



SISC

Self-Insured Schools of California
Schools Helping Schools

Property & Liability Division

December 2021
Volume 1, Issue 5

Quarterly Update

CIVIL RIGHTS CLAIMS AND WHY IT MATTERS TO SCHOOL DISTRICTS

The following article is a summary of a presentation given by Pat Tumbarello, AIC, CPCU, at the first Defense Counsel Summit sponsored by SISC on October 20, 2021. The summit brought together SISC's panel defense counsel from all over the State of California for the purpose of sharing information and discussing hot topics. For a complete copy of Ms. Tumbarello's presentation, please e-mail her at patumbarello@kern.org

Civil rights claims pled against school districts generally include suits for discrimination under the Americans with Disabilities Act and Section 504 of The Rehabilitation Act of 1973. (Note California Unruh Civil Rights Act claims previously pled no longer apply to school districts. That is under appeal however, so stay tuned.) Section 504 and ADA claims do not require tort claims be filed. In order for plaintiffs to prevail under Section 504 or ADA claims, there needs to be deliberate indifference. Negligence is not sufficient.

The Individuals with Disabilities Education Act (IDEA) guarantees individually tailored services, whereas the ADA and Section 504 promise non-discriminatory access to public institutions. This has evolved to the point that the plaintiff must exhaust administrative remedies under the IDEA, where the essence of the complaint is to seek relief for denial of a Fair and Appropriate Public Education (FAPE.) An exception to the exhaustion requirement occurs if the Individual Education Plan (IEP) student could file a lawsuit under 504 or the ADA, had the violation occurred at any other public location. Or, if an adult on campus could file suit for the same claim.

To prevail on a claim under 504 or Title II of the ADA, a plaintiff must show satisfaction of a three pronged process: (1) plaintiff is a qualified individual with a disability; (2) plaintiff was denied 'a reasonable accommodation that plaintiff needs in order to enjoy meaningful access to the benefits of public services'; and (3) the program providing the benefit receives federal financial assistance. A plaintiff may satisfy prong two by showing that the federally funded program denied plaintiff services that plaintiff needed to enjoy meaningful access to the benefits of a public education and were available as reasonable accommodations.

When a district loses a Due Process hearing, the damages awarded by the Administrative Law Judge (ALJ) are Compensatory Education damages. Thus, services are ordered, often with district personnel already in place.

When a district loses on a 504/ADA matter, monetary damages are awarded. Often this is not something that our districts have considered or budgeted for. There is a common misconception with districts that the civil rights component is one that is covered by SISC. More often than not, it is a problem for both the district and for SISC.

Civil Rights claims are one type of claim for which SISC will seek contribution from its member districts towards the resolution of the claim. The district itself has potential exposure for any findings of "intentional acts" or "deliberate indifference".

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Property & Liability Division

Mailing:
P.O. Box 1847
Bakersfield, CA 93303
Physical:
2000 K Street
Bakersfield, CA 93301
Phone: 661-636-4495

Newsletter Editor: Kerri Jones

Social Media Challenges

SISC member districts have reported students engaging in social media challenges. While some challenges strive to increase awareness or support for social causes, such as the Ice Bucket challenge for ALS; other challenges are detrimental to school culture or are destructive to school property.

Districts should be aware of some of the upcoming Tik Tok challenges. Some of these challenges include unwanted physical advances, physical assault, indecent exposure, destruction of property and theft. An internet search produced the following upcoming challenges:

December

Deck the Halls and show your b**** (male genitalia)

January

Jab a b***** (female chest)

March

Make a mess in the courtyard or cafeteria

April

Grab some eggz (stealing challenge)

May

Ditch Day

June

Flip Out in the front of fice

July

Spray paint a neighbor's fence

MOLD GROWTH IN AN INDOOR ENVIRONMENT

Media attention has increased public awareness and concern regarding exposure to mold in the workplace. While this may be considered a new problem, exposure to mold has occurred throughout history. In fact, the types of mold spores found in office buildings are not rare or even unusual. It is important to understand that no indoor space is completely free from mold spores. Mold spores are everywhere, making our exposure to molds unavoidable, whether indoors or outdoors, at home or at work.

Mold is part of the natural environment. Outdoors, mold plays a part in nature by breaking down dead organic matter such as fallen leaves and dead trees. Small amounts of mold spores are commonly found in buildings and other structures. Mold spores floating in the air outside can attach themselves to clothing and shoes and can then be carried inside. They can also travel through HVAC systems and blow in through open doors and windows.

Mold is not usually a problem indoors, unless mold spores land on a wet or damp spot and begin to grow. Mold will grow in places with moisture, such as around leaks in roofs, windows, pipes, or where there has been flooding. Mold needs moisture, oxygen and an organic material such as food, wood, paper, carpet and sheetrock to grow.

