SELF AWARENESS

Schools Excess Liability Fund

SELF Board Increases Core Limit to $55M Sets Rates for 2017/2018 Program Year

The SELF Board voted in April to increase the core limit in the Excess Liability Program from $30 million to $55 million, for the 2017/2018 program year, in an effort to ensure that its members are adequately covered for what lies ahead.

As jury verdicts and settlements continue to skyrocket with little promise of relief on the horizon, and given that nearly 90% of SELF's covered ADA is already protected by the higher limits through the Optional Excess Liability coverage offering, the Board opted to merge that coverage into the core program.

SELF is now examining the potential in the markets and member appetite to support a new Optional Excess Liability offering that will go $10 - $20 million or higher, beyond the core limit.

During the last two program years alone, SELF has witnessed a notable increase in the frequency and severity of catastrophic losses. Increasing the rate—while always a difficult decision for the Board—reflects the Board's fiduciary responsibility to the membership and is in synch with the liability climate trend in California.

The Board is keenly aware that its members are already facing increases in their coverage costs at the primary level and other budgetary pressures, however responsibly funding for future losses will guarantee that SELF has the resources to continue protecting California's schools and colleges well into the future, whatever it may bring.

SELF's K-12 members attaching at $5m will see an increase of $0.60 per ADA for $50 million in coverage limits; while those nine K-12 members still attaching to SELF at $1m will see a $2.70 per ADA increase for $54 million in coverage limits.

The community college rate, which is lower than that of K-12 members based on loss experience, will see an increase of $0.42 per FTES for $50 million in coverage limits.

As we move forward into the 2017/2018 program year, the Board will be examining a number of options to provide flexibility to the membership and keep SELF relevant in the marketplace, including additional retention options that may be available with the 2018/2019 program year.

The adopted rates for the new coverage structure in 2017/2018 are as follows:

Excess Liability Program

Coverage	K-12	Community Colleges	Non-ADA	Minimum
$54M x $1M	$17.40/ADA	On request	On request	$2,200
$50M x $5M	$5.95/ADA	$4.21/FTES	$4,000	$720

If your district is interested in limits above $55 million, please contact Director of Communications and Member Services Lois Gormley at **lois@selfjpa.org.**

In This Issue

Conferences & Events

APRIL
CASBO Annual Conference
Long Beach – April 12-15

Praesidium Webinar Series
Utilizing Well-Crafted Policies & Procedures in Sexual Abuse Prevention Strategy
April 19 – 10 am
April 26 – 1:30 pm

MAY
ACBO Spring Conference
Squaw Valley – May 21-24

About Us

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Our Mission

SELF is a member-owned, statewide partnership of public educational agencies providing quality pooled programs for excess coverage that benefit our students.

By the Numbers

SELF is the leading statewide excess liability provider for California's public schools and colleges, serving nearly 3 million students.

SELF Awareness

Comments should be sent to the above address or info@selfjpa.org.

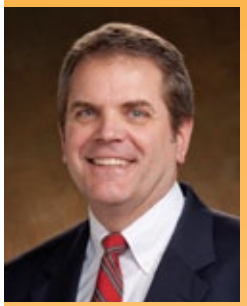
Board

Area II	Adam Hillman
Area III	Bev Wilkinson
Area V	Cathy Reineke
	Dave George
Area VI	Nancy Anderson
	Diane Crosier
	Renee Hendrick
	Tony Nahale
	Toan Nguyen
	Karla Rhay

Community Colleges

Michael Gregoryk, Peter Hardash, Teresa Scott, Kevin McElroy

A Message from Eric Lucas



Rome wasn't built in a day… but they were laying bricks every day. With partial credit to English writer John Heywood, this epigram is used quite often to remind one of the time needed to create something great. We all know it is true. It does take time, sometimes years, to achieve a goal.

For public entities in California, that goal has to be an overhaul of the tort system in place. As I have championed in past writings, tort caps are the answer. Clearly, I do not think that those jurors who hand out large damage awards appreciate just how devastating their actions are to schools in California. Simply put, these excessive awards are putting schools, and those who insure them, in a clear and present danger of being unable to transfer these risks.

