

K-12: Manage Critical Risk Areas



In recent years, the rising cost of claims has highlighted the importance of managing the most critical risks in education. However, resource constraints force schools to prioritize the most critical risks when developing a risk management strategy.

This report — based on quantitative and qualitative data as well as United Educators' (UE's) risk management and claims experience — highlights common risk management vulnerabilities and opportunities for **five liability risks** that represent some of UE K-12 members' largest loss areas. It includes leadership-level questions to help monitor risk mitigation performance and identify additional risk mitigation opportunities.

Navigating This Report

This report examines **five** risk areas:

- [Contracting Practices](#)
- [Sexual Assault Against Students](#)
- [Slips, Trips, and Falls](#)
- [Employee and Student Discrimination](#)
- [Non-Varsity Athletic Injuries and Drownings](#)

Each area includes:

- **Definition** — An explanation of the risk area and examples of related incidents. Where relevant, this includes the relative frequency and severity of this risk area.
- **Key Vulnerabilities and Risk Management Opportunities** — An explanation of common vulnerabilities and tips for mitigating them.
- **Questions Your Institution's Leaders Should Ask** — These questions can help your school's leadership understand ongoing risk management, monitor long-term success, and hold colleagues accountable for managing risks. These questions should lead to deeper questions specific to your school.
- **UE Resources** — Resources to help you understand and manage the risk in greater depth.

Technical Terms

- **Frequency** — Number of claims reported.
- **Severity** — Average amount of loss and expense per claim.

Methodology

These risk areas help drive some of the largest claim losses from UE's CGL and ELL policies, including total indemnity and defense paid from June 30, 2016 – June 30, 2021.

Claims data in this report comes from claims with losses that exceed the member's self-insured retention.

This report discusses risks holistically and lists them in alphabetical order. It does not rank UE's largest or most frequent losses.

Contracting Practices

Sound contracting practices are critical for ensuring institutions do not inadvertently assume responsibility for losses they do not cause or control. In particular, the failure to properly allocate risks between the institution and its contracting partners is a common source of UE claims across many areas of risks.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities	Opportunities
Indemnification and risk transfer	
Inexperienced contract signors may not know to look for risk allocation language that addresses how parties to an agreement will allocate responsibility for claims and losses. Despite the importance of understanding a contract's risk allocation language, even trained contract reviewers can overlook absent or weak risk allocation language or fail to maintain certificates of insurance.	Create a contract review checklist — or use UE's contract checklist — that asks signors and reviewers to identify where they found risk allocation language, how it distributes responsibility, and what insurance requirements it imposes. Risk allocation language can be signaled by many terms, such as indemnification, hold-harmless, waiver, or release. When a draft contract lacks these clauses, elevate to an expert contract reviewer or attorney.
Sexual misconduct coverage	
When requiring insurance coverage in a contract, specify the types of coverage that your school requires — especially sexual misconduct coverage. When coverage isn't specified, contracting partners may have sexual misconduct coverage gaps that could expose your school to large losses in the event of an incident. Even when a partner initially has coverage, it can change during multi-year contracts.	Specify that you require contracting partners to have sexual misconduct coverage. In multi-year contracts, require partners to submit documentation proving coverage each year.
Unwritten contracts	
Short-term service providers, such as entertainers, may treat their transactions informally. Yet inexpensive or one-time services still can produce expensive claims. And without a contract in place, schools may unintentionally assume responsibility.	For short-term services and facility rentals, insist on using a vetted contract.
Minimum insurance limits	
With recent changes to the liability insurance market, old standards for third parties' minimum insurance coverage may no longer be sufficient.	Work with legal counsel and your broker to determine what minimum insurance requirements are sufficient to protect your school and include that standard in model or form agreements your institution uses.

Contracting Practices

Questions Your School's Leaders Should Ask

- How are staff trained on contracts, including unwritten contracts, and our school's contract policy so they don't inadvertently bind our school to an agreement?
- Do contracting practices require the use of specific favorable risk allocation language or form agreements, where possible, and the review of risk allocation language in institution contracts?
- Do contracting policies require our school to verify that our contracting partners have appropriate insurance with adequate limits to cover losses arising out of their contracts? Does legal counsel handle exceptions?
- Are there bottlenecks in the contract approval process that could incentivize employees to avoid or subvert the process?

