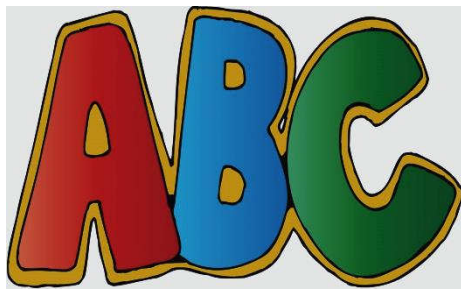


RiskMATTERS

The ABC's of School Risk Management

By Joe Jarrett
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Were you to ask parents of school-aged children what their top priorities are, you would most likely hear such things as standardized testing, school choice, teacher competency and security. What school administrators and parents have in common is that neither have risk management high on their list of priorities. For those school districts that have traditionally maintained viable, well-funded risk management programs,

there appears to be an alarming trend in the form of failing to fill a vacant risk manager position when an incumbent moves on or retires. In an effort to operate in these austere times, the risk management position is often assigned to an already overworked department director (the human resources director is a favorite target) as an "additional duty." Consequently, a department that is traditionally tasked with risk identification, analysis, control, financing and administration, as well as student and employee safety, workers' compensation, claims management and insurance, is reduced to a minor player at best.

Needless to say, before a risk can be effectively analyzed, transferred, controlled, or financed, it must be identified by a professional who can readily discern whether it is human in nature, or related to defects in real property, equipment, the school's physical environment, etc. Although today's savvy school risk manager appreciates the value of relying upon various internal and external people and resources to effectively manage the myriad risks threatening the district, nevertheless, professional risk managers bring a core set of leadership and communication skills that ensure that cutting-edge techniques of risk avoidance, transfer, or mitigation are consistently applied to the education environment. This skill set cannot be effectively exercised by someone who views the risk function as merely one aspect of an overburdened job description and who lacks the experience professional risk managers enjoy.

THE CHALLENGE

Today's school risk manager is called upon to identify and reduce hazards, reduce risks in school activities, improve safety for students, employees and the public, conserve the district's fiscal resources and protect the board of education and staff from liability.

Although school risk issues such as workers' compensation, general liability, and insurance do not, in and of themselves, present unique challenges, when it comes to issues involving children, the rules of the risk game change dramatically. Unlike adults, children often lack the maturity or intellectual acumen to heed warnings, follow directions, anticipate danger, or recognize/ appropriately react to peril. School administrators, while burdened with carrying out school board policies in the form of personnel management, student activities and behavior, teacher certification and financial management, have little time to get involved in the nuts and bolts of risk and insurance management. However, Wanglin and Glurches² recommend char school boards be introduced to the concept of enterprise risk management by placing their risk plan on the school's strategic agenda, seeking a commitment to risk management by integrating risk management practices into all areas of operations, supporting the school superintendent's risk management policies and making available the risk manager's professional expertise as appropriate.

Schools, their administration and staff, along with adults who administer field trips and similar programs, have a responsibility to protect children in their care from harm in order to avoid general liability claims, school premises liability lawsuits, as well as negligent supervision of student claims.

SCHOOL RISK

Although our nation continues to be rightly horrified over the rash of school shootings of late, inappropriate teacher-student relationships, bullying/cyber-bullying, bus safety and premises liability continue to consume the school risk manager's time. Further, just controlling who has access to a school can be a challenge.

STRANGER DANGER

Many schools pride themselves on being open and transparent where parents and legal guardians are concerned. However, a parent-friendly school need not be an unsecure one. For instance, visitors should be required to use a designated entrance, present a valid photo ID that should be inspected and copied, and likewise be required to wear a badge or other identifying object that is clearly visible and readily identifiable by staff. Visitors should likewise be escorted by a staff member throughout their visit. Prominently posted, easily readable signs (in multiple languages depending upon your demographic) should be on hand that serve to identify "staff only" and "no entry points." Entry points should be kept to a minimum and unsupervised entrances secured. Further, school access should be 100 percent controllable through designated, supervised, or locked entry points, including windows and service entries.³

GETTING THERE

Parents who entrust their children's care to schools by putting them on school buses have reason to be concerned. One need only turn-on the T.V or take a glance at the Internet to be exposed to news reports of undisciplined, unprofessional drivers causing accidents, resulting in student injury, while sending text messages on their cell phones or absorbed in other distractions when they should be concentrating on driving their vehicles. The school risk manager is well aware that merely entering into hold-harmless or indemnity agreements with bus subcontractors and requiring commercial drivers' licenses (CLDs) offer only a base level of protection. Subcontractors should be required to demonstrate that their drivers remain qualified as part of an ongoing process that includes confirmation through annual, or in some cases, semi-annual Motor Vehicle Records checks. Criminal background checks are likewise recommended. Violations such as driving under the influence of alcohol/drugs, failure to stop/ report an accident, reckless driving/speeding contest, failing to report an accident or making a false accident report should result in the removal of the driver in question.