The term "Black Mold" or "Toxic Mold" refers to molds that are a toxigenic type mold such as *Stachybotrys chartarum*. These molds have the potential to, but do not always, produce mycotoxins. These molds need very wet materials in areas where there is a constant moisture source in order to grow.

According to the California Department of Public Health, the current consensus does not justify the differentiation of some molds as more "toxic or dangerous" than others. Not all molds produce mycotoxins and even those that do, will not do so under all conditions. The color of the mold is also not an indication of how dangerous a mold may be. The only evidence related consistently to adverse health effects from mold are the presence of visible mold, mold odor, water damage and damp materials regardless of the number or type of mold spores.

There are many different types of mold. The most common indoor molds in California are *Cladosporium*, *Penicillium* and *Aspergillus*. These molds are part of the allergenic type of molds which usually do not produce mycotoxins

Most people are unaffected when exposed to mold. About 20 – 30 percent of individuals may be more susceptible to allergies caused by mold and/or other allergens. When this group of individuals are exposed to damp and moldy environments, they may have an allergic reaction including hay fever type symptoms such as sneezing, runny nose, red eyes and skin rash. Damp, moldy environments can also cause asthma attacks in people with asthma who are also allergic or sensitive to mold. When exposed to these conditions, individuals with immune suppression or underlying lung disease may be more susceptible to mold and fungal infections. There is some evidence that the more extensive, widespread, or severe the water damage, dampness, visible mold, or mold odor, are the greater the health risks. Symptoms other than the allergic and irritant types are not commonly reported as a result of inhaling mold. Research on mold and health effects is ongoing.

There is no practical way to eliminate all mold and mold spores in the indoor environment. The best way to control indoor mold growth is to control moisture. Without moisture and a food source mold spores usually do not grow. Addressing moisture and water intrusion incidents by cleaning up and drying these areas as quickly as possible (within 24-48 hours) is the best defense in avoiding an indoor mold growth issue.

INTRODUCING RYAN BOURGET

Ryan Bourget joined the SISC Property & Liability Division in 2007. He is presently a Property & Liability Adjuster II handling a wide variety of property and liability claims for SISC member districts. In this position, he evaluates property claims, conducts liability investigations and assists districts on litigated claims. Ryan prides himself on providing our member districts with excellent customer service.

Ryan is married and a father of two young boys, age 10 and 12. He moved to Bakersfield from Ventura County in 2006. Prior to working for SISC, he graduated from Fresno State with a Bachelor of Science Degree in the field of Occupational Safety and Health. Ryan completed the course work for the industry wide recognized *Senior Claims Law Associate* (SCLA) designation, through the American Educational Institute, Inc., in March of 2016. He previously worked as a property and liability adjuster with three major private insurance carriers.

Ryan is an avid sports fan and enjoys watching college and NFL football. He is involved in coaching youth sports and loves being outside. Most of his weekends are filled watching his boys play soccer and football and running around the backyard.



CIVIL RIGHTS CLAIMS (CONTINUED)

If plaintiff prevails with an argument of “intentional acts” or “deliberate indifference” necessary for a civil rights violation claim, then the district itself potentially could be on the hook for the resultant plaintiff attorney fees, along with the judgment itself.

Often SISC’s largest exposure is the cost of defending these claims and not the indemnity component. The SISC Memorandum of Coverage (MOC) is written in a manner that allows SISC to provide a defense to these suits even though they involve intentional conduct.

We encourage districts to advise SISC early on of matters for which a due process complaint has been filed and there might later be allegations of civil rights violations. This gives SISC a chance to provide input so that actions taken by the district do not later cause issues in the defense of the civil rights lawsuit. We have found that having SISC defense counsel involved in the due process hearing stage is extremely helpful in providing guidance to the special education attorneys and witnesses. Special education attorneys sometimes need assistance in seeing the value of working with SISC defense counsel in order to obtain the best result in both the special education case as well as the civil case.

Property & Liability Division

Robert Kretzmer, Director
661-636-4709

Tyrone Taylor, Coordinator
661-636-4601

Lilia Beck, Administrative Secretary
661-636-4495

Ryan Bourget, Adjuster
661-636-4606

Roxann Dailey-Webb, Adjuster
661-636-4848

Hilda Tabora, Adjuster
661-636-4694

Pat Tumbarello, Adjuster
805-929-5950

Angel Garcia,
Safety & Loss Control
661-636-4786

Shelby Gonzales,
Safety & Loss Control
661-636-4604

Kerri Jones,
Safety & Loss Control
661-636-4376

Randy Rogers,
Safety & Loss Control
661-636-4607

Debbie Jackson,
Student Insurance
661-636-4206

Elsa Lara,
Student Insurance
661-636-4736

Jahna Lewis,
Student Insurance
661-636-4871

Sabrina Moten,
Student Insurance
661-636-4414

Maintaining District Contacts

Communicating with our member districts is a top priority for SISC. Communicating items such as coverage summary memos; Memorandums of Coverage (MOC); insurance and school industry updates and memos; and information of training opportunities are types of information important to share with our members. In that effort, we strive to maintain current contact information for our district administrative contacts.

