Legal Liability and Risk Management

Managing Risk

Tort. “A tort is generally defined as a civil wrong other than the breach of a contract for which the courts will provide a remedy in the form of damages” (Gehring, 1987, p. 137). In the case of advising, the most common tort is negligence. In other words, if something happens to a person or persons during a student organization sponsored event, a tort lawsuit could be brought against individual students, the student organization, and/or the University.

“Negligence demands that a duty of care be breached; and, as a result, an injury occurs. The duty or standard of care may be breached by an act of commission or omission” (Gehring, 1987, p. 161). Whipple (1996, citing Fenske and Johnson, 1990) points out that “tort law has most often been applied in negligent cases relating to personal injuries sustained while attending an activity sponsored by a student group or the institution, while transiting university property, or while on a class field trip. Higher education institutions have a duty to protect their students and other invited guests from known or reasonable foreseeable dangers” (p. 326).

Certain elements must be present for litigations to be successful for the plaintiff or claimant in negligence cases (Barr, 1988). They are:

- The defendant owed a duty of care to the claimant.
- The defendant breached that duty.
- The breach of duty was the proximate cause of injury.

The general standard in this situation is that you must behave like a “reasonable person,” that is, behave the way a reasonable person would in a similar situation. The standard does not call for extraordinary insight or some other quality that an average person normally would not apply to similar circumstances.

In practical terms, the “reasonable person” standard means that normal precautions should be taken to prevent problems from occurring that a reasonable person would anticipate.

Event Planning

Although things can go wrong even when events are well planned, keeping the “reasonable person” standard in mind and trying to anticipate problems and provide solutions in advance makes excellent sense. Three basic principles apply in event planning that will help minimize risk.

1. Industry Standards: Industry standards should be followed if they are available. For example, whenever equipment is to be used in an event, your group should follow the instructions provided by the manufacturer on how to use the equipment. In addition, governing bodies, such as the National Intramural-Recreational Sports Association, are sources of information on how to provide for the safety of participants in various activities.

If people supervising various elements of an event are required to have a certain level of skill, they should be trained in accordance with the industry standards. If an organization is having a swimming
event, for example, the lifeguards should be trained to meet Red Cross (or equivalent) standards. Industry standards should never be compromised.

2. Transportation: The use of private automobiles with student drivers has the potential for tremendous problems. You certainly cannot ensure that problems won't arise during a trip, but your group should take several steps in advance of the trip to make sure that reasonable precautions are in place. Among these are the following:

- All drivers should have valid operating licenses.
- No drivers should have a history of speeding tickets, reckless driving, driving while intoxicated, or any other problems that would lead one to conclude that they are not prudent operators of vehicles. In short, all drivers should have a clean record.
- All drivers and vehicles should be insured.
- All vehicles should be in good operating condition.
- No vehicles should be operated in a fashion that is not consistent with how the vehicle was designed, for example, overloaded with passengers or luggage, or with passengers riding in the open bed of a truck.
- No driver should be at the wheel for an extended period of time. Drivers should be rotated to avoid fatigue.
- No person should be allowed to drive after consuming alcoholic beverages.

At times it may make more sense to use institutional vehicles rather than the members' vehicles. Again, this may require additional expense, but presumably vehicles kept in the institution's motor pool undergo routine maintenance and have excellent vehicle service records. Student groups can rent vehicles from local rental establishments if they have the extra funds available.

3. Managing Risk: If an event is planned in which there is some risk, then your group should take steps to ensure that the risk is minimized. Some kinds of activities -- such as tug of war, weight-lifting contests, and eating and drinking competitions -- are inherently risky, and if it is possible, your group should plan substitute events.

**Waivers**

One common way organizations attempt to minimize risk is by asking participants to sign waiver forms. Waiver forms are usually worded in such a way as to absolve the organization (and its leaders) from any responsibility for injury that may result from participating in the activity. The assumption is that by having students waive their right to hold anyone responsible for their injuries, the institution will be held harmless from whatever occurs. In fact, these types of waivers do not carry that force with them.

Waivers have a more useful purpose: they can serve as documentation that the participant is aware of the risks involved in participating in certain kinds of activities. Student Activities and Involvement has created a general liability waiver that will be attached to an organization's event permit for their use.

**Insurance**

Another way to minimize risk is to purchase insurance, including health and accident insurance as well as liability insurance.
Money
Maloney (1988) points to two legal aspects of handling money:

  • More than one person should be responsible for financial transactions.
  • An organization must follow federal, state, local and university guidelines.
  • The advisor does not serve as the organization's treasurer, but should be keeping a careful eye on the legal aspects of how the organization handles its funds.

Copyright Laws
Although copyright laws are often considered in the context of photocopying sections of books and using the materials for class, there is much more to these laws. Organizations are more vulnerable to violating the copyright law as it applies to the use of videos or music.

The Fair Use Doctrine comprises four elements:
  • The purpose and character of the use of the material, including whether such use is of a commercial nature or is for nonprofit educational purposes.
  • The nature of the copyrighted work.
  • The amount of the work that was used in relation to the copyrighted work as a whole.
  • The effect of its use upon the potential market (Kaplin and Lee, 1995).

Renting a video or using someone's personal copy of a video and showing it at a club meeting, a residence hall lounge, or at a fraternity house may seem like a harmless, inexpensive form of entertainment. The problem with this scenario, unfortunately, is that it constitutes a public showing of a video, which is illegal; assuming the material included in the video is copyrighted and those exhibiting the video have not purchased a special license. Without an agreement with the copyright holder, no one can show videocassettes in a public forum even if no fees or ticket sales are involved.

Similarly, the use of music is governed by copyright laws. Generally speaking, students cannot make copies of music performances and sell them as a fund-raiser without violating the law (James, 1988).

Alcoholic Beverages
The best risk management technique regarding alcohol is that it should not be available at student events. For more information see the alcohol chapter of the student organization handbook.

People with Disabilities
Section 504 of the Rehabilitation Act of 1973 states: “No otherwise qualified individual with a disability in the United States... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance” (cited by Kaplin and Lee, 1995).

Federal law prohibits excluding students from participating in campus organizations and activities. Meetings and activities must be held in buildings accessible to students who use wheelchairs or other mobility aids. If activities require special accommodations for students with disabilities, those accommodations must be provided. For example, a student who has a hearing impairment may require an interpreter.

These examples are not all inclusive, therefore, if you have questions regarding a request made under the Americans With Disabilities Act, please contact the Disability Resource Center.

(adapted from the University of Wisconsin)