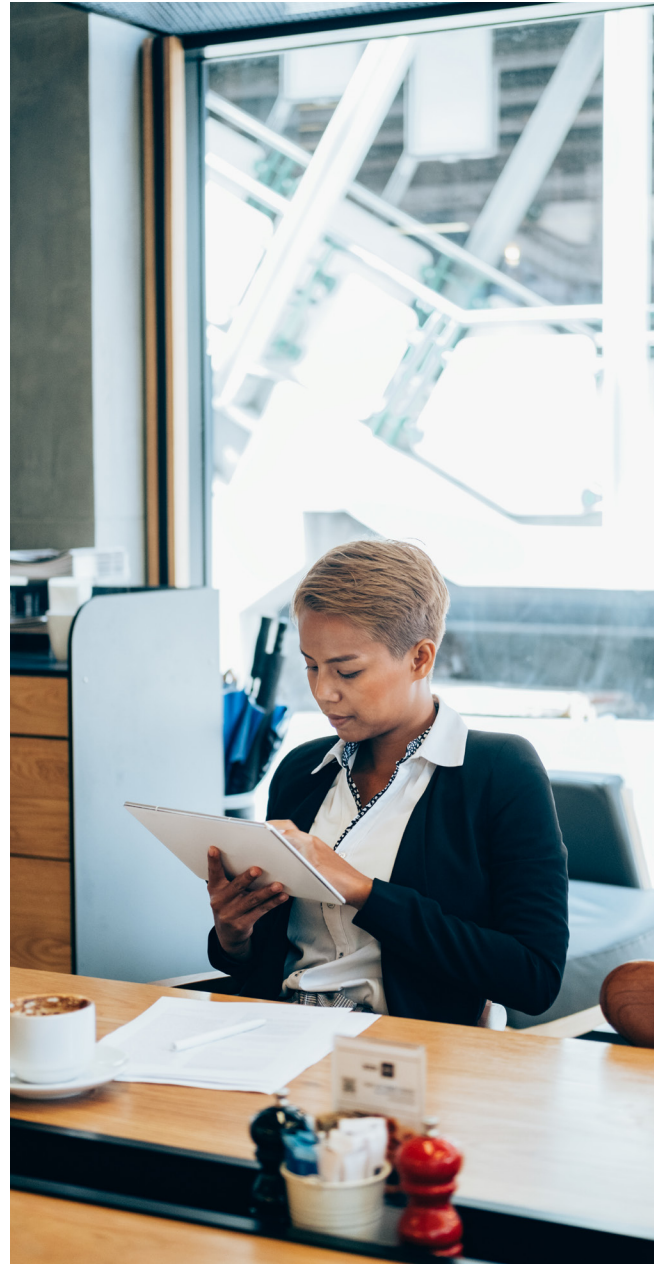
UE Resources

[Checklist: A Guide for Reviewing Contracts](#)

[Contracting Fundamentals](#)

[Avoid Unfavorable Indemnity Provisions in Institution Contracts](#)

[Improving Contracting on Campus: Allocating Risks Between Parties](#)



Sexual Assault Against Students

Sexual assault against students covers sexual abuse and misconduct perpetrated by adults against minors and by minors against other minors.

Incidents where the perpetrator is a minor are among the most common sexual assault claims in UE's K-12 membership. Many of these incidents have moderate financial losses. Incidents where the perpetrator is an employee of the institution are slightly less frequent and, in addition to the personal and reputational damages, have the potential for catastrophic financial losses.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities	Opportunities
Boundary crossings and violations	
When an adult commits a “boundary crossing” – defined as behavior that crosses a commonly held standard but may not violate a code of conduct – toward a student, it can seem small enough to brush aside. However, multiple unaddressed boundary crossings can empower a perpetrator to commit more severe boundary violations or sexual assault.	Set policies that prohibit boundary crossings and violations, including phone and online transgressions. Train faculty and staff on those policies. Empower faculty, parents, and students to report crossings and violations, and follow through on investigation and discipline for behaviors that contradict school policy.
Employee reporting obligations and processes	
Employees unaccustomed to fielding sexual misconduct reports may not know their obligation to notify the appropriate authority. Employees may feel pressure to discourage reports of sexual misconduct involving a prominent member of the school community.	Train all staff on their obligation to report sexual misconduct. Create a feedback loop so the person reporting the incident, involved staff members, and supervisors of internal investigators can check a report's status.
Third-party reports	
People who know the victim — such as parents or classmates — may not know when or how to report suspected misconduct.	Include information about reporting sexual misconduct in parent- and student-facing communications. Design a reporting system that all possible reporters can easily access and understand.
Retaliation	
When someone reports suspected sexual abuse against a powerful or highly respected educator or student, members of the school community may retaliate against the victim or reporter, amplifying the harm.	Specify in student and employee handbooks that the school won't tolerate retaliation and will take prompt remedial action against students and employees who retaliate. If retaliation comes from school leadership, engage the school's Board of Trustees or enlist outside help.

