THE EXPANDING LIABILITY OF THE UNIVERSITY FOR STUDENT INJURY: FIELD TRIPS; K-12 STUDENTS IN ACADEMIC AND SPORT CAMPS; SUPERVISING UNDERAGE STUDENTS

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The Expanding Liability of the University for Student Injury: Field Trips; K-12 Students in Academic and Sport Camps; Supervising Underage Students

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I. Field trips

A. Liability overview - Trips off-campus for fieldwork associated with a course or other academic purpose may range from a one day outing for several students and a professor to an elaborately planned and lengthy trip involving many participants and arrangements. In any case, if the event is institution-sponsored, then injury on or in connection with the field trip may raise liability concerns for the institution. For cases in which colleges and universities have been faced with claims arising out of field trips, see Beach v. University of Utah, 726 P.2d 413 (Utah 1986); Bettencourt v. Los Rios Community College District, 42 Cal. 3d. 270, 228 Cal. Rptr. 190, 721 P.2d 71 (1986); Furr v. Arizona Bd. of Regents, 139 Ariz. 83, 676 P.2d 1141 (Ariz. App. 1983). (Although those decisions do not impose liability on the school - the Beach and Furr decisions find for the defendants and the Bettencourt decision concerns a notice requirement under California law - the factual situations are instructive.)

1. Is an off-campus foray a "field trip" or is it a class celebration or other non-academic event that was not school-sponsored? Examine the extent of the connection between the institution and the trip. Was the event part of the curriculum? Did it have an academic purpose? Did the institution pay any expenses of the outing or provide transportation?

2. Does the university have minimum standards or policies that apply either specifically to field trips or generally to activities involved or aspects of field trips such as transportation (vehicle policies) or contracts for services used in connection with the field trip (policies concerning contracting authority)? If so, does the school know whether its policies are being followed with respect to field trips? If not, does the school manage the liability that it may incur in connection with field trips through other means?
3. Has the university analyzed the extent of its field trip activities and the risks involved, self-insuring or transferring that risk through insurance as appropriate?

B. Priority risk management concerns.

1. Transportation - Significant exposure, particularly when students or faculty are allowed to drive university-owned vehicles.

2. Supervision - The Reach reasoning is not a complete shield against liability for claims of inadequate supervision.

3. Medical attention when required - availability, promptness, and adequacy.

4. Liability for sexual harassment/assault by staff, fellow students, or others.

5. Crimes committed against students while on the field trip.

6. Premises liability (if the university owns or otherwise controls the off-campus premises where the injury occurs.) - The frequency of premises liability claims raises concerns.

7. Injury related to alcohol, drugs, pranks, and other non-school related activities. Inherent tension between requiring individuals to be responsible for their own conduct and regulating conduct through policies and ad hoc intervention. See Gulland, Developing Effective and Legally Sound Alcohol Policies, included in materials on Legal Issues Affecting Event Management, 16th Annual Law & Higher Education Conference (Feb.'93, 1995)

C. Risk management checklist for field trips.

1. Organizing the trip.

   a. What entity within the institution is responsible for the trip?

   b. Who is the individual responsible for organizing the trip?

   c. What is(are) the destination(s)? Do any of the locations raise safety or security concerns? Is the individual responsible for the trip familiar with the destination(s) and with the route that will be taken?
d. What is(are) the purpose(s) of the trip and what activities are contemplated? Are any of the activities unusually hazardous, e.g. mountain climbing, white water rafting, sky diving.

2. Participants

a. How many individuals will participate in the field trip?

b. Who will they be?

c. If the field trip will involve any activities that require athletic or other skills in order to do them safely, what is the skill and experience level of the participants?

d. Will participants (students, faculty and any staff) be required to have health insurance in order to participate?

e. Will the field trip leader have available (while on the trip) emergency medical and emergency contact information regarding each participant?

f. Will participants receive an orientation/introduction providing them with details concerning arrangements, their responsibilities, applicable standards/requirements of conduct, and any appropriate warnings?

3. Supervision

a. Who will lead the field trip? Is that individual the same person who organized it?

b. How many faculty and staff will be on the trip in a supervisory capacity? What will the ratio be of supervisors to students?

c. How are responsibilities delegated or divided among those supervising the field trip?

d. Will all those responsible for supervision have an understanding of university policies, procedures, and contacts relevant to the trip?

