



Building a positive school culture begins with understanding the rights and protections provided to school staff, and their legal obligations to their students.

## Teacher Interventions:

Managing liability before, during, and after an altercation



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# Creating a safe and positive school climate depends on a solid understanding of rights and responsibilities.

"It has long been held that '[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... [t]his affirmative duty arises, in part, based on the compulsory nature of education.' "

Shaana A. Rahman, Esq  
Plaintiff attorney

## Purpose

School fights between two or more students have become more common in Connecticut over the past three to five years. CIRMA has seen a rise in liability claims stemming from teachers intervening to break up physical altercations between students. Most successful plaintiff lawsuits have been the result of the defendant's failure to act appropriately during the altercation or poor investigating and documentation after the event. This white paper identifies CIRMA recommended best practices for schools to use to better manage student altercations before, during, and after an incident.

On any given day, teaching and school staff will encounter a wide range of unique personalities and situations that can test every aspect of her or his knowledge and skill set. The best way to stay calm and react appropriately is for staff to be prepared for the unexpected, use their training and education, and to know their rights and responsibilities. In the event that something does happen, not knowing what to do or how to handle the situation can have serious consequences. If they are mishandled, school fights can result in both the teacher and the school district being held liable for damages.

The most common lawsuits that are brought against schools as a result of a student-to-student physical altercation are:

- Failure to supervise,
- Failure to protect and,
- Negligence.

This white paper will help public schools and their teaching staff understand their legal rights and legal responsibilities so that they can act properly in quelling the situation and protect all students. Because all aspects of negligence are applicable to a student altercation, this white paper discusses ways schools and their faculty can formulate a response plan, so that they can act quickly and efficiently and protect the school district from liability.

CIRMA recommends that schools draft policies and procedures that should be followed if an altercation occurs and to train their staff on the policies.

## Before a Fight Occurs

### Understanding an Established Responsibility

The school district is responsible for the safety and well-being of each and every student from the second he or she steps onto the bus in the morning, every moment he or she is on school grounds, until the second he or she steps off of the bus at the end of the school day. This includes every school-sponsored extracurricular activity, especially sporting events, field trips, or school plays. Case law has established and confirmed the school's responsibility through the legal doctrine *in loco parentis*. Literally meaning "in place of the parent," the doctrine is used to describe a person who, though not the natural parent, acts as a parent to a child and may thus be liable to legal obligations as if he or she were a natural parent<sup>1</sup>. The legal system has determined

<sup>1</sup>Duhaime's Law Dictionary

# It is reasonable to assume that younger or special needs students will need closer supervision than high school students.

“When teachers know state and federal laws that govern discipline and the reasonable use of force, it is less likely that the classroom will be out of control.”

David Schimmel  
University of Massachusetts School of Education,  
Amherst; Harvard University

that schools act *in loco parentis* and are given the authority to supervise and discipline their students. The school is subsequently liable for damages when it is determined that the school or a member/members of its faculty in some way breach that duty of care. Damages resulting from a physical altercation between students can be expensive if the school is found to have acted negligently, which is why it is imperative for every member of the school staff to understand what to do during such an event.

## Act Within the Confines of the Law

Due to the school’s responsibility to keep its students safe, Connecticut General Statute (53a-18) protects teachers in the event they feel it is necessary to use reasonable physical force:

“The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(6) teacher or other person entrusted with the care and supervision of a minor for school purposes may use reasonable physical force upon such a minor when and to the extent he reasonably believes such to be necessary to (A) protect himself or others from immediate physical injury, (B) obtain possession of a dangerous instrument or controlled substance (drug, substance, or immediate precursor in schedules I to V, inclusive, of the CT controlled substance scheduling regulations) upon or within the control of such minor, (C) protect property from physical damage or (D) restrain such minor or remove such minor to another area, to maintain order.”

