

What Happens in Summer, Stays in Summer . . . Right?

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Intro

- What are we talking about?
 - Summer activities such as camps held at school, team camps, Close Up trips, “school” class/teacher trips, etc.
- Potential political headache
 - Finkle is Einhorn, Einhorn is Finkle
- Issues
 - Liability
 - Student Discipline
 - NSAA
 - Employee Issues

Hypo

- KSB PS basketball team has .500 record. Board member tells Coach Karen “We expect better next season.”
- Coach Karen also coaches a summer league team.
- Summer league team has 8 players from school, 2 from another. Coach Karen verbally invited players to play.

Hypo

- Summer league not mandatory, but rumor is players who skip it don't play much the next season, because Karen is a
- Summer team registered as "KSB".
- Coach Karen works on summer practice schedule, fundraisers, and tournaments during school time in May.

Hypo

- Summer team uses school uniforms for games (without school's knowledge or permission) and practices at school gym (with knowledge and permission).
 - No written agreement, no specific board or administrative permission.
- Entry paid $\frac{1}{2}$ by fundraising, $\frac{1}{2}$ by students
- Coach Karen grabs key from office, tells secretary "see you after the tournament," and drives the team to tournament.

Hypo

- On way to tournament, Karen stops and buys some balls with school's tax exemption certificate.
- Prior to the first game, player Bobby punches player Steve in the face in front of the coach and several parents.
- On drive home, the van crashes causing a variety of injuries of varying severity to Karen and several students.
- Kids say K was texting and may have fallen asleep. K says steering and brakes failed.

Legal Questions

Legal Questions

- Was the tournament a school activity?
- Can Bobby and/or Steve be expelled from school? From school activities?
- Can the injured students sue the school?
- Was Karen acting as a school employee or as an individual? Is she subject to discipline?
- Can Karen sue the school for her injuries?

Legal Questions

- Is Karen eligible for or limited to workers' compensation benefits?
- Is Karen entitled to compensation?
- Does the PSTCA apply?
- Can Karen use the school tax exemption to buy uniforms and equipment?

Negligence

Negligence & Liability Basics

- Districts and their supervisory personnel have a general duty to protect and properly supervise students entrusted to their care and custody.
- School may be vicariously liable for negligent acts of its employees or agents
- If no employment or agency exists, no liability.

Negligence & Liability Basics

- Negligence is doing something which an ordinary, prudent person would not have done under similar circumstances or failing to do something which an ordinary, prudent person would have done under similar circumstances
- The proper standard of care regarding negligent supervision is whether the defendant acted as a reasonably prudent person would in a similar circumstance.

Political Subdivisions Tort Claims Act

- Schools and its employees not liable for torts except as allowed by the Act
- PSTCA is a limited waiver of immunity
- One year to file written claim
- Two years to file lawsuit

Student Discipline

Purpose of the SDA

"The purpose of the Student Discipline Act is to assure the protection of all elementary and secondary school students' constitutional right to due process and fundamental fairness within the context of an orderly and effective educational process. The sanctions defined in the act shall be interpreted at all times in the light of the principles of free speech and assembly protected under the Constitution of Nebraska and the United States Constitution and in recognition of the right of every student to public education."

Location of Offense

L-T suspension, expulsion, or mandatory reassignment only allowed when activity occurs:

- On **school grounds**
- In a **vehicle** owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee or
- At a **school-sponsored activity or athletic event**

Extracurricular Considerations

- You can remove students from activities for *almost* any purpose BUT
 - Your policy must provide “notice” of what is considered prohibited conduct
 - Define whether policy is “year round” and if so, when consequences are imposed
 - Must comply with handbooks/policies even if student was caught in the summer

Jurisdiction and Authority

- Even if the incident occurred outside school grounds, vehicles, activities, and not on any other district property:
 - Did the incident cause you to “reasonably forecast” a material and substantial disruption of school functions?
 - Did the incident actually cause a material and substantial disruption of school functions?
 - Did the incident reasonably cause another student to miss school functions or school activities?
- Think: social media posts

NSAA Issues Summer Activities

NSAA Issues

Summer Activities

- “Summertime” Rules - Tuesday following Memorial Day or final day of school (whichever is later) until July 31
- No restrictions on contact between students and HS coaches (including summer league games) as long as no support is received from the school district.

NSAA Issues

Summer Activities

- **School may not:**

- sponsor team or individual;
- provide uniforms or individual player equipment;
- allow use of school name; or
- “otherwise be responsible for” students in summer.

NSAA Issues

Summer Activities

■ School **may**:

- Provide transportation for students to a summer camp with prior approval from school board.
- Allow coach to hold fundraising \$ in school account until it is needed to pay for summer league or camp activities.
- Allow use of school equipment, other than individual player equipment and uniforms, as long as school is in no way responsible or involved.

NSAA Issues

Summer Activities

- Attendance at summer activities must be voluntary.
- Coach and school reps. may not directly or by implication direct students to attend summer activities as a condition for membership on a high school team or restrict the level of team participation within the high school program.

NSAA Issues

Summer Activities

- NSAA Catastrophic Insurance does not cover coaches/students/schools during the summer activities period

Employee Issues

Employee Issues - Discipline

- At-will (coach only)
- Certificated (teacher and coach)
 - Just cause
 - Personal conduct - Must show sufficient nexus between conduct and the board's legitimate interest in protecting the school community from harm
 - In other words, must be related to educational process or to working relationships within school
 - Courts tend to find a nexus only if:
 - Conduct involved student or school-aged individual;
 - Act was widely publicized;
 - Event took place in public (negates right to privacy); or
 - Conduct was result of larger, irremediable problem or condition.

Employee Issues

■ Workers' Compensation

- Benefits for employees who sustain injury by accident arising out of and in the course of their employment.
- WCA is the ***exclusive remedy*** of injured school employee. Cannot file a civil action.

Employee Issues

- Compensation question: was there an expectation that the coach conduct non-basketball season activities?
 - May be an argument from certificated staff to bargain over increased compensation for camps, etc.
 - FLSA would govern classified employees if they were expected to coach.

Outside Groups and Taxation

- Outside groups prohibited from using a school's tax identification number and exemption certificate to make tax-free purchases.
- Wrongful use of tax ID # can be tax fraud resulting in fines and/or jail time.
- Use of school's state Certificate of Exemption + willful failure to pay taxes can = personal liability for unpaid taxes, penalties, and interest.
- Liens, garnishment, property seizure

Recommendations

- BE CLEAR – either it is a school activity or it's not.
- Have policy governing “inside” and “outside” groups
 - Helps make “us” v. “them” clearer
 - Require insurance
 - Require “not a school activity” wording on flyers
 - Use of school name or logo or acceptance of funds used as “carrot” to ensure compliance
 - Prohibit school employees from signing group's checks or acting on group's behalf

Recommendations

- Apply facility use policy
- Use written facility use agreement that include insurance and indemnity provisions
- Keep school funds and group funds separate
- “It Ain’t Us” signed acknowledgments from parents and students
- Over-communication is better than under-communication
- Review student, staff, & activity handbooks

Recommendations

- Only give school's tax identification number and Certificate of Exemption to qualified users

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