If you have changes in administrative staffing, e-mail addresses, phone numbers or mailing addresses for your district, please e-mail Lilia Beck, Administrative Secretary at libeck@kern.org



SISC Offices

Larry E. Reider Education Center,
Bakersfield

FROM THE DIRECTOR

Many of you were able to attend the SISC annual meeting that took place on October 20th and 21st at the Lucia Mar Unified School District on the central coast. As always, this was a great gathering and in light of our recent challenges with the pandemic, this year's meeting was a reunion in a sense. It was a great opportunity to have at least a few face to face conversations and share thoughts on a multitude of topics.

In addition to the annual meeting, we had an opportunity to meet with our SISC panel defense counsel on October 19th in advance of our monthly board meeting, for our first Defense Counsel Summit. This was the first time that SISC's panel defense counsel had ever gathered in one place and we greatly appreciate the effort made by all to attend the summit. Given defense counsel's busy court calendar, we know that it is not easy to arrange for the free time needed to participate in such an event.

The meeting proved to be very beneficial to SISC's claim's staff as well. Ty Taylor, Coordinator, discussed the expectations that SISC has relative to reporting by our defense counsel on assigned suits. Our plan is to develop a set of written guidelines over the next several weeks that can be used as a template for providing essential information to the adjusters handling our litigated matters. Pat Tumbarello, Adjuster, also provided important information and led a discussion on claims and suits involving alleged violations of civil rights.

Additional presenters included Jim Wagoner and Nicholas Rasmussen of McCormick Barstow, with a review of coverage issues and the SISC Liability Memorandum of Coverage. We also heard from Daniel Barer of Pollak, Vida & Barer, for an update on the impact of AB 218 pertaining to the new statutory requirements involving sexual abuse and molestation suits.

A general discussion led to the consideration of establishing a method for panel defense counsel to communicate on areas of common interest as they prepare cases for the defense of our SISC member districts. In addition, a key area of interest was the use of experts and the desire to establish a library of sorts, with information on both plaintiff and defense experts in a variety of areas. These are two goals which will hopefully be fulfilled before the next summit, tentatively scheduled for October of 2022.

SISC is fortunate to have access to some of the most experienced and informed attorneys in the State of California. As a statewide joint powers authority, we benefit greatly from their expertise and commitment to the success of the SISC Property & Liability program.

PROPERTY & LIABILITY SAFETY CREDITS

For a number of years, SISC Property and Liability has provided Safety Credit funds to districts as a mechanism to reduce property and liability claims. Fewer districts than anticipated accessed this funding opportunity, so the program was discontinued in 2019. Districts who still had a balance were given an extension to June 1, 2022 to use these funds and submit an application and all supporting documentation. The P & L Application and Safety Credit Policies & Guidelines for 2021-22 are available for review on our webpage at <https://sisc.kern.org/pl/safety-credits/>

Districts with balances were sent letters in the fall and again this month. If you have questions about the program requirements or your districts balance, please feel free to call the Safety and Loss Control Department.

While this program is being phased out, the monies are still being used to reduce property and liability claims. The current focus is on reducing the incident and severity of fire, smoke and ash damage claims as well as resources to mitigate sexual assault and molestation claims. These value added programs are available to all our member districts.

NEW TRENDS IN YOUTH MENTAL WELLNESS & SCHOOL SAFETY

SISC has been partnering with STOPit Solution to provide our member districts access to an anonymous reporting service. This service provides a resource for students and staff to report issues such as bullying, self-harm, inappropriate relations, vandalism and a variety of other issues to district personnel. This is a value added service for our member districts.



SISC is excited to partner with STOPit in offering webinars focused on ***New Trends in Youth Mental Wellness & School Safety***. This webinar, hosted by STOPit Solutions, will be in January 2022. Learn more about the latest youth mental health facts and figures amidst the COVID-19 pandemic, as well as a discussion on the safety solutions available to your district at NO COST (provided to you by SISC). There are four dates and times from which to join the webinar. Please register for a date/time that works best for you and your District Safety Team, by going to:

<https://register.gotowebinar.com/rt/8599564534001191696>

We look forward to your participation and thank you for your ongoing commitment to creating healthier and safer school communities.

STUDENT FIELD TRIPS

Our member districts have returned to in-person learning, and field trips may be on the agenda for your enrolled students. With this in mind, there are a few things SISC Student Insurance would like to cover.