4. Transportation

a. Does the university have a vehicle policy that applies to transportation being used? If so, is the policy being complied with?
b. Are university-owned vehicles going to be used?

c. Will faculty, staff and/or students drive their own cars? Will there be any car pooling arranged by the school? How many passengers per car?

d. Will the trip involve any bus, plane, or other transportation arranged through contract with a charter company? Rental cars or vans? If so, who will contract with the third party? Who will pay for the transportation?

e. How long will it take to get to the destination? If auto, van, or charter bus transportation, how many hours will an individual drive? What provisions have been made for rest stops and to switch drivers during long trips?

5. Overnight stays

a. What arrangements have been made for overnight stays?

b. Is someone at the campus able to reach the group at all times during the trip? If not, have arrangements been made for the group to maintain periodic contact with the campus?

6. Are waivers, releases, or agreements to participate being used? If so, have the documents been reviewed by counsel or other appropriate administrator?

7. Are contracts (besides transportation) required? If so, what are the details and who is responsible for those contracts? Are institutional requirements for contracting being followed?

II. Camps for K-12 Students on Campus

A. Spectrum of university involvement.

1. Tolerance - University allows a camp to use the university’s facilities, but is not otherwise involved in camp operations or management. E.g. Camp headed by a university athletic coach, who is allowed to participate in camp on his or her own time under the terms of coaching contract with university. The
camp is operated under auspices of a separate entity, such as a company set up by the coach.

2. Encouragement/support - University promotes a camp run by another entity. E.g. University allows a camp for learning disabled children to recruit counselors through the university’s school of education and gives the camp special privileges or access with respect to university resources.

3. Joint operation - University operates a camp jointly with another entity. E.g. A science camp run jointly by the university and a local museum on the university campus using university faculty and museum staff as senior camp staff.

4. In-house operation - University operates a camp on its own.

B. Extent and range of camp activities for K-12 students on university campuses.

1. Many colleges have multiple camp-type activities for K-12 students, often going on during the summer simultaneously with other activities such as music festivals, conferences for business people, and training camps for athletes from professional teams.

2. Camp population

   a. Trends - Colleges and universities are moving beyond gifted and talented programs to programs aimed at youths from minority groups, economically disadvantaged environments, campers with special needs, and those who would be first generation in their family to attend college. Camps are becoming increasingly specialized.

   b. Special needs campers - E.g. Camp for children with spina bifida operated on a midwestern college campus by a state spina bifida association. Camp includes approximately 150 children from 7 to 21 years old attending 7 - 10 day sessions.

   c. International students - Olympic Youth Camp has been held in connection with virtually every set of Olympic games since 1960 in the country where the games are held. For next year’s Olympic games in Atlanta, Georgia, the camp is scheduled to be held on a campus near Rome, Georgia that has a school year population of fewer than 2,000 students. During the two week
summer youth camp, 500 teens 16-18 years old from 100 foreign countries will be on campus, participating in a wide range of activities in groups of 12. Campers of varied nationalities will be mixed within the groups to encourage cultural exchange experiences.

2. What activities will campers engage in?
   a. Beyond academic and athletic activities - E.g. One midwestern college offers a summer nurse camp designed to attract students from Future Nurses Clubs at local high schools. Approximately 100 high school students attend, some after 8th grade. First year campers visit and observe medical facilities and nursing homes, second year campers work in a facility twice a week, and third year campers work four times a week.
   b. Off campus events, trips, and a “taste of college life”.

C. Risk management issues.

1. Overall organization and adherence to generally accepted standards.
   a. Is the camp accredited by a nationally recognized body such as the American Camping Association?
   b. Whether or not the camp is accredited -
      (1) Does it follow recognized safety and other standards?
      (2) Does it have written policies regarding areas that raise important liability concerns such as those areas listed below?
      (3) Does it obtain evaluations from outsiders or perform self-evaluations on how well it is equipped to handle, and how well it has handled, situations that present liability concerns? See materials and self-evaluation forms contained in Standards for Day and Resident Camps, American Camping Association, 1993 ed.

2. Camp staff - Camp staff may include volunteers, as well as employees. An individual’s role and responsibilities, not whether they get a paycheck, should determine how they are assessed and treated from a liability point of view.
a. Screening - Are applicants evaluated and references checked to assess factors that may indicate applicant is a preferential child molester and to weed such individuals before they become staff/volunteers?

b. Training

(1) Is the staff trained to recognize and report child sexual abuse and molestation?

