

Risk Management and Legal Concerns

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February 21, 2009

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Preventative Measures

- Review Student Health Records
- Obtain Medical Clearance
- Facilitate Staff
Communication/Training
- Establish Emergency Response
Procedures

Preventative Measures

- Exchange of Student Records
 - CA Pupil Records Act
 - Ed. Code §§ 49060, et seq.
 - Federal Family Educational Rights and Privacy Act (FERPA)
 - 20 U.S.C. § 1232g
 - 34 C.F.R. Part 99

Preventative Measures - Student Records

- Health/medical records maintained by a school are education records
 - Not subject to HIPAA

Preventative Measures – Student Records

- Health/medical records may be disclosed to:
 - School district employees and officials with a legitimate educational interest
 - School nurse, coach, athletic trainer, teacher, principal

Preventative Measures – Student Records

- Appropriate persons in connection with an emergency if the information is necessary to protect the health or safety of a student or other persons

Preventative Measures – Student Records

- Health care providers can disclose protected health information (PHI) about students to school nurse/school personnel
 - School should provide an authorization for exchange of information signed by parent

Preventative Measures – Emergency Response Procedures

- Coordination with local fire department/paramedics
- Training in CPR/First Aid
- Use of Automated External Defibrillators (AEDs)

Preventative Measures – AEDs

- School district acquisition of AEDs is voluntary
 - Health & Safety Code § 1797.196

Preventative Measures – AEDs

- Barriers for school districts:
 - Cost
 - Legislative mandates

Preventative Measures – AEDs

- Legislative Mandates
 - Maintenance and testing requirements
 - Designating trained employees who are available to respond to an emergency during any school sponsored activity occurring on school grounds
 - Not just during hours of classroom instruction

Preventative Measures – AEDs

- Immunity protections conditioned upon compliance with legislative mandates

School District Liability

- Negligence Standard
 - Omission to do something which a reasonable person would do or would not do
 - Failure to exercise ordinary care under the circumstances
 - Failure to do an act that is necessary for the protection or assistance of others

School District Liability

- Four elements of Negligence
 - Legal duty
 - Breach of legal duty
 - Proximate cause
 - Damages or injury

School District Liability

- Legal Duty – Standards of Care
 - Conforming to a certain standard of care for the protection of others against unreasonable risks

School District Liability

- California Torts Claim Act
 - All government tort liability for injury arising from an act or omission must be based upon breach of a statute
 - Government Code §§ 810, et seq.

School District Liability

- A public employee is liable for injuries caused by his/her acts or omissions to the same extent as a private person
- The public agency is vicariously liable for any injuries caused by the employee to the same extent as a private employer

School District Liability

- Standards of Care
 - Duty to supervise
 - Reasonable supervision of students
 - Duty to warn parents of possible harm to their children
 - Duty to warn of dangerous conditions on school property

School District Liability

- Breach of duty by coach or sports instructor
 - Intentional injury to student
 - Engage in reckless conduct
 - Totally outside the range of the ordinary activity involved in teaching or coaching a sport

School District Liability

- Courts have distinguished the relationship of a coach or sports instructor from other school staff
 - A coach or sports instructor challenges and pushes a student to advance in skill level and undertake more difficult tasks

School District Liability

- Assumption of the Risk
 - When students voluntarily choose to participate in hazardous sports activities, they assume the risk of injury

School District Liability

- Assumption of the Risk
 - A school district is not an insurer of the student's safety and will not be liable unless:
 - Instructor gave specific directions which increased the risk of harm to the student over and above that inherent in the sport

School District Liability

- Constitutional Protections
 - 14th Amendment
 - Violation of Due Process
 - Deprivation of life, liberty, property

School District Liability

- Constitutional Protections
 - Conduct by must be conscience–shocking
 - Willful or malicious act with the intent to injure
 - More than deliberate indifference

School District Liability

- 11th Circuit Court of Appeals (Georgia)
 - Student died the morning after voluntary workout session for varsity football team
- Allegations:
 - Deprived of water even though student exhibited signs of overheating

School District Liability

- Allegations (cont'd)
 - Ignored signs and complaints of dehydration
 - Subjected student to rigorous drills after 2-hour practice
 - Deliberately failed to immediately assist student

School District Liability

- No constitutional claim
- Follow tort analysis

School District Liability

Questions

