

PUBLIC RISK



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Managing the Risks of **SCHOLASTIC CLUB SPORTS** and **ACTIVITIES**

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Scholastic club sports and activities have grown in popularity and provide a positive opportunity for students to engage in various recreational activities. As participation in these activities continues to increase across schools, the possibility of injury also increases. When these two variables combine, they result in rising claims against educational institutions. This article will provide risk managers with suggested policies and procedures to help ensure their institutions are well protected and best situated to resolve possible claims quickly and efficiently. In order to best accomplish this, it is first necessary to understand the various legal duties owed by elementary and secondary schools, as well as colleges and universities, with respect to their students.

THE DUTY OWED TO STUDENTS IN ELEMENTARY AND SECONDARY EDUCATION

A public or private school, at least through the high school level, owes a general duty of supervision to the students placed within its care.² For private boarding schools, the duty may even be greater. Specifically, the United States District Court in Connecticut recently issued a decision where it noted that a boarding school “accepts responsibility for students’ well being.”³ Regardless of whether a school is private or public, students may be able to recover from a school district where there is evidence presented that supervision would have prevented an accident.

For example, in the case *Verhel by Verhel v. Independent School District No. 709*, 359 N.W.2d 579 (Minn. 1984), the Supreme Court of Minnesota found a school district had a duty to supervise its cheerleading team in the summer months because the team held regular practices during these months.⁴ The Court then found the school breached its duty of supervision when it allowed the cheerleaders to banner football players’ homes in the middle of the night unsupervised.⁵

Courts have also expanded this duty of supervision to municipalities that undertake a role in supervising minor children. The case illustrative of this principle is *Callazos v. City of West Miami*, 683 So.2d 1161 (Fl. App. 1996). In *Callazos*, the City of West Miami agreed to supervise children at a city park after school.⁶ One child participating in the program was injured by a baseball bat swung by another child.⁷ The Court found proper supervision would have prevented the accident, and held the city negligent in failing to provide supervision in a reasonably prudent manner.⁸

Colleges and universities also owe a duty, albeit somewhat limited, to their students.

THE DUTY OWED BY POST-SECONDARY INSTITUTIONS

On October 10, 2008, Randall Duchesneau filed suit against Cornell University seeking upwards of \$75 million in damages from an accident occurring two years earlier when Duchesneau was attempting an inverted gymnastics maneuver while practicing with Cornell’s club gymnastic team.⁹ Duchesneau landed incorrectly and suffered catastrophic, permanent spinal injuries which rendered him a quadriplegic.¹⁰ Ultimately, Cornell escaped liability after a jury found it was not legally responsible for the accident.¹¹ Despite a favorable outcome, Cornell spent more than five years defending the action and undoubtedly incurred significant legal expenses.

In the *Duchesneau* case, Cornell was able to escape liability due to the erosion of the *in loco parentis* doctrine. This doctrine, which translates to “in the place of the parent,” describes the historical relationship between a university and its students.¹² Historically, universities exercised a delegated parental authority over their students.¹³ Legally, this created a duty of broad

protection.¹⁴ Specifically, courts determined that a “special relationship” existed between the university and student, and this relationship imposed a duty on the university to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college.¹⁵

The late 1960s and early 1970s saw student revolutions of all sorts across college campuses.¹⁶ Students were predominately attacking the ridged controls by colleges and demanding more student rights.¹⁷ The students succeeded in acquiring new rights, and notably these student-movements triggered legislation and case law lowering the age of majority to eighteen.¹⁸ Following this tumultuous period on college and university campuses, two important legal decisions, one from the United States Appellate Court for the Third Circuit and the other from the California Court of Appeals, helped shape the modern day university-student relationship.

In the decisions, *Bradshaw v. Rawlins* and *Baldwin v. Zoradi*, both Courts found that a college or university is not the “insurer of the safety of its students” and that it is not in society’s interest to transfer the risk of student’s activities to universities when the goal of post-secondary education is the maturation of students.¹⁹ Today, Courts largely abide by the *Bradshaw* and *Baldwin* decisions when deciding cases relating to supervision of college and/or university students. However, Courts have held universities liable when they negligently perform general responsibilities.

