2017 URMIA Journal Reprint

A Risky Business: Managing the Day-to-Day Risks of Having Minors on Campus

Julie Miceli
Husch Blackwell

Ashleigh J. Morpeau
Husch Blackwell

URMIA

University Risk Management and Insurance Association

Test fast, fail fast, adjust fast.

—Tom Peters,

American Author on Business Management

A Risky Business: Managing the Day-to-Day Risks of Having Minors on Campus

Julie Miceli and Ashleigh J. Morpeau, Husch Blackwell

Introduction

The demand for high-quality academic, enrichment, and athletic programs for minors is on the rise. In response, many colleges and universities are expanding the ways in which they serve minors through formal programming, as well as through formal and informal mentoring, volunteer opportunities, and partnerships with K-12 schools.

Administering minor-serving programs does not have to be a risky business. Institutions offering these programs need to keep in mind that there are both legal and reputational risks associated with these programs and find ways to prevent and reduce those risks. Colleges and universities should also recognize that the potential risk to institutions goes far beyond the high profile risk scenarios that we are all familiar with, such as severe injury, death, and sexual abuse. Programs serving minors commonly face a myriad of day-to-day compliance and legal risks. The potential legal liabilities associated with these risks can be expansive, and the costs of litigation can be substantial.

Undoubtedly, the benefits of these programs can be significant for the youth in the institution's community, as well as the institution itself. To ensure that program staff members are prepared to address emerging compliance, risk, and legal issues, institutions must identify the practical risks regularly facing program staff and stay up to date on the applicable federal and state laws and case law developments that can impact program operations. Institutions should also recognize that even their highest performing minor-serving programs may need risk assessment. Indeed, many such programs form organically to meet rapidly growing need, and due to their rapid development, may not have received the full benefit of risk mitigation strategies and legal counsel in the development of their program operation sand policies. This article highlights a number of key areas for institutions to consider as they evaluate their programs and activities that serve minors and work to mitigate legal and reputational exposure to the institution.

The benefits of minor-serving programs can be significant for the youth in the institution's community, as well as the institution itself.

Taking Inventory of Programs and Activities

To address the risks associated with having minors on campus, institutions should first take a close look at every program and activity serving and interacting with minors. Institutions typically offer a variety of minor-serving programs and activities, such as academic enrichment programs, athletic or music camps and clinics, and other institution-sponsored events (e.g., debates, theater productions). Of course, the institution may also host programs and events sponsored by third parties that may rent space from the institution or that may involve participation of faculty, staff, students, or student groups. An often overlooked area, however, are those unofficial activities, such as campus tours and visits, lab tours, and mentoring and tutoring programs being conducted by faculty, students, or student groups.

All of these on- and off-campus activities have varying degrees of connection to the institution. Regardless of whether they are officially sponsored or hosted by the institution, they may all be occurring under the institution's name or imprimatur, which could expose the institution to legal and reputational risk. Undeniably, a college or university will always be a more desirable target for a lawsuit or negative media campaign than an individual. So even programs and activities that are not officially sanctioned by the institution but that may be indirectly connected to the institution should be considered. These may include activities hosted by a faculty member or student group, those that involve a number of students, or are occurring on campus.

In evaluating how to address risk, institutions should avoid the temptation to implement a "one size fits all" approach that may be administratively burdensome and may hinder the operations of beneficial programs and activities that are serving an important stakeholder community. By starting with an inventory, an institution can get a sense of the variety of programming and activities for minors occurring on and off campus and the variety of risks, age ranges, supervision levels, and needs of each program. Indeed, the approach for ensuring adequate supervision and structure for a Saturday chess team will differ from an overnight band camp. Armed with this information, institutions can begin strategically evaluating the legal and reputational risks associated with those activities and determine the best approach for mitigating risks across programs in a manner that supports high-quality experiences for minors while imposing the least administrative burden on program staff.

