

School Litigation

Recently we have all read about child abuse cases in the newspapers. While members of the clergy and celebrities have captured most of the child abuse headlines in the past year, many incidents have involved teachers, custodians, bus drivers, and other adult employees of private and public schools. The circumstances are, not surprisingly, similar. An authority figure, alone with a young, vulnerable child, molests or abuses the youngster, then threatens the child if he or she tells anyone. Having gotten away with this once, the abuser does it again, and again, with



the same child, and frequently, several others. Sometimes this practice goes on for years.

Then one day there is disclosure. There are hundreds of these school-related abuse cases each

year; no one really knows how many. Some take place in the school or on school property. Some occur at the child's home, or in a school vehicle. Others may occur on field trips or during athletic events. Whatever the circumstances, potentially there is a huge liability for the school.

pg 3

Protecting Snow Loaded Roofs

Snow and ice accumulation on flat roofs and roofs with a pitch of less than 4 inches/foot may cause roof collapse. Various other roof designs and configurations as well as construction techniques may also leave some roofs vulnerable to collapse from excessive snow loading.



Each roof should be evaluated for load capacity by a civil engineer or other qualified person. Most roofs are designed to carry at least 6 inches of snow; much more may be applicable in snow country. However, HVAC, emission controls, and other roof-mounted equipment added after the original roof design will reduce the capacity of the roof supports to handle live loads, such as snow. An internal engineering inspection may locate weak areas, leakage, damaged insulation, or cracked roof support members or joists. Roofs should be checked for areas of sag where water may accumulate, causing further weight and more sagging, potentially leading to eventual roof collapse.



As a rule of thumb, at least two 6" diameter drains should be installed on roofs of 10,000 sq. ft. or less. Add another 6"

pg 4

INSIDE THIS ISSUE:

School Litigation	1
Protecting Snow Loaded Roofs	1
Happenings	2
Contact Us	6
Risk Management - Programs & Workshops	8

Happenings!

everyone's talking about... **Diplomax**SM
The Insurance Package
for Private Education



Boiler Maintenance and Safety, Oct. 21
*Edward Springer from Hartford Steam Boiler Company
presents important safety information to attendees*

Risk Management Workshops



MOLD Symposium, Oct 22

Team of Presenters Included:

- Douglas Auvine, ECSMarin Company*
- Steven Gilmore, ServiceMaster by Gilmore Brothers*
- Sarah Friedman, Service Master by Gilmore Brothers*
- Eugene Benoit, EPA (above, with Ron Quattrochi and Rich Daisy from Massamont Loss Control Program)*
- Senator Robert O'Leary, Massachusetts State Senate*
- Richard Williams, PhD, Hartford Steam Boiler*



Meet Our Frequent Presenter Theresa M Dowdy, Esq.

Senior Principal at the municipal law firm of Kopelman & Paige, Ms. Dowdy supervises all labor and employment matters as well as engaging in the practice of traditional labor law. She represents numerous institutional and education clients throughout Massachusetts and New England.



**see page 8
for info on
Upcoming
Workshops**

***Non-Diplomax members are
always welcome to attend!!***

ADVANTAGE

School Litigation, cont'd

Litigation involving school children extends beyond molestation. Other examples are sexual harassment, physical abuse, excessive verbal abuse, bullying, violations of standards of care, supervision, traffic accidents, dangerous field and laboratory experiments, wet floors, sports injuries, fires, discrimination, copyright infringement, student-on-student violence, violations of Title IX of the Educational Amendments of 1972 – the list is very long.

Sometimes the school is drawn into a litigation matter although the school itself is not a party to the lawsuit or court proceeding. This may happen when records are subpoenaed. It can happen in child custody/alternative education cases involving separated or divorced parents. It may be as character witnesses. Whatever the reason, litigation involving school personnel triggers an expenditure of time, cost for legal representation, distractions, and possibly bad publicity.

