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It's in the Paperwork!

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Waivers, Releases, Indemnification and Insurance Procurement Agreements in Summer Recreation Programs

School-sponsored summer camps vary in terms of their course or program offering. They can be large programs that offer a wide variety of activities and courses, ranging from academics and arts to sports and technology. Or, they can be limited programs with a few activities. Some programs offer specialty camps that focus on one subject or activity, such as athletic camps that focus on cheerleading, golf or tennis; drama camps; fitness and nutrition, or overnight programs where campers sleep on campus in dormitories. In other cases, schools lease their facilities to outside groups that sponsor summer programs. These programs can be as large and extensive as school-sponsored programs, or they can be camps that focus on one skill or activity for a limited period of time, such as soccer or baseball specialty programs that are run by local

coaches or former or current professional athletes.

Risk Prevention vs. Reduction

Unfortunately, accidents to campers and other participants occur during recreation programs – creating a legal liability exposure for the sponsoring institution. Efforts such as maintaining safe facilities, training staff and implementing safety programs reduce the likelihood of accidents of occurring. However, risk prevention efforts rarely prevent all accidents from taking place. When accidents occur and then lead to litigation, risk reduction efforts are needed to reduce the severity of claims and lawsuits.

There are several risk reduction techniques that apply to the exposures related to summer recreation programs. They include:

1. Waivers and Releases.

A waiver is a voluntary surrender of the participant's right to sue for injury or damage. A release is a voluntary release of the institution from liability for injuries that may occur. The effectiveness of waivers and releases varies by state. Make



sure to speak to your school counsel before drafting or using these documents.

Often, a waiver and release form will include assumption of risk language – language outlining the risks particular to the activity or program. This is a good way of letting participants know the risks of physical injury that exist when participating (e.g., if a race, the length of the course). These forms often contain a statement regarding medical conditions, in effect an affirmation wherein participants acknowledge they are medically and physically able to participate in the event or activity.

Although the effectiveness of waivers and release forms are often debated, they should still be obtained from participants. Waiver and release forms have the greatest likelihood of passing legal muster if they are specific and related to the events and activities at hand.

2. Risk Transfers

School counsel will require a contract before allowing non-sponsored summer recreation programs to begin operations on your campus. Besides covering the usual business-related terms and conditions, the contract should contain an indemnification and hold harmless agreement in favor of the school and its board for claims, lawsuits and damages arising from the summer recreation program. In addition to ensuring that risk is transferred to outside camp management, the district can request adherence to certain standards as part of an agreement:

- Emergency bus and fire drills;
- Overall emergency management, addressing natural (e.g., weather) and man-made disasters;
- Employment of only qualified drivers;
- Provision of appropriate levels of supervision;
- Parental/guardian permission forms inclusive of emergency medical treatment permission statements;
- Dispensing of medication

only by a qualified person and only with parental/guardian permission;

- Any other contingencies as required by local or state law.

Additionally, camp management should also be required to provide proof of insurance with the school and its board listed as additional insureds on the liability policies. As a minimum, camp management should provide proof of:

- Commercial General Liability (CGL), with coverage for products liability, athletic participants and sexual misconduct.
- Commercial Automobile Policy (CAP), covering the motor vehicles (including buses and vans) used in the program. Coverage should extend to hired and borrowed vehicles as well.
- Excess Liability insurance, with coverage over the CGL and CAP policies and additional limits of liability coverage.
- Commercial Property insurance to cover the property of the camp manager while it is on the campus. The policy should contain a waiver of subrogation against the school and its board.
- Accident Medical insurance, which provides medical insurance for players and coaches injured in sponsored activities as well as related group travel.

Other coverages include crime insurance for theft of property, robbery and burglary, as well as theft of funds by employees. Directors and Officers insurance typically includes coverage for civil rights claims and employment-related harassment and discrimination claims. If watercraft is not included within the CGL policy, a watercraft or marine policy will cover watercraft used in camp activities.