As an aside, there are also other benefits to be gained by conducting an inventory of programs and activities serving minors. By going through this process, an institution has the opportunity to more clearly assess related issues, such as: 1) the types of populations being served (by education level, age range, income level, diversity, etc.); 2) the areas of focus or specialization being offered (e.g., STEM fields, remediation programs, gifted programs, music, arts, athletics); and 3) what data or information exists on each program, if any, that demonstrates quality and effectiveness over time (e.g., anecdotal evidence, program surveys, statistically valid data or longitudinal studies). This assessment can be done at an institutional level and at a programmatic level and can help institutions make strategic decisions about these programs. For instance, institutions can more easily identify high-quality programs with proven track records of success and effectiveness and invest in scaling up those programs. Likewise, this information will help institutions make informed decisions to put resources behind programs with strong anecdotal or program survey information to develop better data for those promising programs over time. Quality programs and activities for minors with valid data showing effectiveness over time may be more competitive for philanthropic, state, and federal grants and charitable contributions from donors. Importantly, highlighting these success stories can also support strong and healthy relations between colleges and universities and their communities.

Key Risk Areas

Supervision of Minors and Releases

The supervision of minors is an obvious and important risk area that institutions must continually assess and evaluate. While on campus, minors participating in programs or activities are in the custody and care of the college or university. While it is strongly recommended that institutions obtain a signed written release and liability waiver from the parents or legal guardian of a minor participating in a program or activity, there is no guarantee that a court will honor that release to absolve the institution from liability should an injury occur. Indeed, state jurisdictions vary greatly with respect to whether they will enforce a waiver or release to protect a school. About a dozen states regularly enforce waivers to protect schools, while nearly 20 states routinely reject enforcing them against schools. This issue is less clear in the remaining states, where there is uncertainty as to whether a state court will enforce a waiver to protect a school.

While there is no legal guarantee that a waiver may protect a program from liability should a minor incur an injury, a well-drafted waiver release can support a useful defense. Moreover, the absence of a release can be more challenging to overcome in litigation. Of course, the best approach is to ensure adequate supervision and monitoring of minors while they are on campus and requires that institutions have eyes and ears in a variety of places.

Internet Use

With an increasing number of minors having their own personal electronic devices, minors have more opportunities to engage in risky activities, right under the watchful eye of trained staff. As an initial matter, institutions must consider whether minors should have unrestricted access to the institution's network and internet. Many institutions provide an open and unrestricted online environment to its campus community; others have technical capabilities to limit the types of websites that can be accessed through its network. These capabilities can be restricted based on user login or even geography (e.g., specific residence hall or specific classroom space). Each institution should consider balancing its values, its administrative

and technological capabilities, and its interest in protecting and restricting internet access based on the age and maturity of minors accessing its network. In other words, what may be suitable for a campus community of adult students may not be as suitable for minors.

Indeed, many legal and reputational risk issues can be triggered by a minor's misuse of an institution's network. For instance, minors found to have downloaded copyrighted content (e.g., music, images, or pornography) through the institution's network may result in a demand for payment from those online retailers that will billed directly to the network owner through their primary source of identification, the Internet Protocol (IP) address. Even though the institution did not incur the charge, failure to pay such a demand can result in legal action.

Minors operating online may also be engaged in, or the victims of, various forms of harassment such as cyber bullying and "sexting" sexually graphic images over the internet. Minors can also be solicited for illegal sexual activity through an institution's network.

Institutions should ensure that they have measures for preventing these issues, addressing them if they arise, and ensuring minors are safe while utilizing the institution's network. Further, institutions should consider whether they are subject to state and federal laws that govern the online safety of children.

What may be suitable for a campus community of adult students may not be as suitable for minors.