I recently observed a mock trial. The facts are ones we have all seen in past cases so I will not belabor them here. However, what struck me, to no surprise, was the mention of insurance by one group I watched deliberate. If this was a real trial, the presiding judge would have mentioned during pre-deliberation instructions to the jury that the insurance word is a no-no during their deliberations—it is irrelevant. This is a typical mindset for jurors. Not only are they not following this simple instruction, they also know schools have insurance of some type. Therefore, no one will feel the pain other than some faceless, east coast insurance behemoth. This is just another root cause of why change is needed.

SELF's Board understands the overall, current dynamic of the California tort system. And, until favorable change in the system occurs, the course of business has to be focused with an eye toward what is in the best interest of the members of SELF. This is seen in the 2017/18 rates set in April. The SELF Board again met their implied duty owed, their responsibility assumed, and their expressed desire to continue to conservatively fund now for any and all future unpredictability.

Much like the Romans, the SELF Board does not underestimate the importance of laying another financial brick. These financial bricks are the part of the overall system built to keep SELF sound for any and all future unpredictability.

Pushing and Shoving at Work: What Counts as "Workplace Violence"?

Courtesy SELF Resource Center and in2vate LLC
By Erika Tyner Allen, J.D., Ph.D.

Workplace violence has been on the national agenda my entire adult life, and perhaps during yours. In many ways, the event that caught our political attention happened in the summer of 1986. You may remember when a letter carrier with a complicated work history walked into his Oklahoma post office and fatally shot 14 people before killing himself. Unfortunately, this wasn't a one-time kind of event. The Department of Justice routinely finds violence by fellow-employees to be a leading cause of death at work. There are about 1,000 workplace homicides in the United States each year.

As a manager, you would surely respond to action that might seriously harm or kill a worker. But what do you do when an employee says they've been shoved or pushed? The shove didn't hurt him, your employee says, but he still wants you to do something—NOW! How do you respond to complaints or observations of this kind of "low-level" violence?

As a preliminary, know that this kind of thing happens a lot. OSHA reports that about 2 million workers a year complain of violence against them at work. Sensational multiple homicides like our letter carrier represent a tiny percentage of workplace violence incidents. By far, employees and managers find themselves dealing with less injurious cases of assault, stalking, threats, harassment, and physical and emotional abuse.

And certain kinds of workers are at increased risk of violence. Certain jobs and tasks are fraught with more violence than others. Among them are workers who:

- Exchange money with the public;
- Deliver passengers, goods, or services;
- Work alone or in small groups, during late night or early morning hours, in high-crime areas or in community settings and homes where they have extensive contact with the public (i.e., visiting nurses, probation officers, gas and water utility employees, phone and cable TV installers, letter carriers, retail workers, and taxi drivers.)

Pushing, shoving or these kinds of actions, can constitute assault. The definition of the crime of assault varies from state to state. It often includes acts defined as something like "causing offensive physical contact to another person." So, the aggressing employee could be sued in a state criminal court.

Resulting injuries are not required to sue. In fact, for the aggressor to be held liable, the victim doesn't even have to prove the aggressor wanted to hurt him or her. Again,

assault laws vary from state to state, but in most cases if an employee intentionally—rather than accidentally—shoved the victim, the employee can be convicted of assault. Said differently, it's the intent to shove, regardless of the intent to cause harm, that constitutes assault.

But what does all this mean for the employer? So it is clear that, in most states, an employee who shoves or pushes can be charged with assault. But is there legal risk for the employer? Maybe. The very first push or shove may or may not create employer liability. There are two theories under which an employer has responsibility for the acts of the employee. Under either of these theories it would be hard to establish that the first act of aggression constitutes liability. However, if the physical act is part of a successful claim of discrimination or harassment, the employer is suddenly on the hook.

What about the second time? Once the employee has assaulted someone else (or has a history of violent acts from a previous job, etc.), the employer probably has sufficient knowledge of the risk to be held responsible, if and when violence happens again.