Sexual Assault Against Students

41%

of all sexual assault losses
exceeded \$200,000

49%

growth in severity
of sexual assault losses

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your School's Leaders Should Ask

- What is the established process for a sexual misconduct report to reach the appropriate office to investigate and resolve the incident? Do most employees know and follow the process?
- Once someone makes a report, is there feedback that notifies the reporter of its progress? How is confidential information protected in this feedback?
- What is our background check policy? How consistently do we follow the policy, and how can the process improve?
- In the event of an incident, how would we care for and support victims, reporters, and our school community?

UE Resources

[Educator Sexual Misconduct at K-12 Schools Resource Collection](#)

[Boundary Training: Promoting Healthy Adult-Student Relationships](#)

[Reporting Suspected Child Abuse](#)

[Educator Sexual Misconduct at Independent Schools: Insights From UE Claims](#)

[Safeguarding Schools From Sexual Predators: What Independent School Heads and Trustees Should Ask](#)

[Safeguarding Schools From Sexual Predators: What Public and Charter School Leaders Should Ask](#)



Slips, Trips, and Falls

Slip, trip, and fall claims include any incident where a person falls and suffers an injury. Common incident locations include icy sidewalks, entryways, parking lots, bleachers at special events, and stairwells, but an incident can occur anywhere.

Slips, trips, and falls are frequent, with campus guests and distracted walkers at particular risk. Most incidents result in a small financial loss, but some can result in very large financial settlements, awards, and defense costs.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities	Opportunities
Special events	
Uncommon events, such as convocation and commencement, combine temporary facilities and guests distracted by the festivities. Staff untrained in event management can overlook hazards like forgotten boxes, wrinkled rugs, faulty chairs, and loose wires.	Assign staff to conduct safety walkthroughs before and during special events. Require event hosts to identify and monitor common walking routes for guests, like from the parking lot to seating and from seating to the restroom, as well as unplanned routes like paths between the event and campus landmarks, residences, and academic buildings.
Unmonitored property	
Many schools own lightly maintained property distant from the campus' core. Even if there are no formal activities on the property, schools still can be held liable when someone falls.	Keep an inventory of all school-owned properties, and set and document a routine walkthrough schedule to seek and remedy hazards. Close access to unused campus areas. Someone eventually will visit the area, so continue walkthroughs despite access restrictions.
Hazard reporting	
Someone on campus often knows about a faulty staircase, sidewalk, or piece of playground equipment. However, many employees see these hazards as outside their job description or simply forget, so the issue persists until someone falls.	Implement an easy-to-use system to report hazards and provide repair feedback to the reporter. Then train faculty and staff on how to use the system.
Parking lots	
Pedestrians in parking lots are often distracted by vehicles, conversations, or cell phones, leading them into potholes and other hazards. Further, parking lots can be an afterthought for maintenance crews focused on the core of campus.	Include parking lots on routine safety walkthroughs. Allocate time to inspect the entire lot, including areas between parking spaces. Assume people will take unexpected routes from their car to their destination. Conduct walkthroughs at different times, such as at night and in the rain, to identify hazards such as dark spots and puddles that might not be apparent at other times.

Slips, Trips, and Falls

41%

increase in slip, trip,
and fall severity

\$2
million

approximate total cost of
UE's largest fall-related loss

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your School's Leaders Should Ask

- How often does our school review slip, trip, and fall incident reports? Are there themes in the reports that suggest locations that need more attention or practices that could improve safety?
- Do we know how people use 100% of our school's owned and leased property? Are all sites inspected regularly? Who is contractually responsible for slip, trip, and fall incidents in our leased and rented properties?
- What is our inspection cycle for playground and gym equipment? How do we document those inspections?
- Roughly what proportion of employees know how to report a hazard? How does our Facilities team respond to promptly inspect and remedy each report?
- Does our school have a consistent process for responding after someone is injured? How do we care for the injured person without expressing fault?

