

OH, THE TANGLED WEB: AVOIDING LIABILITY FOR EMPLOYEES' OFF-CAMPUS ACTIVITIES WITH SCHOOL STUDENTS

Publication
Apr 1, 2011

You've just received a phone call advising that one of the school's employees is being sued for engaging in inappropriate activity with students attending the birthday party for the employee's child. The parent tells you that he is also considering bringing a claim against the school. This type of situation is occurring with more frequency today. Unfortunately, many schools have not yet taken action to assess the potential school liability for an employee's off-duty behavior.

HOW DO THE LIABILITY ISSUES ARISE?

When employees engage in off-campus activities (some of which are school related), the risk of claims increases because the level of supervision decreases and the structure of the environment changes. The issue of off-duty or off-campus interaction with students arises in several contexts. In some situations, the employee is in charge of some type of off-duty activity (such as a pizza party, field trip, or other activity).

In other cases, employees of the school have children who also attend the school. These employees' children often invite their friends to participate in traditional activities such as birthday parties, sleepovers, family vacations or day trips. Finally, many employees are looking for ways to earn extra money and volunteer to tutor, teach piano, or babysit other students, in the employee's home or the student's home.

Related People



Suzanne K. Bogdan

Partner

[954.847.4705](tel:954.847.4705)

The case of Tanya Craft is a prime example of what can go wrong when employees of the school engage in off-duty conduct with students. Craft was a kindergarten teacher at a Georgia school. Her daughter attended school where Craft taught. Craft's story gained national media attention when, after a sleepover with her daughter's friends who were also students at the school where Craft taught, the children accused Craft of molestation. She was later acquitted.

Craft's situation is an extreme example; unfortunately, it is not an unusual one, especially considering the multitude of sexual-abuse cases asserted against churches nationwide for actions of its clergy with children. In addition to sexual-abuse concerns, many other types of claims can arise, both against the individual and potentially against the school. These include claims involving injury from car accidents while driving students, choking hazards while babysitting students, or negligent behavior by the employee or the school in hiring, recommending, or retaining the employee who later engages in the inappropriate behavior.

WHAT IS THE LIABILITY STANDARD?

Generally, schools are not insurers of their students' safety, and are not strictly liable for any injuries which they may sustain. But a school may face liability if the student can establish that: 1) the school owes a duty to the student; 2) the school breached that duty in such a way that the risk of harm was foreseeable; and 3) the student was injured as a result of the school's breach of duty. Courts have held that schools generally do not owe a duty to students after school and off school premises. However, a school's on-premises duty of supervision may continue when an off-premises activity is "school sponsored" or "school related."

HOW DO YOU REDUCE THE RISK?

Ensuring that all employees have been cleared through a thorough criminal background evaluation (and updating it periodically) is a critical first step. In addition, the school's administration should talk openly with the staff about the types of activities that frequently occur with school employees and students on an off-campus basis. Assess your comfort level with the various activities and implement guidelines, including notices to parents, handbook policies, or prohibitions on certain behaviors or activities that could

result in an appearance of impropriety or a claim against the school.

For example, consider implementing policies requiring that two or more adults be present during any off-duty interaction with non-family students, whether the activity is babysitting, sleepovers, kid parties, or pizza events. Schools may choose to prohibit certain activities that have a higher risk of potential claim, such as sleepovers, or other activities that may involve some level of isolation with the adult and student.

Schools should also critically examine policies in recommending employees as babysitters, drivers (for students who do not have rides to school), or tutors. This is not to say that the school should not offer tutoring if students need extra help. Rather, ensure that all tutoring, piano lessons, karate lessons, swim lessons, or other one-on-one type activities occur only at the school and under guidelines protective of the school and employee. Train employees on a yearly basis regarding the school's policies to ensure that all employees understand their obligations.

Finally, because parents do not always understand the responsibilities of the school employees, don't hesitate to educate parents about off-campus activity guidelines such as a no-babysitting or no-sleepover rule. Let parents know that the school will not be responsible for any behavior occurring off-campus in violation of the school's guidelines.

For more information, contact the author at SBogdan@fisherphillips.com or 954.525.4800.