So, what is the manager to do? Consider the following guidelines:

- Establish a zero-tolerance policy toward workplace violence against or by employees. Create a workplace violence prevention program or include it in your accident prevention program or employee handbook. Be very clear that any intentional unwanted touching—or even the threat of it—could result in discipline.
- Help employees understand that the criminal standard for assault generally sets this same low threshold. Employees should know that they could be charged in state criminal court for a push or a shove. Additionally, employees should know that they can and should always report violence to police.
- Help employees understand why you take "low-level violence" so seriously—that it creates a situation in which the employer is now on notice.
- Investigate any and all complaints, including a push or a shove.
- Make discipline decisions not just on the seriousness of the violence or resulting injury, but in consideration of:
    - Your policy standard.
    - Whether or not the act constitutes discrimination or harassment.
    - Likelihood of another complaint. After all, the employer will then have knowledge of the employee's potential for violence.
- Take additional steps to ensure your employees are protected if they work under any of the conditions that present a greater risk of violence.

Legislative Update

Ron Bennett & Nancy LaCasse, School Services of California, Inc.

On Thursday, April 20, the Senate Budget Subcommittee No. 1 on Education, chaired by Senator Anthony Portantino (D-La Cañada Flintridge), met to discuss the Local Control Funding Formula (LCFF), an overview of the accountability system, statewide content standards and resources, and statewide assessments. The subcommittee held the items open and will not take any action on these issues until after the May Revise is released.

The subcommittee heard testimony on these issues from representatives at the Department of Finance (DOF), the Legislative Analyst's Office (LAO), the CDE, the State Board of Education (SBE), and the California Collaborative for Educational Excellence (CCEE). The DOF provided an overview of the Governor's proposals for these issues while the LAO provided their analysis and recommendations.

Senator Allen joined the subcommittee hearing and he, along with the rest of the subcommittee, expressed concerns about the Governor proposing an $859 million deferral from 2016-17 to 2017-18. Senator Allen argued that Proposition 98 funding should be seen as a floor, but that the DOF has been using it as a ceiling, which has resulted in California funding education far less than other states do. The subcommittee also pressed the DOF on the possibility of providing one-time funding to help districts combat the rising pension obligations, but the DOF was not in a position to predict where higher revenues would be appropriated in the May Revise. The DOF did concede that if revenues did come in higher, then the deferral would become unnecessary and DOF would most likely be able to eliminate it.

The subcommittee wanted to hear about the feedback and critiques of the new California Dashboard that was released in March. The SBE said that they have received positive feedback about the Dashboard and that they are addressing the top three areas of concerns that they have heard from stakeholders, which is updating the data that has been used to calculate indicator performance, making the Dashboard mobile accessible, and improving the search function to be able to compare and see multiple districts and schools.

After hearing from the panel on all four issues, the subcommittee heard public comment and committed to taking action on these proposals shortly after the May Revise.

Board Changes

Area VI Board Alternate Debra Quinones, of Hesperia Unified School District, resigned her position with the SELF Board upon her retirement from the district in February. Quinones was appointed to the Board in 2015 and had served on the Member Services & Communication Committee. Her contributions to that committee and the Board will be greatly missed.

At its April meeting the SELF Board appointed two new Area VI alternates. Robert Chacon, Risk Manager for Snowline Unified School District and Fritz Heirich, Chief Executive Officer for Alliance of Cooperative Schools for Insurance Programs (ASCIP).

2017 SELF Board Election Incumbents Run Unopposed

The nomination period for the 2017 SELF Board of Directors election closed March 21, with no valid nominations received for any of the SELF Areas with representatives up for election. In accordance with SELF's bylaws, if there are no opposing candidates, the incumbents shall be declared winners and keep their seats for the new four-year term. The results will be certified by the SELF Board at the June 23 meeting.

Board Representatives were up for election in Areas I, III, IV, VI, and in the Northern and Southern Community College Areas. The next Board election will take place in 2019.