3. Claims Management

Liability policies require the prompt reporting of losses and incidents to the insurer which may give rise to claims. Legal papers must be referred immediately. This not only helps the policyholder comply with post-loss reporting conditions, but it also gives the insurer the ability to start the claims investigation and adjustment process.

Camp management can help with claims management by rendering first aid and calling emergency medical services when needed. Keeping in touch with the injured party provides an opportunity to answer questions about accident insurance and other issues. An accident reporting procedure that includes an objective incident reporting system also helps identify the details about an accident after camp is over. In many cases, accident reports and other records are discoverable and admissible in litigation.



How Prevalent is Educator Sexual Misconduct?

By: Robert Bambino, CPCU, ARM, Vice President - WRM America

According to a recent report issued by the U.S. Department of Education, Office of the Under Secretary, *Educator Sexual Misconduct: A Synthesis of Existing Literature* (Washington, D.C., 2004), between 13 to 34 percent of females and 7 to 16 percent of males experienced sexual abuse by educators in the United States. These are ranges, as the results of the prevalence studies reviewed differ. In addition, the same report published information concerning the percent of student targets by job title of the offender:

Table One Educators and Targeted Students	
Job Title	Percent of Offenses
Teacher	18
Coach	15
Substitute Teacher	13
Bus Driver	12
Teacher's Aide	11
Other School Employee	10
Security Guard	10
Principal	6
Counselor	5

Where does the abuse take place in schools?

According to this report, sexual misconduct by educators occurs in the school, in classrooms (empty or not), in hallways, in offices, on buses, in cars, in the educator's home, and in outdoor secluded areas.



State Regulation

State laws relating to child sexual abuse in schools vary – at times with different definitions of the crime and age of consensual sex. While all states have child abuse legislation, several states increase the severity of the crime if the perpetrator is in a position of authority or trust. Other states require schools to report certain crimes when an educator is convicted of a crime or resigns because of allegations of abuse. All states, the District of Columbia and Puerto Rico, have laws requiring the obligatory reporting of child maltreatment when certain circumstances prevail.

Teachers and other school personnel are mandatory reporters. For example, in Minnesota, the agency responsible for investigating reports of alleged abuse (including sexual abuse) or neglect of children that occurs in Minnesota public schools by school employees is the Minnesota Department of Education. A report to local law

enforcement must be made if a violation of a criminal statute is also alleged. In Illinois, personnel must report to the Illinois Department of Children and Family Services any instance in which a child could have been abused. Wisconsin requires school district employees to report suspected cases of child abuse to the local department of child welfare or law enforcement. New York requires mandatory reporters to report concerns by telephone to the New York Statewide Central Register of Child Abuse and Maltreatment.

State laws relating to child sexual abuse in schools vary – at times with different definitions of the crime, age of consensual sex and legally mandated background checks for public school teacher applicants.

Title IX

The Fall 2011 edition of *At Issue* contains an article about the “Dear Colleague” letter issued by the U.S. Department of Education, Office of Civil Rights (OCR) in April 2011. The letter was issued to give guidance to school districts concerning the Title IX prohibitions against sexual violence and harassment. OCR noted that over 4600 cases of rape or other forms of sexual battery occurred at the high school level during the 2008-2009 school year. OCR expressed both alarm and deep concern over these statistics and strongly emphasized the need for educational institutions to “take immediate and effective steps to end sexual harassment and sexual violence.”

Legal Liability

A potential source of legal liability against schools receiving federal funds is Title IX. Under Title IX, a school district can be found liable for sexual harassment of a student if the district is shown to have had actual knowledge of the harassment and is deliberately indifferent to it. Title IX also applies to abuse (including educator abuse) as an extreme form of harassment. Title IX regulations require each educational institution to have a written policy and protocol for responding to sexual harassment, as well as a Title IX coordinator. Schools (both public and private) also face legal liability exposures under different state laws.

