NEW YORK SCHOOLS INSURANCE RECIPROCAL

NYSIR News

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PREVENTING CHILD SEXUAL ABUSE

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NYSIR's fourth annual symposium, aptly named *Guardians of Innocence*, featured several experts on recognizing and preventing child sexual abuse whose goal was to enlighten teachers, administrators and school employees from around New York and encourage them to join their ranks.

Nearly 150 educators tuned in Aug. 3-4 to the extensive online conference, which was part of a special New York Schools Insurance Reciprocal initiative that also includes a website resource center and a new manual aimed at preventing the sexual abuse and molestation of students.

The forum began with a presentation by Keith Scott, director of education with The Safe Center Long Island, who explained the generally accepted psychology associated with child sex abuse. "Children rarely make up accusations of sexual abuse," he pointed out. "It doesn't come out of nowhere."

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>
> KEITH SCOTT
> DIRECTOR OF EDUCATION, SAFE CENTER LONG ISLAND

PREVENTING CHILD SEXUAL ABUSE... CONTINUED

TOO MANY ACES

It starts in dark places identified as adverse childhood experiences (ACE), noted Scott, which often show up in three categories: parental abuse (psychological, physical and sexual); emotional and physical neglect; and familial dysfunction, which can manifest in alcoholism, the loss of a biological parent or exposure to mentally ill relatives. Children exposed to too many ACEs can suffer from disrupted neuro-development, according to Scott. They're always in flight-or-fight mode, which means "their brains never get the chance to rest."

It starts in dark places identified as adverse childhood experiences that often show up in three categories: parental abuse (psychological, physical and sexual); emotional and physical neglect; and familial dysfunction.

Eventually, that results in less-than-optimal neuro-development, which experts tie to social, emotional and cognitive impairment.

A key part of the solution, said Scott, is for teachers and school counselors to educate themselves about child sex abuse and to communicate what they learn to parents and kids. The message to students should be that "they have a right to control their own bodies," Scott explained, and his message to symposium attendees was equally trenchant: "If it (what's happening to a child) doesn't feel right, report it."

Paul Ernenwein, from the law firm Catania, Mahon, Milligram and Rider PLLC, doubled down on that advice, emphasizing from a legal standpoint the need for district officials to review, respond to and record every spoken and written word related to complaints of sexual abuse. If they don't already exist, he noted, formal student complaint forms should be created and diligently filled out, adding that notes by school officials taken early on in the process are important, too.

"Every situation is so vastly different," he reminded attendees, that every district should encourage the creation and archiving of video records, as well as the filing of communications from parents and guardians. He emphasized the importance of those actions to avoid what could be a damning determination of deliberate indifference, in both a court of law and the court of public opinion.

GROOMING: IT'S NOT ALWAYS ABOUT NEATNESS

Also presenting at the symposium was Stefanie Szwejbka, manager of community education with the Bivona Child Advocacy Center, who focused on the ways sexual predators 'groom' their victims, parents and other members in a child's protective community.

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Citing national statistics, Szwejbka told her audience that 1 in 10 children will have been a victim of sexual abuse by their 18th birthday. Even more eye-opening, "ninety percent of child sexual abuse victims know their abuser."

PREVENTING CHILD SEXUAL ABUSE... CONTINUED

Groomers, she said, fill a need of some kind in a child's life – friendship, social support, help with school work or a sport – and slowly build dependence and trust. They create a situation in which "other folks around the child would say, 'No way'," to the idea that sexual abuse might be occurring.

From there, she continued, perpetrators – adults as well as minors – slowly isolate their victims and gradually begin to sexualize the relationship. "It's all about pressing boundaries," according to Szwejbka.

She advised educators to be on the lookout for adults in school settings who may engage in obvious or preferential treatment of a student; spend excessive time alone or outside class with them; drive a student to or from school; befriend parents and visit their homes; act as a student's confidante; give small gifts, cards, or letters; initiate inappropriate calls, emails or texts; or even engage in flirtatious behavior or make off-color remarks.

Additionally, she said she highly recommended precise and detailed codes of conduct for school teachers, administrators and other employees.

THE SOCIAL MEDIA CONNECTION

Day Two of the symposium began with a presentation focused on the way the internet and social media have exacerbated the problem of child sexual abuse. How kids are victimized has changed over time, Ed Suk, executive director of the National Center for Missing and Exploited Children New York Regional Office, told attendees. "We are in a completely different world," where, for children in the current generation, what's online is fully integrated with what's just outside the front door.

One-sixth of almost 30,000 missing kids are victims of sex trafficking, Ed Suk advised. "We've seen kids advertised for sale on *Craig's List*." Abusers are "extraordinarily skilled at finding kids" using online enticements.