SISC understands that field trips are a great way for students to explore and connect to the information they're learning in the classroom. SISC Student Insurance wants to make sure our member districts have the proper documents available to make that happen. Field trip permission forms are important and should be a necessary requirement for participation. Any permission form needs to cite **Education Code section 35330 (d)** since the language in this code provides school districts immunity from liability claims. SISC has field trip/permission forms on the SISC Property and Liability website which are available to our member districts. SISC would also ask that our member districts keep a copy of the participation form in their student files, since there are times when our office will need access to the information on the form. The forms can be accessed through the following link <https://sisc.kern.org/wp-content/uploads/2007/07/Student-Participation-In-Voluntary-Field-Trip.pdf>. If you have any further questions or concerns, please contact our office at 661-636-4495.

Trends In Youth Mental Wellness & School Safety

The Webinar dates for the training are as follows:

- Tuesday, January 18th - 10:00 am
- Thursday, January 20th - 1:00 p.m.
- Tuesday, January 25th - 10: 00 am
- Thursday, January 27th - 1:00 p.m.

[REGISTER FOR THE WEBINAR HERE](#)

If you can't make it for the webinar, you can receive the recording free.



CAJPA Trainings

The Self Insured Schools of California, as many of you know, is a participating member of the California Association of Joint Powers Authorities (CAJPA).

In addition to the annual conference held in September of each year, CAJPA sponsors and provides many educational opportunities that benefit the property and liability division. One of the key committees that provides these opportunities is the CAJPA Litigation Insurance and Tort Liability (LITL) committee.

Recent events sponsored by LITL have enlightened members on topics ranging from traumatic brain injury claims to sidewalk liability issues that can impact school districts as well as many other public entities.

In the event you are interested in having any one from your district staff attend any of the upcoming educational events planned by the CAJPA LITL committee please contact Kerri Jones, Safety & Loss Control Specialist at 661-636-4376 or at kejones@kern.org. You can also find information regarding CAJPA and other educational opportunities at www.cajpa.org

BUSINESS PARTNER SPOTLIGHT - LEONARD HERR, ATTORNEY

Leonard Herr is an attorney with Herr, Pedersen, Berglund, Attorneys at Law, LLP. He was admitted to the California Supreme Court in 1978 and to the U.S. Supreme Court in 1986. Mr. Herr has represented SISC districts a number of times in litigation.

What got you interested in the law and motivated you to go to law school?

The tremendous work of many dedicated attorneys in President John F. Kennedy's administration impressed me at an early age. From the "mob busting" work of Bobby Kennedy as Attorney General, to the work of attorneys fighting for desegregation and equal equality, it seemed like the legal profession was having a profound positive impact on our country. Having "come of age" in 1971, the war in Vietnam piqued my interest. That is because by the early 1970s, military service was near the top of most males "to do" list. It was in the confluence of those concerns that college and law school seemed appropriate courses of action. By luck, the war in Vietnam ended with the fall of Saigon in 1975, the same year I was admitted to law school.

What do you enjoy most about being a lawyer?

Civil litigation is exceedingly fulfilling for me. It requires a lot of hard work, but allows for creativity in assessing the most efficient, economical approach to achieving my client's goals. The challenges of working within our complicated civil litigation system against talented adversaries, motivates me immensely. Partnering with the talented, experienced personnel at SISC, is especially rewarding.

Looking back over your career what do you consider to be your proudest achievement or moment as a lawyer?

Early on in my career as an attorney, the California Court of Appeal (Fifth District) appointed me as special counsel for a young girl, who had been removed from her home by a county foster care department. The appellate court asked me to assess the circumstances of the removal, retain the requisite professionals to determine the best interests of this little girl and do my best to get it done. The opportunity to apply my skills, at the request of some appellate judges that I respected immensely, all for the benefit of a very precocious little girl, reflected positively on what I think is the highest calling of the legal profession.

When you are not being a lawyer what do you like to do?

When I am not being a lawyer, I like doing whatever my wife wants me to do. "Happy wife, happy life," she likes to say. Seriously, I have been able to do what I do for over 4 decades because of my wonderful wife. We now have 4 supercalifragilisticexpialidocious grandchildren that our delightful daughters (x2) and their dedicated husbands entrust to us to spoil. And, for some reason, deep in my DNA I think it is my job to come up with mischief for my grandchildren beyond what they could come up with from anyone else. I take great satisfaction in undoing all the rules and direction my grandchildren get from their dutiful parents. "From grandpa," is such a beautiful refrain when my grandchildren are asked by their parents, "where did you learn that."



The SISC Property & Liability Staff

wish you all

a happy and healthy

Holiday Season!