For instance, the Children's Internet Protection Act (CIPA) and accompanying regulations issued by the US Federal Communications Commission address concerns about children's access to obscene or harmful content over the internet.[1] CIPA imposes certain requirements on schools or libraries that receive discounts for internet access or internal connections through the E-rate program, a program that makes certain communications services and products more affordable for eligible schools and libraries. CIPA requires E-rate participants to adopt and implement an internet safety policy that addresses: 1) minors' access to inappropriate internet content; 2) the safety and security of minors when using e-mail, SMS, and direct communications; 3) hacking and other unlawful activities by minors online; 4) unauthorized disclosure, use, and dissemination of minors' personal information; and 5) measures for restricting minors' access to harmful online materials.[2] Colleges and universities may participate indirectly through partnerships with school districts and libraries to jointly provide programs to minors. Institutions should consider whether CIPA applies, and if not, whether the standards and principles set forth in CIPA should nonetheless be followed as a best practice and to help ensure minor students are safe online.

In addition, various states have enacted laws regulating publicly accessible computers at certain public institutions.[3] For instance, under Kansas law, any school district that provides public access to a computer is required to implement and enforce technology protection measures to ensure that no minor has access to visual depictions that are child pornography, harmful to minors, or obscene.[4] Missouri has a similar law, which requires that any publicly accessible computer at a public institution or library either be equipped with software or a service to restrict minors' access to material that is pornographic, or they must develop a policy that establishes measures to restrict minors from gaining access to such material.[5] Idaho requires school districts to adopt an internet use policy that requires filtering technology to block internet materials that are harmful to minors and requires schools to establish disciplinary measures for violators. Additionally, school districts must provide a component of internet safety to be integrated into the schools instructional program.[6]

Regardless of whether an institution administering a minor-serving program is subject to such state laws, being familiar with these laws has its advantages. They serve as a reference for colleges and universities to establish best practices that can help keep children safe online. Further, they often set a "floor" for expectations within the state; consistency with those expectations,

even when they do not legally apply to colleges or universities, can help protect an institution's reputation and provide it some protection in defending itself, should an issue involving a minor online arise.

"Coming and Going"

While advances in technology have many institutions thinking about the new risks associated with minors using technology, it is still crucial that institutions continue to address the risks associated with minors' offline activities. One of the day-to-day risks facing staff of programs and activities serving minors is the "coming and going" of minors to a program site or location. Indeed, the degree of risk and potential legal exposure can be extensive in the event a minor is harmed or injured at a time when the minor is entrusted to the institution. This exposure is even more complicated in cases where an injury occurs when a minor leaves a program site on their own accord or where it is unclear whether the minor is under the care of the institution at the point in time or location when the injury occurs.

Of course, the primary concern is the safety of the minor. Institutions have faced litigation and threats of litigation when a minor leaves a program and is harmed or killed (e.g., assaulted by another party, an accident, drug overdose, or drowning). However, it is not only the minor's safety that the institution has to consider. Some institutions have faced threats of litigation by injured parties where the injury occurred at the hands of a minor who was supposed to be in a program or activity at the time. Likewise, other schools have dealt with claims where minors were caught stealing from a nearby convenience store when they were on "free time" away from their enrichment programs. While such claims are attenuated and may not survive a strong legal defense, an institution of higher education will always be a more desirable defendant to a civil plaintiff than an individual.

Inadequate or negligent supervision of a minor's coming and going is a significant legal risk. The surest way to avoid exposure is through policies, practices, and training that help program staff educate parents about expectations and ensure adequate supervision and monitoring of minors' comings and goings. Program staff must be aware of the minors' arrivals and departures, and the program's policies should put parents on notice as to the clear line of when a minor is under the program's care and custody and when he or she is not. Key issues that should be considered in procedures or guidelines about arrivals and departures include:

- Arrival and pick up locations and time periods
- Alternative arrival location for late drop offs
- Degree of supervision provided at arrival and pick up locations, by age group
- Alternative location for late pick ups and consequences of late pick ups
- Whether the program must be made aware of third parties with authorization to pick up a minor (e.g., caretaker, family member, neighbor)
- The process, if any, for matching minors with their parents/guardians/authorized third parties prior to the minor's release
- A minor's ability to come and go on his/her own (walkers, bicycles, public transportation)
- The process for mid-program departures for appointments
- Whether attendance is taken upon the start of the program and whether a call to the parent/guardian will be made if a student does not arrive on time

These policies should take into consideration the age group of the minors and the nature and duration of the program or activity.

