



Youth Protection Practices and Policies: Reducing Liability in Remote Learning

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Overview

Organizational liability

Limiting liability

Other considerations

- Types of digital engagement
 - Group sessions
 - 1:1 youth engagement
 - Pre-recorded videos



Organizational Liability



When might an organization face liability for an injury to a child in a digital space?

Intentional action

- this is the most publicized and most feared, but not the most common form of liability
- examples: cyberbullying, online harassment

Negligence

- unintentional injury caused by unreasonable action or inaction
- most common form of liability
- has four elements:
 - duty, breach, causation, damages



Negligent hiring

Negligent hiring

- A organization breaches its duty to adequately screen an applicant before giving that applicant access to children (does not use reasonable care in selecting employees)
- Three step test:
 1. Was/is the employee unfit for employment?
 2. Did the employer have actual or constructive knowledge of the employee's unfitness?
 3. Was the employer's hiring of the unfit employee the cause of the third party's injury?
- An organization is responsible for **any damages caused** by an employee negligently hired
- Negligent “hiring” or “supervision” can also apply to volunteers’ actions



Discrimination and harassment

Harassment includes:

- Employee on student harassment
- Student on student harassment
- Employee on employee harassment
- Student on employee harassment



Harassment case law example

- *In digital world:*
 - *Cyberbullying:*
 - Two 12-year-olds in Florida were arrested for cyberbullying in connection with the death of a middle-school student



Limiting Liability



What can you do to limit liability?

Waivers, releases or parental consents

- Participation release/waiver
- Parental consent
- Media release

A note on enforceability:

- Waivers/releases have limited enforceability
- BUT can serve as a deterrent to litigation, help evidence that parents were informed



What can you do to limit liability?

Media releases

- Photo, video, interview, voice
- Permission to use the name of the child
- Include all uses, including online meetings or videos
- No compensation will be given



What can you do to limit liability?

Anti-harassment policy

- Comprehensive written policy
- Include anti-harassment policies in employee handbook or code of conduct
- Make sure that it includes cyberbullying and other online harassment, among and between students and employees
- Make sure staff is trained on what's in the policy
 - Even if your policy already covers it, make sure you staff understands how it applies in the digital environment



What can you do to limit liability?

Code of Conduct

- For employees and staff
 - agreement to follow laws and regulations
 - agreement to behave professionally
 - specific responsibilities
 - limitations on relationships between staff and youth
 - provisions on confidentiality
 - anti-discrimination and harassment
- For students
 - abide by rules of program
 - explain how misconduct will be handled
 - anti-harassment
 - bullying/ cyberbullying



What can you do to limit liability?

Online Guidelines

- Privacy considerations
 - should be located in a neutral environment, no personal information visible or audible
 - use a virtual background
 - stay on mute
 - turn off digital assistants (Google Home, Alexa)
- “Netiquette”



What can you do to limit liability?

Communicate with all parties involved

- Employees, students, parents
- Create updated documents that address changes to learning due to coronavirus
- Obtain updated parental consents



Other considerations



Security and privacy

- Make sure you're using a secure platform
 - enable or utilize all appropriate security options (e.g., locking classrooms, using security codes)
- Read the user agreement
 - major platforms will have information about their security features and compliance with relevant privacy laws
- Inform parents about the security measures you're taking and whether/how you will be collecting or using any data



Privacy laws

- **COPPA (“Children’s Online Privacy Protection Act”)**
 - Applies to the collection of personal information of youth under the age of 13
Not-for-profits generally exempt but best practice is to comply with privacy laws (provide notice and obtain parental consent)
 - <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions>
 - <https://www.ftc.gov/tips-advice/business-center/guidance/childrens-online-privacy-protection-rule-six-step-compliance>
- **State and City education privacy laws**
 - If an organization is a vendor of or getting personal information from NY schools there likely are additional contractual limitations placed on them from the schools. These can include the Family Educational Rights and Privacy Act (“**FERPA**”), state and city education privacy laws.



Recording an online session

- NY is a one – party consent state, meaning you can record so long as you have consent of one party
- But you should notify students and parents if you plan to record
- If to be made available to anyone outside of those participating in the session, *should* have consent – this can be added to your media release



Pre-recorded materials

- No live interaction
- Include in parental consent
- If materials will be made publically available, consider a disclaimer



Adult supervision

- Even online, still need adult supervision
- Follow your typical practices as closely as possible
- Use breakout rooms
- Pay special attention whenever any sensitive information may be discussed



Insurance

- Existing coverage should be sufficient
- Notify your malpractice carrier so they are aware the risk profile has changed (presumably the carrier is already generally aware of this anyway!)



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