; a very young child discovered the chemicals and accidentally made an explosive mixture resulting in serious burns.

Usually the burden can be met by merely carrying out sound educational and instructional practices and by use of common sense. Often, injuries occur in conjunction with instructional practices that have not been validated for effectiveness and safety.

Finally, **accidents will happen** in spite of our best efforts. When they do happen, you must do three things:

1. Be sure the injured person has the best possible care as quickly as possible whether it is a pupil, visitor, staff member, or even a trespasser.
2. Contact the responsible district official so that the insurance carrier can be notified as soon as possible.
3. Create a complete record of the event as soon as you can.

These actions will significantly modify the degree of exposure of the district to claims against it for negligence.



NEW YORK STATE SAFETY GROUP 491