(2) Does the staff have training in emergency response and camp and university policies and procedures related to emergency response? E.g. medical emergencies, missing campers, natural disasters.

c. Concerns related to high turnover, supervision of staff (including volunteers), leisure time activities of staff, the existence and enforcement of an alcohol and drug policy.

2. Particularly hazardous athletic/recreation activities and liability issues that they raise.

a. Water sports and recreation - activities in pools and at lakes, rivers, and other bodies of water.

(1) Camper unfamiliarity with sports and survival skills. This is a significant concern with respect to campers, often from urban environments, who are not strong swimmers.

(2) Supervision issues - E.g. Allowing diving at the shallow end of a pool. According to one study, approximately 800 spinal injuries result annually from diving accidents, half of which take place in pools and the other half in natural bodies of water. Approximately 80% of those pool-related diving accidents that caused spinal injuries resulted from diving in shallow water.

(3) Lifeguard/rescue preparations - Staffing, training, equipment, and ability of those given lifeguarding responsibilities.

b. Ropes, climbing walls, and other challenge courses.
(1) Equipment inspection, maintenance, repair, and replacement. Should include scheduled preventive inspections and follow-up, ad hoc "spot checks", and prompt response to problems reported by staff or users of the challenge course.

(2) Training for counselors and other staff.

(3) Rules for use, including age and ability requirements of participants, and requirements for spotters.

3. Health and medical care arrangements for campers, staff and volunteers.
   a. A well-designed and carefully followed health care plan can help a camp manage any medical problems that may arise during camp and may help avoid liability. Elements of a camp health care plan should include:
      (1) Pre-camp screening.
      (2) Record-keeping system.
      (3) Emergency and disaster response procedures.
      (4) Coordination with university.
   b. Training of camp staff, including preparations for how staff and camp will deal with campers with known medical problems.
   c. Coordination with university health care system to the extent that the system is responsible for medical needs of campers and staff, or available to provide emergency assistance. Camp should appoint liaison to coordinate with appropriate university staff.

   a. Release of campers to family or others (leaving camp for emergencies, scheduled visits, or other reasons.)
   b. Visitors to the camp.
   c. Trips off-campus as part of scheduled camp activities or with permission on other bases. Camp policies on supervision required for off-campus trips.
d. Mixing groups on campus and proximity of camp to other activities taking place on campus. Are any parts of the campus “off limits” to some or all campers?

D. Bases of potential liability for university.

1. Premises liability (if the camp premises or other location where injury occurred are under the control of the school). Prevalence of premises liability claims generally makes this exposure a concern.

2. Supervision - Note that a higher degree of supervision is required for K-12 students/campers than for college students.

3. Medical attention when required - availability, promptness, and adequacy.

4. Liability for sexual assault/molestation by staff or others. Note the potential that factual basis for a civil claim may also have criminal implications.

5. Crimes (other than sexual assault/molestation) committed against K-12 students while on campus or involved in camp activities.

6. Transportation - Significant exposure, including risks related to inexperienced drivers and same causes that lead to school bus accidents during the school year.

7. Injury related to alcohol, drugs, pranks, and other non-camp related activities of the injured K-12 student.

8. Injury caused by another K-12 student. How far should the camp go in preventing “horseplay” that can lead to injury? Increasing number of claims seek to hold institutions liable for peer-to-peer harassment, assault.

D. Relationship between the university and co-sponsors (if any) and relationships between the university and the camp.

1. Relationship between the university and a camp co-sponsor.

a. The parties should have a written contract specifying each entity’s role and responsibilities in operating the camp.
b. Should the university require an indemnification/hold harmless from the co-sponsor?

2. Relationship between the university and the camp if the camp is operated by another entity.

a. The university should require adherence to specified university policies and procedures

b. Communications between the camp and the university should include:

(1) Liaison system, ongoing contacts between designated individuals.

(2) Coordinated responses to emergencies and other situations presenting risk to either or both entities.

c. The university should retain the ability to prevent certain activities and to end relationship if the camp or its campers or staff present problems for the university

E. Insurance issues

1. What insurance protects the university for claims involving the camp?

a. Camp's insurance.

b. Another entity's/joint sponsor's insurance.

c. University's own insurance.

d. Is the coverage adequate?