BULLYING

The U.S. Department of Health & Human Services defines bullying as "unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time." School bullying, both physical and that perpetrated via social media, is on the rise and has led to increasing numbers of suicides in school-aged children. Lawsuits founded in a theory of "failure to protect" are increasingly being successfully filed against school districts across the U.S. There are three basic types of abuse that fall within the definition of bullying; physical, verbal and emotional bullying, also referred to as relational bullying. Bullying can either be direct or indirect.

Indirect bullying is more difficult to identify as it typically involves multiple aggressors, victims, and bystanders. The risk manager should insure that administration has an anti-bullying policy in place that is easily understood by both students and staff and provides and promotes easily accessible mechanisms and procedures for reporting and handling bullying complaints.

Further, the policy should offer counselling to both the alleged bully and affected student, provide a procedure for disciplining the perpetrator and monitor student relationships. Students must be encouraged to report incidents if interventions are to be accurately assessed.⁴

FIELD TRIPS

The school field trip has a long history in American public education. Nevertheless, these events are generally considered "out of the ordinary," and as such are an area rife with possibilities for injuries and liability. The off-site situations mean that students may be exposed to hazards not present in the usual school environment and staff members can more easily lose control of the students. Therefore, additional safeguards must be used for the protection of students during such outings. It is always important to inculcate in staff the distinctions between school sponsored activities versus non-school sponsored activities. Courts across the United States have ruled that school personnel who undertake field trips have the explicit duty to not merely warn and inform but to:

- provide proper instruction
- condition and equip participants properly
- provide proper supervision
- provide safe facilities
- provide safe equipment
- provide prompt and appropriate post-injury care
- provide appropriate chaperones

Because some activities provide unusual risk to staff and students involved, the risk manager should consistently be made aware of those field trips that are beyond the norm. It sometimes takes the risk manager to inquire of school staff whether the curriculum objectives are worth the potential risk of injury to those involved. More than one school has been the target of a lawsuit due to a well-meaning, albeit over-zealous teacher who planned activities such as parachute/bungie jumping, mechanical bull riding, hang-gliding, jet skiing and venomous snake handling.

SCHOOL PREMISES LIABILITY

When a child becomes injured on school grounds or during a field trip, chances are that the lawsuit that will follow will include a count for negligent supervision. The chances of the school prevailing in its defense of the suit often hinges on whether the school had in place clear, concise and consistently enforced policies. More often than not, plaintiffs enjoy high rates of success with school premises liability lawsuits once it is demonstrated that the school failed to maintain its campus and equipment, failed to have a regular inspection plan and failed to instruct and supervise students in the safe and appropriate use of equipment. The greatest deterrent to litigation with respect to premises and equipment liability is to keep the building and grounds free from hazards, both obvious and hidden, maintain them on a regular basis and ensure that playground and other equipment is safe, age-appropriate and properly installed, used and maintained.

In those cases when plaintiffs successfully allege that equipment, especially playground equipment, is defective, the proximate cause is attributed to a breach of a duty of care by failing to adequately maintain the equipment. In the case of a 4-year-old whose finger was badly mangled while playing on a merry-go-round (*Fetters v. City of Des Moines*⁵), the plaintiff alleged that the merry-go-round was defective, not due to the manufacturer's negligence, but because the city failed to properly maintain same. In another case in which negligent maintenance was alleged (*Rich v. City of Goldsboro*⁶), the plaintiff was thrown from a seesaw that was worn and wobbly and that lacked handholds or stabilizing devices. Dr. Edward F. Dragan⁷ suggests that, when a potentially dangerous situation is identified, there are several alternatives:

- Discontinue the activity;
- Do not allow activity in an area where children would be exposed to the danger; or,
- Modify the activity by adjusting the manner of play to avoid contact with the defect

Schools, their administration and staff, along with adults who administer field trips and similar programs, have a responsibility to protect children in their care from harm in order to avoid general liability claims, school premises liability lawsuits, as well as negligent supervision of students claims. Policies that set standards for ensuring safety and maintaining the building, grounds, and equipment are a start, but those policies must be reviewed by the entity's risk manager and supported and enforced by administrators and teachers in a concerted effort to protect students, staff and visitors and reduce the frequency and severity of claims.

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FOOTNOTES

1. Bill Tarro, CSRM, is the Risk Manager for the Lubbock, Texas, Independent School District.
2. Wangli n, R. and Gutches, D. (2013) *A Primer on Insurance and Risk Management for Independent Schools*, Boiton & Co.
3. See, "Improving School Access Control", National Clearinghouse for Educational Facilities, 2008, <http://www.ncef.org/pubs/accesscontrol.pdf> and Courrage, Allison, 2015, *Risk Management for Schools Risk Management for Schools: Top Ten Risks and How to Manage Them*. J. Gallagher Risk Management Services, Inc.
4. For a more expansive study on school bullying, see: <http://www.stopbullying.gov>
5. *Fetters v. City Of Des Moines*, 49 N.W.2d815 (1967).
6. *Rich v. City Of Goldsboro*, 192 S.E.2d 824 (1972). 282 N.C. 383.
7. Dragan, Edward F. (2016). School Premises Liability: Maintaining School Grounds to Keep Students Safe. www.education-expert.com