Likewise, universities and colleges with minor-serving programs should consider the amount and degree of supervision that is necessary to maintain a safe and healthy environment for minors on campus. This will often depend on the type of program or activity (day program, overnight camp, academic program, athletic program, etc.), the age of the minors attending the program, and program activities. Generally, programs serving younger minors and programs that include resident or overnight activities will require a smaller staff to student ratio to ensure adequate supervision.

Some states[7] and independent associations, such as the American Camp Association,[8] have developed guidelines and recommendations for ratio of program

staff to program participants based on these factors. Institutions should consider such guidelines and any applicable state guidelines to set a standard program staff to program participants ratio for their minor-serving programs.

Adults Working with Minors

Adult participants in minor-serving programs can greatly impact the quality of such programs. These adults do more than just supervise minor participants; these individuals provide mentorship and support to the minors they serve. In times of crisis, adult participants are the first to the scene to maintain the health and the safety of these minors. These individuals develop relationships with minors, serving as confidants to the minors who are under their care. Unfortunately, there have been instances in which adult participants have betrayed the trust of the minors and parents they serve, which have resulted in a number of disputes and legal challenges, some with significant damage to the institution itself. Therefore, institutions should use tools, such as background checks, mandatory reporting, and training, to ensure that they continue to have the highest quality staff working with minors.

Adults do more than just supervise minor participants; they provide mentorship and support to the minors they serve. Universities and colleges should consider the amount and degree of supervision that is necessary to maintain a safe environment for minors.

Some states require institutions to run background checks on adults who work with minors. While these laws generally apply to school district and daycare personnel, these laws may also be applicable to employees, as well as volunteers participating in minor-serving programs. For instance, in Pennsylvania, employees and volunteers having contact with children must undergo a criminal background screening by Pennsylvania State Police and the Federal Bureau of Investigation (FBI).[9] In Missouri, background checks are completed based on an individual's fingerprints and are performed by both the Missouri State Highway Patrol (MSHP) and the FBI. Moreover, the Missouri Department of Elementary and Secondary Education has procedures for schools to submit personnel information so criminal background checks can be updated annually.[10]

Not all background check laws involving minors will apply to the unique setting of a college or university. But institutions should work with their counsel to determine if they apply and, if not, whether they provide a useful road map for policies that address how to conduct appropriate background checks on specific personnel who work with minors.

Further, other checks of individuals working with minors may be beneficial and may include: credit reports, public court records, driving records, educational records, employment verifications, personal and professional references, verification of social security numbers, licensing and certification records, and drug testing. Whether to conduct these checks should be considered against a number of variables, including the nature and duties of the position, the degree of risk mitigation such check provides, and the administrative capacity of the institution to ensure the check is consistently and non discriminatorily utilized. For instance, a driving record check is advisable for staff members who are responsible for transporting minors, but may not be administratively necessary or reasonable for all staff.

Interactions between minors and the adult participants in a program can serve as the basis for a number of employment disputes and legal challenges, some with significant potential exposure. Institutions should consider developing clear rules and disciplinary measures applicable to adult participants (i.e., a "Code of Conduct") for interacting with minors. Institutions should clearly state in their policy documents and employment materials that any adult participant may be immediately removed from the program or activity for non-compliance. A code of conduct should also address key issues, such as the operation of motor vehicles with minor passengers;

the use of social media, text messaging, and e-mail to receive/initiate communication with minor participants; the maintenance of appropriate social, emotional, and physical boundaries with minor participants; the institution's position on violence, sexual abuse, or harassment and conduct that threatens or endangers the emotional well-being, health, or safety of any person; the expectations with respect to professionalism and compliance with the institution's rules; and the prohibition of the possession or use of alcohol, drugs, and tobacco.