Molestation and sexual harassment are among the toughest litigation issues. These cases are not only damaging to the victim; they draw much media attention and affect the entire school, the school board, and the community. There are standards of care that schools around the country have adopted. Foremost among them are hiring, written policies and procedures, reporting, non-isolation, investigation, and disciplinary measures.

Before any potential school employee is hired, the employer has the responsibility to exercise due diligence, e.g., authenticating credentials; conducting criminal background checks; performing as thorough an employment reference check as possible; interviewing and testing the candidate for

competency, subject knowledge, stability, and drugs; and assessing the candidate's or volunteer's compatibility with school policies and student demographics. For example, if the school has many Hispanic students, does the candidate have a bias against that ethnicity? Does the candidate speak Spanish?

The school should have a concise, non-ambiguous policy statement that addresses employee/volunteer relationships with students. The policy should apply to administrators, business and custodial staff, teachers and aides, physical education personnel, special-needs staff, bus drivers, food service and medical personnel, contractors and substitutes, volunteers – everyone involved with the school. It should be a zero tolerance policy that includes suspension while a person is under investigation for an alleged offense. The policy should be supported by a comprehensive set of procedures, guidelines, examples, instructions, reporting forms, and appeals procedures.

When an alleged incident occurs, it is absolutely imperative that anyone with knowledge of the event be compelled to report that happening to the designated school official or the principal. An alternative official should be named in the procedures should the primary contact not be immediately available. Time and facts are crucial to a good prevention program and to a supportable defense.

Molestation and sexual harassment are among the toughest litigation issues.

Volunteers should be scrutinized as if they were employees.

They can be an asset or a liability, or both.



Protecting Snow Loaded Roofs, cont'd

drain for each additional 10,000 sq. ft. Scuppers with a diameter of 8 inches or more may be substituted for drains. Drains and scuppers need to be checked and cleaned quarterly, after significant storms, and, if effected, after there has been a significant falling of leaves.



A civil engineer should determine what the safe snow and ice load is. Work to remove the accumulation should begin at half the determined load since (1) the persons and equipment necessary to

remove the accumulation will add temporary weight to the roof, and (2) additional snow and ice may accumulate while the work is underway.

Following these procedures shown here will considerably advance your chances of preventing a roof collapse due to snow and ice. For additional advice, contact the Massamont loss prevention department.

IF CONTRACTORS WILL BE USED TO REMOVE SNOW AND ICE:

- **Make the arrangements months before the snow season.**
- **Check their references.**
- **Ensure that they have a current certificate of liability and workers' compensation insurance with adequate limits for the work.**
- **Review the list and availability of equipment they will use on your roof.**
- **Determine how quickly they will respond to a call for snow removal as they likely will have several other clients who will need their attention at the same time that you do.**



ADVANTAGE

FOR CONTRACTORS OR EMPLOYEES:

- ✓ Review personal training and operating procedures for safety.
- ✓ Provide them with a current roof plan. Include wiring, piping, vents, drain/scupper locations, skylights, hatches, roof-mounted equipment, the location of load-bearing walls, antennas, piping and valves, etc. Include the location of isolation or shut-off valves for all utilities, and procedures for the workers to follow to gain authorized access to them in an emergency.
- ✓ Keep heating systems on at normal levels during and after a storm to promote even heating and melting on the roof.
- ✓ Have braces installed in weak areas before snow removal begins.
- ✓ Have workers first clear all drains/scuppers (use salt if necessary) and heavy accumulations due to drifting.
- ✓ If snow blowers are used, ensure that the workers set the deck high enough so as to prevent contact between rotating parts and the roof.

If there is roof damage, close, brace, and secure the effected areas to prevent further property damage, injuries, or theft. Use torches and other heating devises sparingly and with great caution.

As soon as possible, restore all systems to normal operational status, including any safety and automatic sprinkler systems that may have been isolated or closed.



Let it Snow!