The most important aspect of this statute is the term “reasonable.” Because of this language, it should be noted that the actions of the teacher in question will be held to the “reasonable person” standard of care. Used as an objective test, the “reasonable person” is frequently used in tort to denote a hypothetical person in society who exercises **average** care, skill, and judgement in conduct and who serves as a comparative standard for determining liability. Persons with **special duties** to society are usually held to a **higher standard of care**; thus, the teacher in question would be **compared** to what is considered a **reasonable teacher**<sup>2</sup>. This wording makes it imperative for teachers to keep a level head, allowing him or her to think clearly in a stressful situation.

A good way to ensure that all members of the staff are prepared to act appropriately during a physical altercation is for the school to develop a comprehensive response plan. Furthermore, training faculty to learn, understand, and act on this strategy are integral steps in mitigating damages stemming from an altercation.

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<sup>2</sup>The Free Dictionary by Farlex

# The response should be appropriate to the incident.

“Schools should educate teachers, students and parents regarding their policies, and create a culture of safety and accountability.”

Constance H. Baker, Esq., Cella E. Landgren, Esq.

## **Make the Right Decision During the Altercation Maintaining Your Composure and Ensuring Safety**

Because there exists a legal obligation for the school to provide a safe environment for students, the school may be found liable for damages if this duty is breached. This applies in the case of a student-to-student physical altercation. Therefore, Connecticut General Statute 53a-18 has given teachers the authority to use physical force in the event that **he or she reasonably believes it to be necessary, the guidelines of which are outlined under Section (6)**. With all of this in mind, there are instances where physical intervention is warranted and would pass the reasonable person standard. Teacher and school staff should consider the following question, “Does the threat that I perceive at the time of the incident warrant reasonable physical force?” This best practice immediately prevents teachers from using weapons, life threatening maneuvers, throwing punches, etc. The faculty member’s involvement in the altercation is simply to **prevent further** injuries or death, **not to inflict pain or punishment**. A negligence lawsuit will aim to prove that the teacher in question did not use reasonable judgement in subduing the situation. To use an extreme example, if two students have engaged in a verbal altercation where they are shouting and yelling in each other’s faces, it may be considered unreasonable for an intervening teacher to put one of the students in a rear naked choke hold. A plaintiff’s attorney can argue that the threats associated with the initial altercation did not warrant a maneuver that could cause serious long-term damages, especially if it was applied by an individual with no training in the hold. In other words, a nonlife threatening confrontation or combative individual should not be neutralized by a life threatening maneuver.

The third and fourth aspects of a negligence lawsuit are *cause in fact* and *proximate cause*. *Cause in fact* is the component that proves that negligence caused the damages and, without negligence, the damages never would have occurred. The plaintiff’s attorney is asking a variation of the question, “Would this injury have occurred if the action in question did not occur?” Secondly, when a plaintiff’s attorney or judge refers to *proximate cause*, she or he is trying to make the connection between the plaintiff’s injuries and the defendant’s decision making. The question being asked here is, “Were the damages foreseeable through the defendant’s actions?” Both of these qualifications need to be met in order to successfully prove negligence. With the understanding that these two questions may be asked and would be answered in a court of law, it is critical for teachers to make the decision they would be willing to justify. Ultimately, know that both action and inaction will be investigated and carefully analyzed.

In the case that a teacher does not feel comfortable using physical force to separate the combatants, recognize that *in loco parentis* applies to all students and not just the aggressive ones. School staff is responsible to ensure the safety of every student. Directing innocent bystanders away from the altercation may be just as helpful in alleviating a situation. This may include telling onlookers to leave the area and

# Proper, timely, and complete documentation of an incident is crucial for a strong defense.

For more information about this topic, please contact your CIRMA Risk Management Consultant.

communicating the consequences for not obeying orders<sup>3</sup>. This simple tactic helps the situation because it can allow the properly trained personnel easier access to the combatants so that they may separate them and stop the fight. Additionally, it helps to prevent an altercation that would otherwise have included two combatants from snowballing into a brawl between a larger number of students.