One-sixth of almost 30,000 missing kids are victims of sex trafficking, he advised. "We've seen kids advertised for sale on *Craig's List*," he said, and abusers are "extraordinarily skilled at finding kids" using online enticements. They find out about their targets by checking personal online profiles and, using that information, "they're going to track kids… and start to manipulate them." Surprising many in his audience, Suk noted that nearly 15% of teens have emailed or texted nude images of themselves to somebody, a fad that makes

PREVENTING CHILD SEXUAL ABUSE... CONTINUED

it easier for them to be exploited later on.

That exploitation can sometimes take the form of sex trafficking, or coercing children into performing sexual acts for commercial gain. Traffickers can be anyone, noted Molly England, task force coordinator for the Suffolk County Anti-Trafficking Initiative on Long Island – even family members. Victims tend to be runaways, drug users, homeless children or recent migrants, she said, and traffickers – who often know their victims – will sometimes pretend to be romantically involved with their targets, inducing psychological manipulation and control.

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RED FLAGS

Signs of trafficking involving children that educators can look for include evidence of physical abuse, neglect or malnutrition; unexplained absences or increasing truancy; wearing clothes or jewelry suspected victims most likely can't afford; and even carrying an unlikely number of door keys, especially to hotels and motels.

As in all cases of suspected child sexual abuse, teachers and administrators generally cannot be held liable for filing reports with their districts or state and local governmental agencies.

In fact, encouraging educators to do just that in cases where they genuinely worry about abuse was a key message throughout the symposium. The conference's final expert presenter, Jack McCalmon, president of The McCalmon Group, declared outright that his company suspects "there is more abuse than is reported. Oftentimes you (teachers) are the front line of defense." The McCalmon Group has worked with some of the largest organizations in the world to help make their workplaces safe.

Driving home his point, he straightforwardly affirmed that sexual encounters do, in fact, occur on school grounds. An estimated 10% of K-12 students, he told his audience, will experience sexual misconduct by a school employee. Harkening back to the topic of grooming, McCalmon repeated that "There's one student that always gets the time after school for tutoring." Winners of Teacher of the Year awards, he stated matter-of-factly, have later been determined to be abusers.

SOME ANSWERS

NYSIR Director of Risk Management Brett Carruthers closed the symposium by reminding attendees about the reciprocal's own sexual abuse prevention initiative, which includes a comprehensive Guide for the Prevention of Sexual Abuse and Molestation of Students, training programs available at NYSIR Online University and a special resource center in Risk Management Central at nysir.org. ▪

A Short, Sweet History of NYSIR

At one point in his illustrious career,

Mark Twain supposedly declared that, despite the generally accepted axiom, history rarely repeats itself. It does, however, rhyme.

Well, with a younger generation of superintendents and business officials stepping up to replace retiring New York state school district and BOCES leaders, this might be the right moment for a little poetry about NYSIR's history. And in keeping with the theme, we'll begin with this dandy couplet:

> In the 2004 book *And One For All – The Story of the New York Schools Insurance Reciprocal,* Roberta Zampolin recounted how, in the early 1980s, 60 cents on every dollar of new state education aid coming into her county was being used to buy insurance.

To start, let's get a fix
On nineteen eighty-six.

That was when then-New York State Comptroller Edward Regan began to warn that liability insurance premiums for school districts across New York had tripled over the previous year, and advised the legislature to get ready for what he called a "statewide liability insurance crisis."

Just what kind of crisis was he talking about? In the 2004 book *And One For All – The Story of the New York Schools Insurance Reciprocal,* Roberta Zampolin, who in 1986 had become assistant superintendent for business with the Nyack Public School District in Rockland County, recounted how, in the early 1980s, 60 cents on every dollar of new state education aid coming into her county was being used to buy insurance.

MISSION IMPOSSIBLE

"That's a pretty drastic number," she told NYSIR at the time.[1] "It was an impossible situation. I remember some Westchester schools couldn't even buy insurance." Back then, the school district liability insurance problem was, in Comptroller Regan's judgment, "the most important local issue facing state government."

How did things get so bad? Howard Lasher, then chairman of the New York State Assembly Insurance Committee, thought he had it figured out. Before the crisis, he contended, insurance companies had charged artificially low premiums for coverage as a way to attract customers during a period of high-intensity competition. But then they had the rug pulled out from under them when interest rates collapsed and their investment income began to decline.

The answer? Raise premiums sharply to quickly increase revenue. Lasher, however, had an answer to that answer: "There's no justification for that sort of thing."

The insurance industry saw it differently, though. It was suffering from litigation inflation, exacerbated by the legal system's rush to expand definitions of liability to include third-party defendants like insurers, who had deep pockets but little culpability when it came to claims.

INSURANCE? WHAT INSURANCE?

Of all the public entities hit by the crisis, school districts may have suffered the

Continued on back page.