School Litigation, cont'd

When practical, school officials, employees, and volunteers should not place themselves in an isolated environment with a non-adult student. If possible, another adult should be present or in the vicinity. Because this is not always practical, exceptions may be acceptable. These might include a student visit to the school nurse where privacy may be warranted, an after school detention, a visit to the disciplinarian's or principal's office, a personal speech or instrument rehearsal, a single-student van for a special education or special needs student, or a visit to the library during non-class hours.

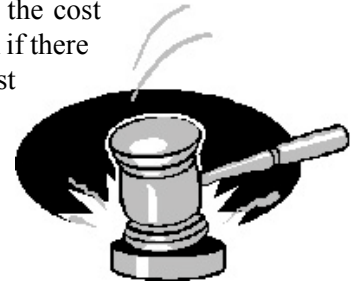
Rules may be broken and procedures may not be followed. That is why there needs to be a clear disciplinary policy that applies to everyone, including volunteers. But the school must be fair to the employee or volunteer as well as to the alleged victim. There should be a hearing or other forum in which the accused has ample opportunity to explain the "what, why, where, and when." If

discipline is meted out, it should be fair and consistent during the investigative and action stages. Otherwise, the school may be the subject of a discriminatory action lawsuit.

Good procedures, immediate reporting, and solid investigation are critical to a good defense.

If there is a lawsuit against the school or the employee or volunteer, there may be coverage in the Educators Liability insurance policy. There are several factors that determine whether there is coverage, such as the circumstances of the alleged offense, the nature of the

action, and where the alleged offense took place. The policy may also offer defense and/or pay the cost of the defense, even if there is a conflict of interest between an alleged offender and the employing school.



➡ next page

Would you like to be on our mailing list?
Want more info on our programs?

Contact:

Hugh Campbell
Massamont Insurance Agency, Inc.
800.444.3916 ext 632
email: hcampbell@kscins.com

ADVANTAGE

POTENTIAL DEFENSES.....

Potential defenses for the institution, and the employee/volunteer, may include one or more of the following petitions:

- ☞ The school had in place a policy and procedures that followed state or national guidelines.
- ☞ The school was in compliance with state and federal laws, regulations, and its own policy and procedures.
- ☞ The alleged offender(s) was aware of and trained in the laws, regulations, policy, and procedures.
- ☞ The incident was not school-related.
- ☞ Personnel were adequately trained and supervised.
- ☞ The incident could not have been anticipated, nor had there been prior like incidents.
- ☞ The employer conducted due diligence before the employee/volunteer was hired/ retained.
- ☞ The alleged victim has a history of false claims or mental disease.

We will discuss these and other related issues further in future editions of Advantage.

*Wishing you a joyous holiday season
and a prosperous 2004.*

from all of us at the

Diplomax[™] Insurance Program
The Insurance Package
for Private Education

Winter/Spring '04 SEMINAR SERIES

check it out at www.metrogard.com

Seminar Topics Include:

Workers' Compensation Workshop

Law Enforcement

Americans with Disabilities, (ADA)

Discrimination in the Workplace

Preventing Sexual Harassment

Pursuit and Emergency Response Decision Making

HazMat - Handling Chemical Spills

Public Buildings Fire & Safety Concerns

Recreation - Sports, Skate parks, Playgrounds & Bleachers

The Mysteries of Mold, Brought to Light

Boiler Maintenance for Physical Plant Operators

***Please note:** Check our website regularly for new dates and/or changes. Be sure to enroll and RSVP for specific topics and dates, as seminars fill quickly. Massamont will attempt to post any notifications of last-minute changes and/or cancellations on the site as well, so please check prior to your departure. Thank you.

Non-Diplomax members are welcome to attend!!

***Published by Massamont Insurance Agency, Inc.,
to Actively Participate with Private Education Managers in Protecting Their Schools***

Note: Any coverages described in this newsletter are summarized and subject to terms, conditions and exclusions printed in policies. References to specific policy language, terms or conditions should not be construed as binding. Refer to policy forms for specifics on the coverages and limits. All coverages are subject to state law, which may vary materially from the stated information.