

At Issue

A RISK MANAGEMENT NEWSLETTER FOR AMERICA'S PRIVATE SCHOOLS



In This Issue:

| | |
|---|---|
| Compliance With Racketeering And Immigration Laws | 1 |
| Managing Fairs, Carnivals And Festivals | 4 |
| Start School Safely | 5 |
| School Safety Committees | 7 |

Compliance With Racketeering Or Immigration Laws

How You Can Prevent Your School From Being The Next Wal-Mart

by Charles M. Schnepf Jr., Esq.
& David Kwee, Esq.
Congdon Flaherty O'Callaghan
Reid Donlon Travis & Fishlinger

You, as a private school employer, could well find yourself facing federal criminal charges under the Racketeering Influenced and Corrupt Organizations Act (RICO) if you hire a contractor who hires illegal aliens. The United States District Court in Newark, New Jersey, may have never reached the criminal convictions issue faced by Wal-Mart, its executives and managers for hiring outside and independent cleaning contractors who had recruited and hired illegal alien janitors to clean the Wal-Mart stores, but Wal-Mart still paid \$11 million to settle the case against it for federal allegations that it conspired to hire illegal immigrants to clean its stores. Wal-Mart appears to be an extreme example, given



that the federal grand jury investigation resulted in 250 illegal immigrants at 60 Wal-Mart stores in 21 states being rounded up. These illegal immigrants, who were not hired by Wal-Mart but by independent contractors hired by Wal-Mart, worked seven days or nights a week and received no overtime pay.

What Does Your School Have In Common With Wal-Mart?

An employer must use precautions to ensure that it does not directly hire illegal aliens. However, it is also important to recognize that liability is not confined to the school's employees, but may also extend to hiring a contractor, such as a food service caterer, to service the school. You cannot insulate yourself from liability merely because you may not be in a position to check the immigration and work eligibility status of those who are not employed directly by the school yet who are working on school grounds.

How To Avoid A Federal Probe

Private school human resource departments need to be familiar with the Immigration Reform and Control Act of 1986. However, few human resource department

Compliance With Racketeering Or Immigration Laws

Continued from page 1

professionals know the difference between an immigrant and a non-immigrant, or what the acronyms ICE (Immigrations and Customs Enforcement) or DHS (Department of Homeland Security) stand for.

How Do We Know Whether Someone Is Eligible To Work In The United States Of America?

Citizens and nationals of the U.S. are automatically eligible for employment, but they must present proof of identity, employment eligibility, and complete an Employment Eligibility Verification form (Form I-9). Citizens of the U.S. include persons born in the 50 states, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island. Permanent residents, more commonly known as "Green Card" holders, are also eligible to work in the United States of America. Although Permanent Residents are foreign nationals, and have "immigrant" status in the United States under the Immigration Laws, Permanent Residents have all of the rights that American Citizens or nationals have save for the right to vote or the right to work for federal law enforcement. Once a Permanent Resident presents a Permanent Resident Card (Green Card) which is not actually green in



color, that document establishes that person's identity as well as employment eligibility.

Must We Verify Every Prospective Employee's Identity And Employment Eligibility?

You do not have to verify every prospective employee's identity and employment eligibility, but once you hire that person, you must complete the Employment Eligibility Verification form issued by the U. S. Citizenship and Immigration Services ("USCIS") branch of the Department of Homeland Security. This used to be handled by the agency known as the Immigration and Naturalization Services, which was also known as the "INS". This form is known as Form I-9 (federal immigration forms are typically preceded by the letter "I" such as the I-151 which is also known as the "Green Card" or the I-688A which is an "Employment Authorization Card" issued by USCIS.

Must We Keep The I-9 Forms For Every Employee Hired?

Although the requirement of keeping I-9 forms for every employee hired has existed since 1986, ICE, in conjunction with DHS, has taken

to enforcing its right to inspect these forms. In fact, these forms must be made available for inspection by the ICE.

Failure to comply with this requirement subjects employers to civil and/or criminal penalties.

What If An Employee We Hired Is Not Authorized To Work?

As long as you verify the employee's eligibility in good faith by examining the original identity document that the employee presents, you cannot be charged with a verification violation.

What Is The Duty Of A Private School Human Resources Professional To Verify Employment Eligibility?

Pursuant to 8 U.S.C.A. §1324a, you must verify that an employee is not an unauthorized alien by examining certain identification documents which are presented to you by the employee. An I-9 form then needs to be signed by the Human Resources professional, on behalf of the private school employer, under penalties of perjury, that you have examined the document and the document reasonably appears to be genuine on its face. Employees must choose from an approved list of documents, or combination of

Continued on page 3

Compliance With Racketeering Or Immigration Laws

Continued from page 2

documents, which they will submit to establish their identity and employment eligibility. The list is extensive and is available from ICE. Requesting more or different documents than are required under Section 1324a, or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual.