Confidentiality and Disclosures of Information

Medical Information

To provide a safe and healthy environment for minors on campus, institutions may need to be aware of a minor's medical history. Possession of such confidential information can impose a number of legal obligations on an institution since institutions can be subject to various state and federal statutes and regulations governing the privacy of medical information.

As a recipient of federal dollars, an institution is required to comply with the Family Educational Rights and Privacy Act (FERPA). While this federal law clearly applies to enrolled students at a higher education institution, most institutions apply FERPA's privacy protections to the education and health information of minors participating in their programs, as well. Under FERPA, parents and legal guardians have a right to inspect and review minors' health and medical records maintained by institutions because they are considered "education records" under FERPA.[11] Additionally, written parental/guardian consent is required in order for these records to be shared unless the disclosure meets one of the exceptions to FERPA's general consent requirement.[12] These exceptions include when teachers and other school officials have "legitimate educational interests" in reviewing the records or when the records are in connection with an emergency and the information is necessary to protect the health or safety of the minor or other individuals.[13]

In addition to FERPA, to the extent minors receive healthcare services from the institution while attending a minor-serving program, their health information and medical records could also be governed by the Health Insurance Portability and Accountability Act (HIPAA). Generally, the HIPAA privacy rules *do not* apply to college or university student records because the institution: 1) is not a "HIPAA covered entity" (health plans, healthcare clearinghouses, and those healthcare providers that transmit health information electronically in connection with certain administrative and financial transactions), or 2) is a HIPAA covered entity but maintains health information only on students in records that are by definition "education records" under FERPA and, therefore, is not subject to the HIPAA Privacy Rule. The interplay between FERPA and HIPAA can be tricky, so institutions should consider with their legal counsel the ways in which it may be receiving and transmitting health information of minor students and whether those transactions may trigger HIPAA requirements.

The interplay between FERPA and HIPAA can be tricky, so institutions should consider with their legal counsel the ways in which it may be receiving and transmitting health information of minor students and whether those transactions may trigger HIPAA requirements.

Video and Photographs

In addition to medical information, an institution should consider the risks and privacy issues that arise with respect to filming and photographing students. Institutions may want to film or photograph minors participating in their programs for marketing purposes. However, unauthorized and inadvertent disclosures can have substantial legal and reputational consequences. As such, all programs or activities serving minors should utilize a media/photo/video release. This release will not only ensure compliance with FERPA and best

practices with respect to student privacy, but it will serve as a defense should a minor's likeness be misappropriated by a third party.

The release should first provide parents and guardians with notice of how photos or videos of their minor children could be used. The notice should cover the institution's right to reproduce, use, exhibit, display, broadcast, distribute, exploit, modify, adapt, and create derivative works of such materials and that the minor will receive no remuneration for the material. Institutions should obtain authorization from the parents/guardians that acknowledges such use and waives claims to inspecting materials prior to use. Finally, the release should provide parents/guardians the ability to "opt-out" of such disclosures, so images or recordings of their minor children are not taken or disseminated.

Behavior and Discipline

A common legal trouble area for programs serving minors is where a minor's behavior or non-compliance with a program rule or expectation (or their parent/guardian's non-compliance) results in the minor's discipline or removal from the program activity, or some component thereof. In cases where a parent/guardian, or the minor him/herself, disagrees with the discipline or feels that the discipline was unfair, parents/guardians or the minor may seek to challenge the discipline administratively with program staff or legally through legal counsel.