UE Resources

[Slips, Trips, and Falls Course Collection](#)

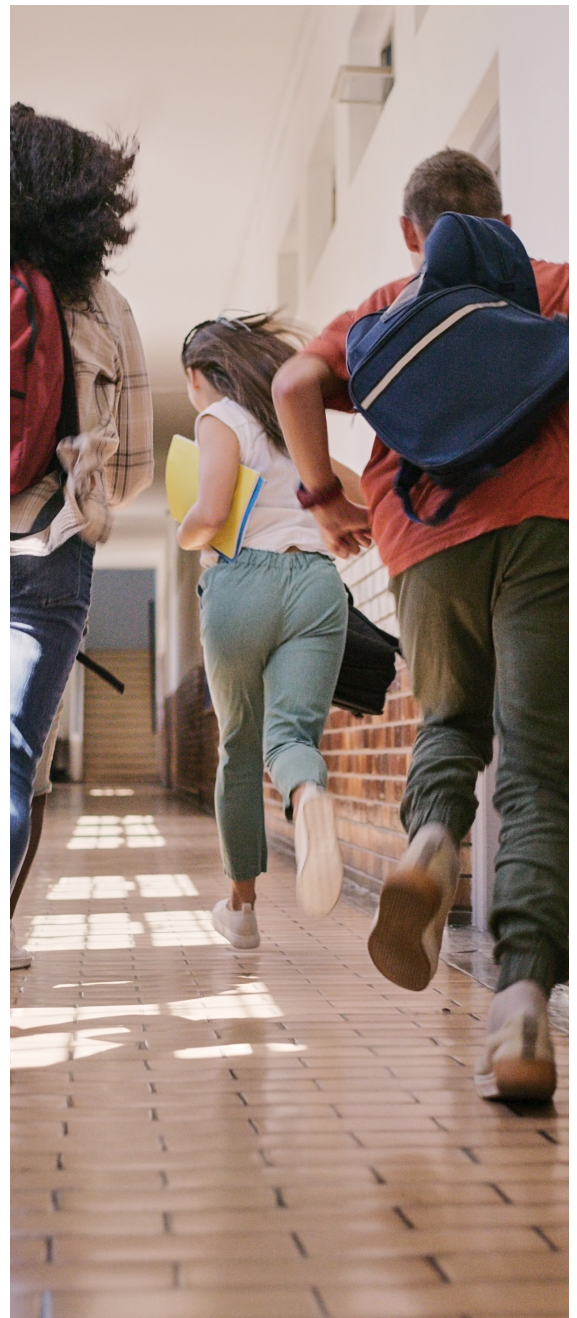
[Checklist: Safety at Commencement and Other Special Events](#)

[Take Inventory of Your Off-Campus Real Estate](#)

[Checklist: Investigating Accidents Causing Personal Injury](#)

[Help Prevent and Respond to Slips and Falls: Lessons From Claims](#)

[Campus Parking Lots: Common But Risky Locations](#)



Employee and Student Discrimination

Discrimination claims involve adverse or unequal treatment of employees or students based on a protected class. This includes retaliation against someone for claiming discrimination or helping another person who does. The most common types of discrimination in UE member schools' claims are age, disability, gender, and race.

Some risk mitigation tactics can address many types of discrimination, while others target specific types of discrimination or specific audiences, like employees or students.



Work with an attorney to identify protected classes at your school. Some localities and states add protected classes on top of the ones stipulated at the federal level. In addition, some school policies include protected classes beyond legal requirements.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities	Opportunities
Supervisor retaliation	
Many supervisors are hired or promoted for their content expertise, not for their managerial skills, and training may be limited. These supervisors may not know how to handle a discrimination matter and — knowingly or unknowingly — retaliate against an employee who alleges discrimination.	Train managers to avoid discrimination and retaliation and how to involve Human Resources (HR) for a discrimination complaint. During performance evaluations, ask direct reports about their managers' ability to create a fair, equitable workplace.
Performance evaluations and documentation	
Some managers give their direct reports positive performance evaluations with little documentation and address poor performance verbally or not at all. Under-resourced HR offices may be unaware that managers aren't documenting performance sufficiently or may not have the ability to enforce a standard.	Establish expectations for documenting performance reviews and disciplinary problems. Regularly evaluate performance evaluations to identify managers who fail to include required detail and provide them with additional training. Require HR approval for disciplining or terminating an employee.
Employee disability accommodation practices	
Accommodation practices may be too flexible or too rigid. Too much flexibility leads to inconsistent accommodations, over-accommodating some disabilities and under-accommodating others. Exceedingly rigid practices apply a blanket approach that could exclude an otherwise reasonable accommodation.	Establish accommodation guidelines as a starting point, then engage in an interactive process to determine what is necessary and feasible to provide. Most disabilities have unique factors, meaning accommodations for one employee could differ from another, despite similar circumstances.
Responding to discrimination against students	
When students report discrimination from teachers or peers, schools can fail to conduct a thorough investigation or try to protect the accused from the allegations.	Establish and follow a process for investigating students' allegations of discrimination. Document investigation results and the rationale behind discipline. When allegations name popular or powerful members of the school community, seek impartial investigators.