Prevention Techniques

Educator Sexual Misconduct: A Synthesis of Existing Literature contains a number of recommendations school districts can use to help prevent incidents of educator sexual misconduct. Some of these measures are mandatory under Title IX or state laws and include the following:

1. Develop district and school level policies.
2. Appoint a Title IX coordinator who will handle all complaints of student-related sexual harassment and abuse.
3. Hiring practices. The employment application should be used for all job applications that include questions on work history, qualifications, educational history as well as identification that will facilitate background checks.
4. Screen employees. Screening applicants includes reference and background checks, professional license information, and criminal checks. As stated previously, all 50 states require either a background check or fingerprinting for new teacher applicants. Some states require background checks for classroom aides as well. National background checks are preferred over only statewide checks.
5. Assign a case coordinator to handle all incidents of educator sexual misconduct and centralize information.

6. Report all allegations to both child protection, law enforcement and any other agency as required by law.
7. Develop thorough investigative practices. Train investigators who can respond quickly to allegations.
8. Incorporate sexual abuse identification and notification of incidents of abuse in student lesson plans or student orientation.
9. Train employees and administrators to identify and respond to signs of educator sexual misconduct. Also include prevention programs that empower adults surrounding the children to protect them. This includes parents, school staff childcare experts, and others.
10. Develop procedures and programs to help victims of abuse. This includes referrals to mental health professionals, changing classroom or school assignments, and preventing retaliation.



Hurricanes and Emergency Preparedness

By: Andrew Graham, Assistant Vice President, WRM America

Hurricanes are one of the most destructive and deadliest natural disasters that occur in the continental United States. On May 24th, the National Oceanic and Atmospheric Administration (NOAA) reported its predictions for the 2012 Hurricane Season. The Season begins June 1st and extends to November 30th. September is the month with the most activity.

NOAA predicts a near normal hurricane season in the Atlantic Basin, with a 70 percent chance of nine to 15 named storms (with top winds of 39 mph or higher), of which four to eight will strengthen to a hurricane (with top winds of 74 mph or higher) and of those one to three will become major hurricanes (with top winds of 111 mph or higher, ranking Category 3, 4 or 5). Based on the period 1981-2010, an average season produces 12 named storms with six hurricanes, including three major hurricanes. Hurricanes are categorized by the strength of winds and how much damage will be caused. A category 1 is the least dangerous and a category 5 can have catastrophic damages.

Although hurricanes typically hit along coastlines, they can travel hundreds of miles inland, as witnessed last August with Hurricane Irene. Irene caused extensive river flooding in upstate New York, New Jersey and Vermont. Based on this experience, inland schools should include hurricanes in their emergency management planning. Regardless of your institution's location, the preparation

for a hurricane can also apply to other natural disasters, such as tornados, nor'easters, and winter storms.

Preparedness

The American Red Cross outlines different ways to prepare for a disaster. They include:

- Stock several days of food, bottled water and medical supplies in the event students and staff are stranded.
- Secure a generator(s) in the event utility services are disconnected. Depending on size, need and capabilities, generators can usually produce enough power to support a minimum level of operations.
- Obtain battery-operated radios and communication devices to communicate in case phone lines and cell phones are not available.
- Update Emergency Management Plans (EMPs) to be current and relevant. As facilities are renovated, locations are added and new programs are initiated, EMPs need to be updated with new personnel and current contact information.
- Include a continuity of operations plan in the event the institution is damaged and not useable.
- Keep informed about local weather warnings and when a hurricane watch or warning is initiated so that you may respond immediately.
- Train staff and students on how to prepare and what to do so

they are ready when a disaster strikes.

Protecting Your Property

Hurricanes and other storms can cause significant structural damage to buildings with high repair costs from flooding and strong winds. Here are some steps educational institutions can take to help reduce their risk of damages:

- Secure your property and equipment. Any loose furniture or equipment should be secured down.
- Board up windows to protect from debris.
- Clear gutters and drains to decrease flooding.
- Back up all computer files and copy records in case of water damage.
- Move any electronic equipment and other valuable items above flood level.