While K-12 students in public school settings must be afforded due process prior to being removed from an education setting,[14] minors are not provided a "right" under federal or state law to participate in an enrichment activity. Of course, to the extent a public institution is offering educational programming to minor students that results in their matriculation through a traditional K-12 educational system, a participating student should be afforded some degree of due process prior to limiting the minor's access to or removing him/her from the program or activity, or some component thereof.

However, for other minor-serving programs and activities, providing minors a fair disciplinary process derived from principles of due process is prudent to avoid misunderstandings with minors and their parents and to ensure that minors are treated fairly and in a manner consistent with the institution's values. Moreover, failing to follow established practices with respect to discipline can give rise to a breach of contract claim. Simply applying existing disciplinary procedures that are directed to graduate and undergraduate students to minors is insufficient. Those procedures generally do not take into account the differences in discipline approaches and philosophies given the age difference.

For these reasons, it is recommended that each institution provide guidelines for program staff on disciplining minors. Disciplinary policy should address certain key areas, such as civility and rudeness/ridicule of others, bullying, harassment, discrimination, cellphone use, internet use, academic dishonesty, theft, damage to property, leaving program site without appropriate permission/notification, weapons, drug and alcohol use, and sexual activity and touching. Disciplinary procedures should be expressly communicated to minors and their parents or guardians before the start of each program. Disciplinary procedures should include the manner in which an investigation of any infraction will be handled; the process for notifying minors and parents or guardians of infractions and possible disciplinary actions, which should be proportional to and correspond with the severity of the infraction/violation; and a statement as to whether disciplinary decisions are final or appealable.

Inclusion and Accommodations

A key area that is evolving rapidly is the extension of civil rights protections to transgender and gender non-conforming individuals. These issues are playing out in schools across the country as parties look to the court system for clarity on how laws, such as Title IX prohibitions of sex discrimination, may protect such individuals.[15] Given the legal complexity of this evolving area of law and the increased motivation for legal challenge by individuals alleging discrimination, on one hand, and individuals asserting invasion of privacy claims, on the other, institutions should do a cost/benefit analysis about whether to implement guidelines on how to accommodate transgender and gender non-conforming minors.

In addition, institutions should consider how to address minor participants with disabilities. Higher education institutions are obligated to comply with laws that protect individuals with disabilities from discrimination, including the Americans with Disabilities Act (ADA)

and Section 504 of the Rehabilitation Act of 1973 (Section 504). These requirements prohibit institutions from discriminating against individuals with disabilities and impose obligations on institutions to accommodate individuals with disabilities to ensure equal access to its offerings.

It is unclear how the implementing regulations of Section 504 apply to postsecondary institutions serving minor students. Though there are regulations that apply to postsecondary institutions,[16] these regulations do not clearly address how they might apply to programs and activities that serve minors. Nevertheless, the cautious approach for institutions administering minor-serving programs would be to comply with the spirit of the law and address accommodation requests from any minor who has disclosed his or her disability.

A policy addressing accessibility for disabled minors should include a process to determine if the minor's impairment substantially limits a major life activity, a list of required documents to confirm that the minor has a disability or impairment, a mechanism for notifying parents of the institution's determination on disability, a process to evaluate a minor's support request or other support alternatives to determine if a request can be implemented, and a mechanism for notifying parents or guardians of the institution's decision to implement or deny the minor's support request. It is also important to recognize that the lack of clarity in the regulations creates some uncertainty as to how burdensome those accommodations can be. As such, universities and colleges should seek counsel on how to address the risks associated with having disabled minors on campus.

