

## THE SCHOOL RULE

### What's the Risk in Risk Management

by David R. Hostetler, Esq.

*The last two "School Rule" columns addressed employee job status contracting issues. This month begins a series on school risk management problems and practices.*

A coach holds a girls' softball practice on a field that is under construction, telling players that the rough surface would improve their reflexes and fielding ability. During a drill where students field groundballs, a ball hits a rock, takes an erratic hop, and strikes a player in the face, knocking out one tooth and loosening several others. In the lawsuit for damages, the court ruled that the coach acted unreasonably and breached her duty of care by holding practice on the field; the court determined that the player's injury was foreseeable.<sup>1</sup>

This case is one of the many decided each year involving student injuries and negligence claims: a reminder of the importance of risk management. Risk management is good for students; that's Reason One for undertaking it. We also know, practically speaking, it's important for minimizing school costs and liabilities—tangible and intangible. These can include liability damages and attorney's fees, employee productivity and stress, reputational injury (and consequent financial costs), school conflict, declining morale, and public reputation.

In so many instances school officials simply failed to exercise due care in responding to needs or demands or in preparing for foreseeable risks. In some cases, simple deliberation or review would have averted a problem.

In subsequent "School Rule" columns we will consider other cases that illustrate many of these points and offer lessons in effective risk management. For now, here are some general considerations.

#### Practice Points:

- Plan ahead and anticipate risk in an orderly, deliberate manner.

- Appoint a risk management director and/or committee.
- Perform periodic, rotational "legal audits." Key areas include:
  - Facilities and grounds
  - Student supervisory and safety practices
  - Employment practices; e.g., recruiting, hiring, supervision, discharge
  - Special activities; e.g., field trips, extra-curriculars, and athletics
  - Contracts; e.g., enrollment, employment, vendors
  - Insurance needs, coverage, and contracts
- Develop and update comprehensive, clear, and consistent school policies; e.g., board policies, handbooks, guidelines.
- Establish reliable consulting relationships; e.g., financial, legal, insurance.
- Provide regular law and policy training; i.e., for board members and staff.
- Seize isolated incidents as learning opportunities to review, discuss with affected individuals, and revise school procedures.
- Generally, act in a reasonable, common sense, and caring manner—this will go far in averting much liability and risk.

This column is for information only. It should not be relied upon as formal legal advice. Readers are urged to contact a school law attorney to address specific legal questions and apply the law of the school's jurisdiction.

#### Notes:

1. The case is *Daniel v. City of Morganton*, 125 N.C. 47, 479 S.E.2d 263 (1997). Despite liability, the school was not required to pay damages because the court also ruled that the student was "contributorily negligent"; she should have known that playing on the field could lead to injury. In some states, like North Carolina, contributory negligence precludes damage awards. (Other states use a "comparative negligence" standard by which damages are apportioned according to the degree of negligence contributed.)

*The "School Rule" column is designed to offer legal updates and practical legal recommendations. Mr. Hostetler, legal consultant for ACCS, specializes in education law, is founder and director of Lex-is School Law Services (Chapel Hill, NC), and is an associate professor of education law, policy, and ethics at Appalachian State University in Boone, NC. His four children are or have been students at Trinity School (Durham, NC) and the McCallie School (Chattanooga, TN). He may be contacted at [hos@Lex-is.com](mailto:hos@Lex-is.com) or (919) 308-4652.*