Employees must present original documents, with the exception of a birth certificate. A certified copy of that certificate is acceptable. If the documents comply with the requirements of 8 U.S.C.A. §1324a; reasonably appear to be genuine; and relate to the person presenting the document, you must accept those documents presented by the applicant. If you do not accept the documents, you could expose yourself to liability for unfair immigration-related employment practices. If a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, you must not accept it.

What About My Duty To Hire Contractors Who Do Not Violate Immigration Laws?

Remember that the Racketeer



Influenced and Corrupt Organizations Act (RICO) is a criminal statute. To prove that your school is liable under RICO, the government has to show that the school has, knowingly or with reckless disregard, engaged in a conspiracy to conceal or harbor from detection illegal aliens; meaning that you were at the least condoning the contractor's conduct. In the Wal-Mart case, the government argued that Wal-Mart knew or should have known that the contractors it had hired were using illegal immigrants. In this regard, the government asserted that Wal-Mart encouraged its contractors to lock the workers in the stores overnight, knowing that it could get away with it. Simply stated, one cannot recklessly disregard certain truths about the contractors one hires. In order to ensure compliance, the school should familiarize itself with the employment practices of its contractors. However, caution should be exercised in order to avoid liability being cast upon the school, should the school be found to control the hiring practices of its contractors.

Know The Laws, And Their Nuances

The sword of immigration law is double-edged. Hire an illegal alien and face the blade of both civil and criminal penalties, penalties that at best involve fines, at worst imprisonment of up to ten years. Ask a prospective employee the wrong question, and risk anti-discrimination lawsuits and civil rights violations. Fail to ask the right question, and risk fines and extensive audits by the United States Immigration and Customs Enforcement, Department of Labor, and Office of Special Counsel for Immigration Related Unfair Employment Practices. The fact that three separate agencies were mentioned in the preceding sentence, all with their own separate purpose, should be enough impetus to keep reading. Unfortunately the laws are nuanced, conflicting, and ever-growing as we proceed cautiously in the post 9/11 world. Human Resources departments would do well to study these laws, and the potential pitfalls that their schools are faced with virtually any time they hire or contract with a new employee or service company. However, to misunderstand or misinterpret these laws, and implement policies based on an interpretation of these laws is to invite anti-discrimination litigation. A school's strategy should never be to take the approach that immigration laws are too complicated, so the school should only hire United States citizens. ■

Managing Fairs, Carnivals And Festivals

by Robert Bambino, CPCU
Vice President, Risk Management

During the warm weather months, private schools often sponsor various kinds of special events such as fundraisers, fall festivals, homecoming, or local observances. These events often involve mechanical and animal rides, outdoor cooking, arcade games and other activities that increase the overall liability exposure for the school. With adequate planning and good supervision, private school administrators can reduce the likelihood of accidents and injuries. Risk Control Techniques include pre-event planning, facility management, emergency management planning, cash control, and risk transfer.

Pre-Event Planning

Pre-event planning involves the following:

- Creating a management team.
- Verifying all required licenses and certifications from municipal clerks or other officials.
- Completing any mandatory inspections of mechanical equipment.
- Verifying that event managers and other vendors have public and automobile liability insurance as well as workers' compensation.
- Complying with local Department of Health rules concerning



food preparation.

- Checking attendance capacities.
- Verifying that the vendors obtained adequate levels of insurance.

Facility Management

Facility management addresses the adequacy of the campus to safely accommodate the chosen event. It includes a review of the overall condition of fields and buildings, utility services, lighting, crowd control, security, signage, egress issues and parking. If fireworks are planned, there must be sufficient space to safely light them away from crowds, buildings, brush and trees.

Emergency Management Planning

The emergency management plans for the school should include ways to address an event that would require some type of an emergency response. For example: the collapse of a mechanical ride; fire; severe, unexpected weather; civil commotion or a motor vehicular accident. Many schools ask the local fire or emer-

gency management service to position a rescue vehicle on the site.

Cash Control

Admission is almost always on a cash basis. Therefore, sizable amounts of cash can be generated. Unscrupulous individuals may see a fair or carnival as an opportunity to redirect cash for their own gain. Additionally, it may be unclear as to who is responsible for an accounting of funds after the event. The event management team should check for the following:

- Will there be security on site?
- Who is responsible for cash accountability - the school or event manager?
- Where will cash be kept?