Education.

It's a complicated enterprise. Faculty. Staff. Students. Supplies. Transportation. Buildings and grounds. With seemingly a thousand things demanding attention all at once, risk management is bound to slip to the bottom of the list every once in a while, right? Here's why it shouldn't, and why it's important to remember…

It Could Happen to You.

When an athlete takes a tumble, something most likely hasn't gone according to plan. A running-back slips before reaching the end zone. A center is tripped and surrenders control of the puck. A shortstop loses footing trying to scoop a ground ball.

When an athlete takes a tumble, something most likely hasn't gone according to plan.

Gymnastics is unique because tumbling usually is part of the formal competition, but that doesn't mean accidents can't happen. One NYSIR subscriber school district found that out when a student's fall from a piece of gym equipment served as a springboard to a claim of negligence.

The 5-year-old had just completed a skills test on a 16-inch-high padded box mat, according to the girl's gym teacher, who reported that he had observed her standing on the box mat a second time when she slipped and fell onto a floor mat below, hitting her shoulder and head. The school nurse was called and the student was taken to an emergency room, where she was diagnosed with left radial neck and left ulnar neck fractures. The injuries required multiple surgeries over the next year; three years later her family filed a suit against the district seeking damages that vaulted over the half-million-dollar mark.

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MOUNTING AN ARGUMENT

Attorneys for the plaintiff alleged that the student shouldn't have been allowed to participate in the activities in the first place, due to a 504-plan put in place because of low muscle tone in the student's lower body. Additionally, expert testimony was submitted stating that the particular activity in question was not age-appropriate, the class was improperly conducted and the district's overall supervision of the young student was inadequate. The plaintiff's counsel also made a subsequent allegation that the student sustained not only the stated injuries to her neck and arm, but also suffered from a concussion, headaches, cognitive deficits and vision issues related to the fall.

Working with counsel, the district secured an affidavit from its own expert, who stated that the activity not only had been age-appropriate, but that supervision complied with all relevant standards and the class had indeed been conducted properly. Based on that a motion for summary judgment was sought by the defense, but was denied because of the conflicting opinions of the two experts.

An appeal of that decision also was denied, but prior to trial, the court did grant a defense motion asking that testimony from the plaintiff's expert be excluded because it wasn't relevant to any fact up for debate, and he was unqualified to speak on the issue.

STICKING THE LANDING

NYSIR attorneys also were able to present medical examination records from multiple doctors who found that the student's reported intellectual deficits were attributable not to the fall, but to her borderline-to-low average functioning across several cognitive areas consistent with developmental learning issues. Despite the defense counsel's confidence that the evidence was insufficient to prove the district was liable for the injury, attorneys for the district made two motions for a directed verdict out of concern that a jury might find for the plaintiff based on sympathy. The court reserved on both, but ultimately the jury delivered a judgment for the defense, finding that the district had indeed provided reasonable supervision.

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THE LESSON?

When approaching the legal apparatus, make sure you maintain a good balance of evidence. ▪

A SHORT, SWEET HISTORY OF NYSIR… CONTINUED

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most. In some regions of the state, once-trusted insurers went so far as to cancel or non-renew liability coverages, leaving districts and BOCES high and dry. As remembered by Paul Weinstein, now vice president and director of NYSIR Member Support and Marketing, "Some school districts essentially faced abandonment by commercial insurers that had been serving them for years. They had very few places to turn."

Of all the public entities hit by the crisis, school districts may have suffered the most. In some regions of the state, once-trusted insurers went so far as to cancel or non-renew liability coverages, leaving districts and BOCES high and dry.

Fortunately, one of those places was a company called Wright Risk Management (WRM), where a group of insurance and risk management experts was watching with great interest. Schools, they decided, were inherently a good risk. They had to abide by state and local regulations, after all, and were run by boards with the best interest of the community in mind. To put it bluntly, parents weren't going to allow their kids to be bused into a danger zone. Even better, if school districts banded together, something called aggregate market power might suddenly materialize.

Convinced that it had the solution, WRM began to advocate for self-insurance in the form of a reciprocal made up of school districts themselves. The upshot was that, after months of collaborating with legislators, reinsurers, district superintendents, school business officials and boards from Long Island to the Hudson Valley, the New York Schools Insurance Reciprocal, a.k.a. NYSIR, opened its doors for business in 1989. After that, districts and BOCES across the state were able to get reasonably priced insurance tailored to schools, without worrying that they might be abandoned by commercial insurers. They were insuring themselves.

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There is, of course, no way to know if history actually does repeat itself. But in this case, it most definitely can be made to rhyme.

For schools in New York things were markedly nicer,

Once they got introduced to a company called NYSIR

[1] And One For All, from which all historical references are taken, was published in 2004 and reprinted in paperback in 2020.

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