(1) Amount of coverage.

(2) Terms of coverage. Any coverage “gaps”?

e. Which insurance coverage is primary in the event of a claim? It is useful to have coverage provided by camp or another entity designated as primary (i.e. first to respond) so that limits of the university’s own policy are not eroded.

2. What steps may be taken by the university to protect the university’s interest through insurance?
3. What coverage is provided for individuals acting within the scope of their duties for the university?

a. Who is covered?

(1) University employees.

(2) University volunteers.

b. How are they covered?

(1) Policies of the university, camp, or other sponsoring entity.

(2) Individual’s own (personal) insurance such as auto or umbrella liability coverage.
HYPOTHETICALS
CONCERNING CAMPS FOR K-12 STUDENTS

1. A program sponsored by a non-profit with minimal staff has brought 50 inner city teens to your campus for a six week college preparatory camp. Program staff consists of a director with 15 years of experience, an assistant director who is a recent college graduate, and a number of college age counselors. The camp director was killed this morning in a car accident when she went off-campus to do an errand. Your school has just been notified by the highway patrol of the camp director’s death. What do you do?

2. Your college and a local science museum co-sponsor a science camp on your campus for high school students. The program participants are housed in dormitories as are other groups attending functions or programs on campus. Business people attending a conferences on campus sometimes stay in a separate, but connected, wing of the same dorm that houses the science camp participants. You are the director of residential life at the college. This morning you were told by a camp counselor that business people attending a conference held a wild party in the shared dormitory last night. The counselor saw several partially unclothed revelers sliding down banisters and believes that there was alcohol at the party. The counselor heard that women who passed the party scene were groped, kissed, and otherwise harassed, but has no first hand knowledge of such incidents. One of the high school students told the counselor that she walked by the party on her way back from an evening activity with several other campers, but she is too upset to discuss what happened. The business conference ended this morning and its participants have left your campus, but the high school program has one more week to run.

3. Your school’s tennis coach operates a tennis camp under an informal arrangement with the university. The camp has use of tennis courts, dormitory rooms, food service facilities, and certain other university facilities. The camp counselors include members of the varsity tennis team and outsiders (non-students). A female counselor tells a college administrator with whom she is friendly that she overheard two of the male counselors, one of whom is a varsity tennis player, bragging about drinking and having sex with one of the campers, a 14 year old girl. The college administrator has come to you, the university’s counsel, to ask what she should do about her conversation with the female counselor.
4. A camp leases space and facilities on your campus. There are no other formal ties between the camp and the college and the camp director has no connection to the college. There is a sign at the climbing wall on your challenge course requiring use of spotters. Your track coach passed by the wall this morning when the camp was using that facility. The coach saw a camper in his early teens spotting for a counselor. The counselor was laughing and talking to campers on the ground. The track coach waited until the counselor descended and spoke to the counselor about her safety concerns. The counselor’s reaction was not reassuring to the coach and she immediately reported the incident to you, the college’s athletic director.
SELF-ADMINISTERED QUIZ
LIABILITY ARISING OUT OF CAMPS FOR K-12 STUDENTS

1. How many camp or similar programs for K-12 students does your school have operating on campus or under college auspices or co-sponsorship?

2. How many participant below college age with those programs bring to your campus?

3. Is there a centralized location where details of those programs are kept?

4. Is there a written agreement and every other sponsor of such programs?

5. Do all written agreements define the school’s responsibilities and the responsibilities of the other entity? Do they provide for any indemnification/hold harmless for the school?

6. Is the school’s risk manager aware of the extent and nature of the programs?

7. Do you require programs that are not part of the school to purchase their own insurance? How much insurance are they required to purchase? Are they required to name the school as an additional insured?

8. Have all programs bee provided by the school with information concerning the school’s campus security, sexual assault, fire safety, and other emergency/crisis management policies and procedures?

9. Have you alerted those on campus responsible for emergency/crisis management to the presence of the programs and their particulars?

10. Does the school have policies and procedures that regulate or set standards for programs that it operates, co-sponsors, or otherwise allows to operate on campus?

11. Does someone on campus coordinate the scheduling and operations of the various programs?

12. What could the school do during the next year to better manage the programs that it operates, co-sponsors, or otherwise allows to operate on campus?