Finally, it is worth keeping in mind that while the Individuals with Disabilities Education Act (IDEA) establishes a process for determining a child's eligibility for special education services, it is limited in application to K-12 schools. The law requires school districts to ensure those services are provided to minor students under an individual education plan (IEP) if they are attending another school. Parents are often familiar with these requirements and may believe that they extend to enrichment and academic programs provided by a college or university. However, IDEA does *not* generally apply to postsecondary institutions (unless they are matriculating K-12 students by serving as a school district). But to the extent that an institution is offering educational programming to minor students that result in their matriculation through a traditional K-12 educational system, the program would need to cooperate with the home district to ensure the district can provide any required services under the student's IEP.[17]

Simply applying existing disciplinary procedures that are directed to graduate and undergraduate students to minors is insufficient. Those procedures generally do not take into account the differences in discipline approaches and philosophies given the age difference.

Promotional Materials and Handbooks

Another risk related to programs and activities serving minors is ensuring that each minor's parent or guardian has received adequate notice of the program or activity in which their child will engage and has authorized the minor's participation. Essentially, this notice and authorization serves as the "contract" that establishes the terms and conditions of the minor's participation in the program or activity. Sufficient notice of program activities ensures that parents or guardians are fully aware of the activities that the minor will experience while engaged in the program and any associated risk. Institutions must ensure that they are providing parents or guardians with enough information that a reasonable person would feel that he or she is sufficiently informed of any potential risks before assuming those risks. The degree of detail that should be included in the notice will vary depending upon the nature of a program or activity.

Parents/Guardians

While not precisely a legal issue, institutions should consider the risks of having parents and guardians participate in minor-serving programs. It is not uncommon for parents and guardians to want to visit their child during their child's participation in a program, stop by for lunch, observe the class or activity, and/or volunteer in their child's class. Many programs and activities serving minors would be supportive of such active involvement by a parent. However, unannounced parent or guardian visits and involvement can create some administrative burdens and difficulties on program staff and impact staff's ability to properly supervise minor participants. In some instances, unannounced parent involvement can lead to other issues, such as safety and security concerns and child custody and visitation rights.

There have been situations where issues related to custody battles between parents and guardians have bled into programs and activities serving minors. These issues can be burdensome for program staff and institutions, as they have the potential to raise legal complications for institutions in having to respond to subpoenas for information and depositions from parents and guardian ad litems. Further, programs and activities may need to be able to navigate their operations in compliance with court-issued protective orders involving the minors being served. Similarly, they may need to navigate around one parent's request that the other parent have no contact with the minor. While these issues, in theory, are unrelated to the minor-serving programs, whether and how program staff handles these issues can have a significant impact on the institution with respect to the legal and administrative resources needed to manage the institution's involvement in these issues.

Conclusion

Continuous assessment of minor-serving programs is critical to avoiding potential liability and ensuring safe, high-quality programming for children. Program organizers should work closely with legal counsel to identify and address the risks of having minors on campus and ensure that the institution is in compliance with applicable federal and state laws. Inventorying programs and crafting and maintaining appropriate and consistent policies and practices to address the key areas discussed in this article are just the first steps. To ensure the effective administration of minor-serving programs, institutions must also train program staff to understand their policies and procedures, as well as staff obligations and responsibilities under these policies and applicable state and federal laws. Developing robust policies and procedures and training on the implementation of such policies are critical to mitigating risk and protecting program quality and institutional reputation.

About the Authors

Julie Miceli is a partner of Husch Blackwell's Higher Education group and counsels private and public institutions of higher education in connection with campus safety, financial aid, and fundraising and development matters. She also provides legal counsel on issues and litigation related to faculty tenure, student conduct, disability accommodations, and employment issues. Before joining Husch Blackwell, Ms. Miceli served as associate general counsel at Northwestern University, and prior to that she served as the deputy general counsel for higher education and federal student aid at the US Department of Education.

Ashleigh Morpeau is an attorney in the Chicago office of Husch Blackwell, where she focuses on litigation. Prior to joining Husch Blackwell, Ms. Morpeau was an assistant attorney general at the Office of the Illinois Attorney General where she prosecuted labor claims on behalf of the Illinois Department of Labor, gaining significant trial experience. She has experience in all stages of trial level litigation, from initial case evaluation through post-judgment collection.