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SELF AWARENESS
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KMTG Legal Alert

Private Accounts May Be Subject To Disclosure Under The California Public Records Act

On March 2, 2017, the California Supreme Court published its ruling in the case of City of San Jose v. Superior Court, holding that when a city employee uses a personal account to communicate about the conduct of public business, those records may be subject to disclosure under the California Public Records Act (CPRA).

Background

In June 2009, petitioner Ted Smith requested disclosure of public records from the City of San Jose ("City") that concerned redevelopment efforts in downtown. The request included emails and text messages sent or received on private electronic devices used by the mayor, two city council members, and their staffs. The city complied by disclosing records stored on City email accounts and communications made using City telephone numbers, but refused to disclose emails or text messages on private electronic devices used by those officials or employees.

Smith sued under the CPRA to compel disclosure of the communications on the basis that public records encompass all communications about official business, regardless of how those records are stored. The City countered that messages communicated through personal accounts or devices are not within the public agency's custody or control, and therefore, cannot be public records. The trial court issued an order to compel but the Court of Appeals reversed the trial court's order in favor of the City. The Supreme Court observed that "In today's environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace."

As such, if a communication relating to official agency business is memorialized by an official or employee, that communication is a public record, even if it is created on a personal account. The Court reasoned that documents or communications that meet the CPRA's definition of a "public record" do not lose their status merely because they are located in a private account or device.

Legal Conclusions

- **The CPRA Should be Broadly Construed:** The court's ruling re-emphasized the mandate to broadly construe the CPRA and disclose every record, unless a statutory exception is shown.
- **Communications on Personal Accounts are not beyond the scope of the CPRA:** The court refused to categorically exclude communications on personal accounts from the purview of the CPRA. Instead, the court set out factors to analyze the communications themselves, including the content, context, the audience to whom the writing was directed, and who prepared the communication. The court emphasized that, in order to qualify as a public record under the CPRA, the writing must relate in some substantive way to the conduct of the public's business.
- **For the purposes of interpreting the CPRA, there is no distinction between individual officers and the agency as a whole:** The City argued that if writings were not accessible to the local agency as a whole, they cannot constitute public records under the CPRA because California statutes do not include individuals in the definition of "local agency". The court rejected this argument, saying that when a public employee prepares a writing to conduct agency business, they are working on behalf of the entire agency, and thus the writing constitutes a public record.
- **Public records do not lose their status as subject to the CPRA despite their location on private accounts:** The City pointed to the fact that communications on personal

(continued on page 2)

accounts are not directly accessible to the agency, and should not be considered as "retained" by the agency. The court disagreed, saying that the definition of retention was broad; the more important question was whether the agency had the obligation to search for the public record, not whether the public record was located within the agency's walls or servers.

- **Privacy interests of government employees do not outweigh the public's interest in disclosure:** While acknowledging that expanding the CPRA's definition of public records to include communications on personal accounts could raise privacy concerns, the court noted those could be protected in other ways, such as redaction of disclosed documents and procedural safeguards. The public's interest in disclosure was the paramount concern.

Guidance for Public Agencies, Officials, and Employees

The Court provided some guidance for agencies in conducting searches that comply with the law in the future.

- **Searches can be limited to those records agencies can locate with reasonable effort:** Unless a public records request is overbroad or unduly burdensome, public agencies are obligated to disclose all records they can locate with reasonable effort. This does not require agencies undertake extraordinarily extensive or intrusive searches; simply that the methods employed should be reasonably calculated to locate responsive documents.
- **Agencies can rely on employees to search their own personal files, accounts, and devices:** The Court explicitly gave permission to local agencies to rely on their employee's discretion in locating public records in their own accounts, so long as employees have been properly trained in how to distinguish between the two. Personal records can be withheld as long as the employees submit an affidavit with facts sufficient to show the information is not a public record.
- **Agency policies can help keep personal and public business separate:** Making a comparative analysis to the Freedom of Information Act, the Federal counterpart to the CPRA, the Court noted that Federal agency employees are required to use their government accounts for all communications touching on public business. The Supreme Court suggested local agencies can adopt similar policies.