## **After the Physical Altercation Has Ended**

If in the event the teacher found it justifiable to use physical force in a reasonable manner, the most important thing to do is to get checked by a qualified medical professional for any physical injuries that may have occurred. A scrape on the arm, a twisted knee, or a hyperextended wrist, if left unattended, could result in long term medical complications. The health and safety of the teachers that provide education and guidance to our youth is just as important as that of the students they are educating.

## **Your Obligation to Keep Proper Documentation**

The next step is to document everything that occurred. Obtain written reports that include what the teacher saw, how the teacher reacted to what was seen, and why the teacher acted in that manner. There is usually quite a bit of time between when an incident takes place and when a lawsuit gets filed (individuals have two (2) years to file suit). Even more time elapses before the witnesses and defendants submit testimony. During this time, the teacher may forget some important facts about what was seen, heard, or done that can assist in mitigating lawsuit settlements or exonerating the defendant.

Keeping proper documentation can assist the school and the teacher in a number of different ways. For example, it provides a training piece for the teacher that he or she and others can refer back to in case a similar situation arises in the future. The worst thing that can come out of physically intervening in an altercation is nothing; instead, assess what was done right and wrong and communicate the results so that the same mistake is not made a second time or that a success can be repeated.

An investigation is not complete without obtaining witness statements and pertinent evidence. A timely investigation will be helpful in disproving proximate cause, if possible. For instance, if the plaintiff claims that he or she hurt his or her head as a result of a teacher's intervention, the subsequent witness interview could reveal if there were other factors that could have played a part in that injury. The school can then use that information for their defense. If your school uses CCTV, CIRMA recommends that you secure all electronic digital images and that staff knows how to maintain it. The school may want to consider saving the video evidence on a separate device as a back-up.

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<sup>3</sup>Johns, Beverly H., & Valerie G. Carr. 1995. Techniques for Managing Verbally and Physically Aggressive Students. Hawthorne Educational Services, Inc.

## Resources

*Security Surveillance: Managing the Use of CCTV*, Whitepaper; Connecticut Interlocal Risk Management Agency, 2016,

“Managing Disruptive Behavior in the Classroom,” CIRMA Training & Education Program.

David Schimmel, University of Massachusetts, Amherst and visiting professor Harvard University’s Graduate School of Education, University of Massachusetts Law Review. *The Risks of Legally Illiterate Teachers: The Findings, the Consequences and the Solutions*, <http://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1092&context=umlr>.

David Schimmel, Leslie R. Stellman, Cynthia K. Conlon, Louis Fischer; *Teachers and the Law, 9th Edition*. Pearson, 2014.

Johns, Beverly H., & Valerie G. Carr. 1995. *Techniques for Managing Verbally and Physically Aggressive Students*. Hawthorne Educational Services, Inc.

Connecticut General Statutes 10-235 – Indemnification of teachers, board members, employees and certain volunteers and students in damage suits; expenses of litigation. [https://www.cga.ct.gov/current/pub/chap\\_170.htm#sec\\_10-235](https://www.cga.ct.gov/current/pub/chap_170.htm#sec_10-235)

Paul D. Coverdell Teacher Liability Protection Act of 2001.” [www.GovTrack.us](http://www.GovTrack.us). 2001. September 20, 2017; <https://www.govtrack.us/congress/bills/107/s316>

Public Act No. 15-141. An Act Concerning Seclusion and Restraint in Schools. <https://www.cga.ct.gov/2015/ACT/PA/2015PA-00141-R00SB-00927-PA.htm>

*The Connecticut Interlocal Risk Management Agency, CIRMA, is Connecticut’s leading provider of municipal risk financing and risk management services. A member-owned and governed agency, CIRMA provides high quality insurance for municipalities, school districts, and local public agencies. CIRMA operates two risk pools, the Workers’ Compensation and the Liability-Auto-Property pool. It also provides Heart & Hypertension claims services and claims administration and risk management services to self-insured municipalities. CIRMA’s financial strength enables it to provide assured rate stability, open availability, and expert risk control and claims services.*

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