Endnotes

1 47 U.S.C. § 254(h)(5) (B) (2012).

2 47 U.S.C. § 254(h)(5) (B) (2012).

3 *See* Ariz. Rev. Stat. Ann. § 34-501 (West 2017) (Requires public libraries to install software or develop policies to prevent minors from gaining access on the Internet to materials harmful to minors; requires public schools to install computer software that would prevent minors from gaining access to materials harmful to minors); C.R.S.A. § 24-90-603; § 24-90-401 to 404; § 24-90-603; § 22-87-101 to 107 (West 2017) (Requires public schools to adopt and enforce reasonable policies of Internet safety that will protect children from obtaining harmful material; provides grants to publicly supported libraries, including school libraries, that equip public access computers with filtering software and that have policies to restrict minors from accessing obscene or illegal information; requires public libraries to adopt a policy of Internet safety for minors that includes the operation of a technology protection measure for computers with Internet access).

4 Kan. Stat. § 75-2589 (West 2017).

5 Mo. Rev. Stat. §§ 182.825-827 (West).

6 I.C § 33-132 (West 2017).

7 *See e.g.*, "Class Size and Assigned Enrollment," Missouri Department of Elementary and Secondary Education, https://dese.mo.gov/quality-schools/mo-school-improvement-program/class-size-and-assigned-enrollments.

8 "ACA Standards that Relate to Staff Screening, Supervision, and Training," American Camp Association, https://www.acacamps.org/resource-library/accreditation-standards/aca-standards-relate-staff-screening-supervision-training.

9 *See* 23 Pa. C.S.A. § 6344(b) (West 2017).

10 *See* Mo. Rev. Stat. § 168.133.1 (2016).

11 20 U.S.C. §1232g (2012); see also 34 CFR §§ 99.10–99.12 (2016).

12 20 U.S.C. §1232g (b) (2012).

13 Ibid.

14 *See Goss v. Lopez*, 419 U.S. 565, 574 (1975). Though school officials have broad authority to prescribe and enforce standards of conduct in public schools, their efforts to maintain a safe and secure learning environment are limited by the Fourteenth Amendment, which prohibits any state deprivation of life, liberty, or property without due process of law. The Due Process Clause of the Fourteenth Amendment essentially requires a state actor, such as public universities and colleges, to provide due process (notice and an opportunity to be heard) prior to depriving an individual of a "right" under the law.

15 *See e.g., G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 132 F. Supp. 3d 736 (E.D. Va. 2015), rev'd in part, vacated in part, 822 F.3d 709 (4th Cir. 2016), vacated and remanded, 137 S. Ct. 1239 (2017). A transgender high school student brought action against the school board under the Equal Protection Clause and Title IX of the Education Amendments of 1972, challenging the school board's restroom policy requiring students to use restroom consistent with birth sex, rather than gender identity.

16 *See* 34 CFR §§ 104.41-47 (2016).

17 20 U.S.C. 1400(a), *et seq.* (2012).

To dare is to lose one's footing momentarily.

To not dare is to lose oneself.

—Soren Kierkegaard,

Danish Theologian and the First Existentialist Philosopher

The *URMIA Journal* is published annually by the University Risk Management and Insurance Association (URMIA), PO Box 1027, Bloomington, IN 47402-1027. URMIA is an incorporated non-profit professional organization.

The 2017 *URMIA Journal* was edited and designed by Christie Koester, Indianapolis, Indiana, and the *URMIA Journal* was printed at Indiana University Printing Services, Bloomington, Indiana.

There is no charge to members for this publication. It is a privilege of membership, or it may be distributed free of charge to other interested parties. Membership and subscription inquiries should be directed to the National Office at the address above.

UNIVERSITY RISK MANAGEMENT &
INSURANCE ASSOCIATION

URMIA National Office
P.O. Box 1027
Bloomington, Indiana 47402
www.urmia.org