Risk Transfer

Adequate contract language in favor of the school can help with the defense of claims that arise from accidents related to the event. Contracts with event managers and food vendors should contain a list of responsibilities, reimbursement, and insurance requirements specifically requiring the manager to carry adequate insurance and list the school as an additional insured. Although waivers and releases do not necessarily prevent claims and litigation, they can be helpful in demonstrating the ride participants and others knew about the risks associated

Continued on page 5

Managing Fairs, Carnivals and Festivals

Continued from page 4

with certain activities. Many admission tickets contain waiver and release language.

The risk control techniques listed above are designed to help private schools manage the exposures associated with spe-



cial events. Prepare a checklist of the topics here, and a specifications sheet that includes such things as capacity limits, electrical use limits and contact telephone numbers. The more you are able to organize your planning, the less stress there will be in managing these events.

Start School Safely

by Joann Robertson, CSP, ARM
Risk Management Coordinator

At the end of each school year, all school campuses are turned upside down for cleaning, repairs and renovations. As this summer comes to a close, desks must be turned right side up and teachers must prepare their lesson plans and decorate the classrooms for the imminent arrival of the students.

There are some common safety issues that go hand-in-hand with the start of the school:

Classrooms

During the first week of school, remind staff to report all safety-related problems to the office. Ask them to review all areas and ensure that all exits are clear and

combustible decorations are under control. Provide each teacher with the emergency procedures and post the fire exit maps in all areas. Remind staff to gather all cleaning products together and return them to a locked cabinet or drawer out of students' reach.

Safety can easily be overlooked; one school had nails protruding out of the back of the each of the classroom doors, used for years to hang up coats. In the meantime, this practice posed a hazard to students and the nails were simple to remove.

Areas Of Assembly

If the gym, auditorium, or cafeteria was newly painted, verify that the occupancy signs are still in place. Ensure that all signs that indicate

safety rules, fire exit maps, moving partition procedures and automated external defibrillators locations are posted. Verify that emergency lighting and illuminated exit signs are working properly. All exits should be clear. Common culprits that are stored in exit ways – athletic equipment, furniture and late summer deliveries – should be relocated.

Grounds

Ensure that fields and grounds are also in satisfactory condition. Over the summer hazards such as poison ivy, bee and wasp's nests or dead trees or branches can appear and should be assessed and removed. Replace any missing or vandalized signs that may direct traffic or indicate No Parking areas for the opening of school.

Continued on page 6

School Safety

Continued from page 5

Be on the lookout for missed repairs such as cracked sidewalks, damaged fencing or potholes.

Playgrounds

Conduct a full inspection of your playgrounds before school opens. It is critical to provide the proper depth of resilient surfacing beneath your playgrounds. If you have questions about the playground guidelines, please refer to the *Handbook for Public Playground Safety*, a publication of the Consumer Product Safety Commission (available at www.cpsc.gov). Ensure that rules of use are posted, indicating: *No bare feet, No use if wet or icy*, etc. Post signs indicating the proper age group for the equipment. Age groups of playground users are typically designated as pre-school (2-5 year olds) or school-aged children (over 5 years of age).

Facility Use

Each year, review the facilities use form to verify with your agent/insurer that your facility users are required to submit proper paperwork and insurance certificates. Many facility users will need to submit updated certificates of insurance at this time.

Ongoing Construction

If construction projects continue into the school year, ensure that proper exits are maintained at all times. Be on the lookout for these

other common construction complaints before they escalate at your school:

- Odors
- Noise
- Delivery trucks
- Smokers on school grounds
- Unidentified contractors not wearing ID tags
- Removal of construction debris
- Changes in traffic patterns
- Students/staff accessing the work sites

Starting School Safety Checklist

- ✓ Are all exits, stairwells and hallways clear?
- ✓ Have all chemicals and cleansers been put away after summer cleaning?
- ✓ Perform a pre-opening playground survey – surfacing acceptable, debris removed, no broken parts, etc.?
- ✓ Are signs posted to direct all visitors to the appropriate building entrance?
- ✓ Have areas off-limits to students been secured – for example, boiler rooms, crawl spaces, attics, electrical closets, etc.?
- ✓ Are all emergency lights and illuminated exit signs functional?
- ✓ Are all construction materials and debris put away or removed?
- ✓ Are all electrical junction boxes and switches properly covered?
- ✓ Are fire alarms functional and are all detectors uncovered subsequent to construction?
- ✓ Are rules posted in the shop, labs, weight rooms, pools and other areas to set a safe tone for the start of the year?
- ✓ Is all machinery in the shops anchored to the floor to prevent tip over?
- ✓ Are all TVs, computer monitors and other AV equipment anchored or belted onto a suitable cart to prevent accidental injury?
- ✓ Are first aid kits stocked and ready?
- ✓ Are spill kits accessible in the chemical storage areas?
- ✓ Is protective eyewear clean and in the sanitizing cabinet in shops and labs?
- ✓ Are moving partition warnings and instructions posted in the gym or other necessary areas?
- ✓ Are all occupancy signs or fire exit maps in place after summer painting?
- ✓ Are fire blankets mounted in kitchens, labs, and shops as needed?
- ✓ Have new staff been instructed about the location of gas cut off switches, emergency shut offs, eyewashes, etc.?
- ✓ Are emergency numbers posted in needed locations and are bomb threat reminders under appropriate telephones?
- ✓ Are automatic external defibrillators/AEDs in proper locations?
- ✓ Have they been serviced and/or tested as required?
- ✓ Is the emergency bag/suitcase updated and stocked for use in drills or emergencies?