For example, in the case *Kleinknecht v. Gettysburg College*, 989 F.2d 1360 (3rd Cir. 1993), the United States Court of Appeals for the Third Circuit found Gettysburg College negligent in its failure to implement emergency medical procedures for collegiate athletes.²⁰ In that case, a Gettysburg College student, Drew Kleinknecht, was at lacrosse practice when he suffered a heart attack.²¹ At the time of his death, the college employed two full-time athletic trainers. Both were certified by the National Athletic Trainers Association, which required current certification in both cardio-pulmonary resuscitation and standard first aid.²² In addition, 12 student trainers participated in Gettysburg’s sports program.²³ The trainers were stationed in Gettysburg’s two training room facilities at Musselman Stadium and Plank Gymnasium.²⁴ No student trainers were assigned to oversee the lacrosse practice, and neither of the two athletic trainers were present.²⁵ The Court held that Gettysburg had a duty under Pennsylvania law to take reasonable precautions against the risk of reasonably foreseeable life-threatening injuries during participation in athletic events. The Court further held that Gettysburg owed a duty to its student-athletes to have measures in place at the lacrosse team’s practice in order to provide prompt treatment in the event that Kleinknecht, or any other member of the lacrosse team, suffered a life-threatening injury.²⁶

In a similar case, *Speigler v. State of Arizona*, the University of Arizona was found liable for failing to provide access to a defibrillator in its fitness center after a female student suffered a heart attack while riding a stationary bike.²⁷ The jury entered a \$5.1 million verdict against the State of Arizona.²⁸

Club sports and activities are enjoyed by all participants and are a significant addition to the educational experience at all levels of schooling. However, if institutions do not properly manage the risks posed by these activities, they face the prospect of expensive litigation. Education and management of the known risks can go a long way toward keeping students safe and minimizing the potential legal exposure associated with these activities.

MANAGING THE RISKS OF CLUB SPORTS AND ACTIVITIES

As demonstrated by the case law above, institutions providing students access to club sports and activities open themselves up to possible litigation. As such, risk managers should have a risk management process in place to analyze all of the risks associated with that particular club activity. The process should adhere to the following steps:

- 1 Identify all of the risks associated with the club sport and/or event.
- 2 Evaluate each risk as to its frequency and severity.
- 3 Determine the best treatment option available to minimize or at least manage the risk.
- 4 Implement a sound management plan to address the risk at hand.²⁹

A successful management plan should focus on the four key areas of concern regarding club sports and activities: (1) travel, (2) playing fields and facilities, (3) equipment, and (4) sports/activity-related injuries. An institution can manage the risks created by all four of these concern areas through the use of waivers, or in jurisdictions where waivers are unenforceable, through the use of acknowledgment of the risks documents. Institutions should also implement certain policies and procedures specific to each area of risk. Institutions should also look for risk transfer opportunities.

Travel

In the context of colleges and universities, club teams typically have three options for travel: (1) hire an independent transportation company; (2) rent a university-owned vehicle driven by a student; and, (3) student-owned, and -driven, private vehicles. Of these three options, the use of an independent transportation company can include a risk transfer away from the school or university. For elementary and secondary schools, this is a common way of transporting varsity teams and other groups, like bands, etc.; however, clubs are not typically transported by bus, as the cost is often too high. Likewise, colleges and universities rarely utilize private transportation companies for the transportation of club participants. The second option places much of the risk on the university and is, therefore, not recommended from a risk management perspective. The third option is likely the most common of the three travel options, but is a cause of concern for universities as there is little control over the actions of students.

To best control the risks posed by allowing students to use their own private vehicles to transport other students, institutions should maintain a list of approved drivers for all clubs/teams and confirm that all listed drivers are properly licensed, fully insured, and possess clean driving records. Institutions should also implement distance restrictions and night time travel bans or curfews for organized club activities. Finally, institutions should consider implementing oversight procedures, including check-in and checkout requirements, where drivers must inform administrators when they arrive back on campus. Institutions need to walk a fine line between managing the risk and exercising too much control over club activities.

Playing Fields and Equipment

Schools should ensure that any and all equipment and fields/facilities utilized by student participants are in good condition, even if the fields or facilities are independently owned or operated. While this advice is common sense, it is good practice for administrators to routinely check all equipment and fields/facilities to ensure there are no dangerous conditions present. To the extent that a particular activity or sport requires the use of protective equipment, the school should consider notifying all participants of the equipment necessary for participation and confirming that said equipment is actually being used and is in reasonably good condition.

Injuries

While injuries are common and a recognized risk of participation in certain extracurricular activities, schools can position themselves to best respond to medical emergencies by obtaining consent to treat waivers from all participants. Institutions should also provide contact information for trainers during practices and hire emergency medical technicians for games.