Resources:

Federal Emergency Management Agency:

<http://www.ready.gov/hurricanes>

National Oceanic and Atmospheric Administration:

http://www.noaanews.noaa.gov/stories2012/20120524_atlantic_hurricane_season.html

American Red Cross:

www.redcross.org



Commencement Safety Checklist

By: Robert Bambino, CPCU, ARM, Vice President - WRM America

When planning for a commencement, consider the following checklist:

Commencement Safety Checklist
✓ Designate entrances/exits for disabled visitors.
✓ Parking areas must be clearly marked. Staff should be prepared for an unusual amount of traffic on campus. If parking is far from the commencement area, arrange for shuttles or courtesy carts for transportation.
✓ If hot weather is predicted, establish water stations in and around the facility.
✓ Seating should cease when graduates enter the arena or stadium to reduce the chance of accidents.
✓ Have greeters watch for coolers, backpacks, duffle bags, alcohol, glass bottles and any other prohibited items.
✓ Store oversized strollers, tripods, balloon bouquets and other items too large to be allowed in the arena and assist guests in checking them in at the appropriate station.
✓ Remind visitors to safeguard valuables.
✓ For outdoor venues, procedures for postponing, relocating, or cancelling the event must be in place.
✓ An emergency management plan covering events such as fire, weather-related events, civil unrest, explosions, collapse must be in place prior to the event. Commencement staff (including volunteers) must know how to react in the event of an emergency.
✓ A communication system must be in place that is able to be heard by all persons attending the event.
✓ Exit ways within the commencement area must be kept clearly marked, kept open without obstructions, and displayed at the start of the ceremony.
✓ Coordination with local police, private security, or campus police is key.
✓ Consider having EMTs or ambulances on campus near the commencement.
✓ Consider having local police assist with logistics and security.
✓ Before the event, inspect seating, rails and outdoor pathways to make sure there is no damage.



Do Budget Cuts Result in Higher Claims and Litigation?

By: Robert Bambino, CPCU, ARM, Vice President - WRM America

All schools – public, charter and private – are trying to determine the impact of proposed budget cuts on educational programs, supplies, technology, athletics, staffing, contract negotiations, capital projects, and repairs and other issues. Some effects are easier to quantify than others. For example, cutting teachers brings larger class sizes, less special education services and less elective options for students. Reducing the number of administrators means less day-to-day staff supervision and less oversight of the physical plant and IT infrastructure. A decrease in transportation typically results in fewer field trips, shortened or eliminated bus routes or the loss of transportation entirely. Also at risk are athletics, summer school and enrichment classes, as well as before-school and after-school programs. All have the potential to negatively affect the overall quality of education offered by the institution, both now and in the future.

Determining the impact of reduced budgets on incident and claim

frequency is another matter – it is much more difficult to make this type of prediction. However, cuts in certain staff positions, services and programs would most likely increase hazards – whether physical or legal in nature. For example, fewer cleaners and custodians, along with a reduction in the operations and maintenance budget could lead to more premises (slips, trips and falls) accidents if housekeeping begins to deteriorate or necessary repairs and renovations are not completed. A reduction in teacher aides or assistants would reduce the number of recess and playground monitors, classroom assistants and chaperones for transportation or student travel – all negatively affecting the level of student supervision. Eliminating assistant coaches and athletic supervisors means less instruction, supervision and coaching, and a smaller amount of oversight at sporting events. Staff training is often scaled back during a budget crisis. If not done carefully, this could result in employees not

receiving mandatory workplace safety training, not renewing certifications, and noncompliance with continuing education requirements. Anti-harassment and discrimination training for teachers, staff and administrators is needed to control employment-liability complaints and litigation. Within the past 18 months, many states have implemented anti-bullying programs with training (both staff and student) components. Failure to comply not only results in noncompliance, but it also defeats efforts to eliminate or control bullying.

The impact of budget cuts is felt throughout the system. But it also has a likely impact on accidents and claims experience. Besides the financial toll, accidents have a human side, causing injuries, disruptions in lifestyle, emotion and mental distress. When reductions are being debated and considered, these effects should be taken into account as well.

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