School Safety Committees

by Joann Robertson, CSP, ARM
Risk Management Coordinator

Starting Safety Committees

It is time to begin or restart your committee, review or create a mission statement, and develop or review your list of potential participants. The support of the administration and a dedicated chairperson are critical to the committee's success and longevity.

Components Of A Mission Statement

The Safety Committee Will:

- Meet at least four times per year
- Disseminate information and identify ways to reduce losses
- Receive information and provide recommendations regarding compliance with various rules and regulations
- Investigate areas in the district to minimize exposures and provide recommendations to administration
- Serve as a vehicle for safety communication
- Create and maintain an interest in safety

To motivate members the committee has to be active and evolving. It is important for the chairperson to set an agenda and follow it. Each member must be asked to be an active participant. All members should be recog-



nized for their work on the committee. All suggestions must be heard and considered. Current events affecting the school should be shared with the committee, including new policies, regulations or items noted in the media. Each member should feel that he or she is contributing, effective, and relevant.

Safety Committee Members

Typically, members of a safety committee include:

- A chairperson and an alternate should be chosen to oversee the functions of the committee.
- A secretary should be selected who will compile and distribute minutes of each meeting.

- Superintendent of Business or Business Official/Headmaster
- Superintendent or representative from Building & Grounds
- Supervisor or representative from Food Services
- Member of the Board of Directors
- Superintendent or representative from Transportation
- Supervisor or representative from Purchasing
- Athletic Director
- Science Department representative
- Industrial Arts representative
- Art Department representative
- Nurse or health representative
- Teacher

Continued on page 8

School Safety Committees

Continued from page 7

- Representative from police or fire departments
- Parent and student representatives

Committee Focus

Many committees choose to focus on one issue such as nutrition, emergency drills or selecting a new playground. Other functions performed by a safety committee might include:

- Review incident reports and identify loss trends (i.e., high frequency of incidents on a particular stairwell)
- Review loss runs and investigate accidents, seeking the cause for the loss
- Interpret and implement Right-To-Know and Emergency Management Preparedness Requirements
- Conduct building or facility walk-throughs
- Identify hazards and make recommendations (i.e., loose handrails, broken sidewalks)
- Solicit information from the staff about hazardous conditions
- Review safety procedures, such as the location of fire alarms and extinguishers



- Participate in Safety Promotion Programs (i.e., pins or certificates for accident-free performance)
- Invite outside experts to conduct internal training for staff
- Utilize films and videos
- Maintain motivation and interest by promoting the Committee (i.e., posting minutes, publishing a newsletter)

Safety Committee Pitfalls

One major pitfall of most safety committees is that members can become indifferent. This problem can be overcome by:

- Asking members to send a representative in their place when they have to miss a meeting
- Ensuring that the committee

- is instructed to replace inactive members as needed
- Choosing future meetings dates and following an agenda
- Contacting committee members to ensure that they are willing to participate at the start of each school year
- Finding ways to encourage Administration to support the committee
- Communicating with staff about the reason for the Committee
- Ensuring that the approach changes and that new topics are addressed
- Establishing a range of authority and substance for the committee.

WRIGHT RISK MANAGEMENT

333 EARLE OVINGTON BLVD., SUITE 505 • UNIONDALE, NY 11553-3624

PHONE: 516.750.9395 • FAX: 516.227.2352 • WWW.WRIGHTRISK.COM

Wright Risk Management designs and manages comprehensive risk management solutions for public and private sector entities. For over 25 years, we have been successful in developing and managing the highest quality risk financing vehicles and risk control programs available in the educational market. Learn more about us at: wrightrisk.com

Wright Risk Management provides information and material through this newsletter to private schools throughout the United States. Wright Risk Management makes no representations about the suitability of this information and material for any purposes other than research and discussion. Please consult your insurance representative and school counsel if you have legal, procedural or safety-related questions.