RISK TRANSFER AND EDUCATION

A key way to manage the risks posed by club sports and activities is to implement procedures that transfer risk away from the institution. Of course, liability waiver/release documents should be executed by all participants where legally appropriate, and acknowledgment of risk documents should also be utilized to inform and educate students (and their parents) of the risks of a particular activity. A school should consider whether a particular activity has a national governing body that may provide insurance to members. For example, a school with a club ice hockey team should make sure that the club requires all players to register with USA Hockey and that the team participates in USA Hockey-registered events. USA Hockey membership and registration is inexpensive and provides certain insurance benefits to members/players.

Each club should also maintain a simple three-ring binder (or comparable tablet-based set of documents), with all necessary emergency information and procedures included. The binders should include copies of all waivers and releases signed by team members, consent-to-treat documents for each participant (which typically list any known allergies), and emergency contact information. In the event of an emergency, the binder can be the first source of potentially critical information.

Institutions should consider implementing policies requiring club athletics practices to be held at set places and times so administrators know where the students are in case of emergency. For games taking place at home, EMTs should be present or readily available, and referees should be certified / qualified. For away games or activities, travel plans and times should be submitted to administrators, all teams should be provided with first aid kits, and clubs/teams should know where they are physically located and be aware of where the nearest hospital or medical center is located.

In implementing these procedures, institutions may find it beneficial to require clubs and teams to provide the names of



one or two members who will act as liaisons between the administration and the club/team. Institutions should also require the two identified members from all club sports and activities to participate in mandatory training where the institution's policies and procedures are reviewed. For higher risk activities, an institution may consider mandatory training for all participants and, if the students are elementary or secondary school students, parental involvement in the training, as well. This allows for uniform communication and minimizes the chance that a team or activity fails to receive vital information.

CONCLUSION

Club sports and activities are enjoyed by all participants and are a significant addition to the educational experience at all levels of schooling. However, if institutions do not properly manage the risks posed by these activities, they face the prospect of expensive litigation. Education and management of the known risks can go a long way toward keeping students safe and minimizing the potential legal exposure associated with these activities. We recommend all risk managers go through the following check list at the beginning of each season as part of their risk management plan:

- ❶ Identify "key" individuals from each club sport and activity (ie. head coach, team captains) who will be the liaison between their activity and the risk manager.
- ❷ Ensure the "key" individuals are aware of the responsibility of their role.
- ❸ Hold a meeting at the beginning of each season with the "key" individuals. At this meeting hand out all waivers, releases, consent to treat forms, etc. Implement a deadline to return these documents and enforce it.
- ❹ Monitor and review compliance with risk management strategies at least annually and address any concerns with *all* members of the club sport and/or activity.

In summary, by taking these proactive measures before the start of each club sport or activity, you can go a long way in protecting the safety of both the students and staff while minimizing the school's liability exposure. ■

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FOOTNOTES

- 1 The authors wish to recognize the significant efforts of Shrina Faldu of Seiger Gfeller Laurie LLP who contributed much of the research and assisted with the drafting of this article.
- 2 *Munn v. Hotchkiss School*, 24 F. Supp. 3d 155 (D.Conn. 2014).
- 3 *Id.*
- 4 *Id.* at 587-88.
- 5 *Id.* at 589.
- 6 *Callazos v. City of West Miami*, 683 So.2d 1161, 1163 (Fl. App. 1996).
- 7 *Id.* at 1162.
- 8 *Id.* at 1163-64.
- 9 *Duchesneau v. Cornell University*, Civil Action No. 08-4856, at 1-2 (E.D. Pa. 2013).
- 10 *Id.*
- 11 *Id.* at 8.
- 12 *Bradshaw v. Rawlings*, 612 F.2d 135, 139 (3rd Cir. 1979).
- 13 *Id.*
- 14 *Id.*
- 15 *Id.*
- 16 *Id.* at 139.
- 17 *Id.*
- 18 The Twenty-Sixth Amendment to the United States Constitution, passed in 1971, lowered the age of majority to eighteen.
- 19 *Id.* at 139; *Baldwin v. Zoradi*, 123 Cal. App.3d 275, 287(1981).
- 20 *Kleinknecht v. Gettysburg College*, 989 F.2d 1360 (3rd Cir. 1993).
- 21 *Id.* at 1363.
- 22 *Id.*
- 23 *Id.*
- 24 *Id.*
- 25 *Id.*
- 26 *Id.* at 1369, 1370.
- 27 Ann McBride, "Director in 'disbelief' over Spiegler ruling," Arizona Daily Wildcat, February 21, 1996.
- 28 *Id.*
- 29 Sports Club Council University of Central Florida, "Risk Management and Safety" (available at: <http://ucfsportclubs.orgsync.com/Handbook-Safety>).

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