Employee and Student Discrimination

45%

growth in frequency
of discrimination claims

67%

growth in severity
of discrimination claims

* When comparing the following two five-year claims periods: 2008-12 and 2013-17.

Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your School's Leaders Should Ask

- When were our last employee and student climate surveys? How did our school fare on questions relating to diversity, equity, and inclusion?
- How do we analyze hiring outcomes to identify whether there is cause for further investigation of biases in hiring?
- Review discrimination allegations from the past several years. Are there commonalities among the reports that have gone unaddressed?
- How do we train supervisors on their roles in responding to allegations of discrimination and requests for disability accommodations?
- What process do we follow if a student or family reports discrimination?

UE Resources

[Lessons from Discrimination and Wrongful Termination Claims](#)

[Workplace Harassment Prevention for K-12 Schools](#)

[Avoiding Supervisory Pitfalls](#)

[Preventing Workplace Race Discrimination](#)

[Guide to Preventing Retaliation on Campus](#)

[Checklist: Assessing Your Performance Evaluation System](#)

[Properly Documenting Employee Disciplinary Actions](#)



Non-Varsity Athletic Injuries and Drownings

Non-varsity athletic injuries and drownings include physical harm across many activities not associated with a varsity sport. In addition to club sports, intramural sports, and physical education classes, claims in this category include injuries arising from playground games, dance rehearsals, swimming pool incidents, and fitness rooms.

Given minors' energy and activities, these incidents are moderately frequent relative to other risk areas. Losses can be large, especially for serious injury and death.

Key Vulnerabilities and Risk Management Opportunities

Vulnerabilities	Opportunities
Access to unmonitored athletic areas	
Unsafe areas, such as swimming pools and fitness rooms, may remain accessible when they are unlocked and unmonitored. Once inside, students can be injured with no one to intervene or help them.	Install doors that automatically close and lock and remove objects that could be used to prop open doors. Continue routine campus walkthroughs that inspect for unintended access to athletic areas.
Activity training	
Coaches or teachers invite students to participate in an activity, such as swimming, without evaluating students' ability.	Train athletic activity leaders to evaluate participants' skills before starting potentially dangerous or aquatic activities. Let students practice skills in safer environments before increasing the difficulty. Record skill evaluations and trainings.
Athletic facilities and equipment safety	
Athletic spaces and equipment, especially ones not used for varsity athletics, can fall into disrepair or misuse. Regular wear and tear of equipment or having infrequently maintained spaces poses a risk of injury. Participants may misuse unusual or unfamiliar equipment when unsupervised.	Keep an inventory and inspection schedule of non-varsity athletic spaces and equipment, including easy-to-overlook safety equipment like pads in fitness rooms, railings in performance spaces, and informal playing fields. Provide supervision for students using unusual, unfamiliar, or potentially dangerous equipment.
Waivers	
Non-varsity athletic activities tend to be less organized than their varsity counterparts. As a result, students join and leave athletic activities without parent/guardian waivers and other acknowledgements of risks. Generalized waivers and assumption of risk forms that apply to all activities may not adequately protect schools from injuries suffered in a specific activity.	Prepare waivers outlining risks associated with each athletic activity. Train activity leaders to collect waivers and other risk-related documents from families before students participate. Require activity leaders to prepare low-risk activities for students who forget to return paperwork or exclude them from participation.

Non-Varsity Athletic Injuries and Drownings

3x

increase in
claim severity

* When comparing the following two five-year claims periods: 2008-12 and 2013-17. Since claims can take years to resolve, we exclude recent years to make time periods more directly comparable.

Questions Your School's Leaders Should Ask

- Where do students play on campus, in formal student activities and as informal play? How often do we inspect these places and their equipment for safety?
- What potentially dangerous athletic activities do we sponsor? How do we train leaders of those activities to evaluate participants' skills, teach safety practices, and document their actions?
- Do employees know which athletic areas should have restricted access and what to do if they notice a restricted area is unmonitored?
- How does our school explain risks associated with athletic activities to families?

UE Resources

[Athletics Resource Collection](#)

[Athletics Emergency Action Plans](#)

[Youth Athletics Course Collection](#)



Other Critical Risk Areas

We excluded from this report three risk areas that rank among the most critical for K-12 schools:

- **Wrongful Termination** — Claims alleging improper or illegal termination of employment
- **Breach of Contract** — Claims alleging the school violated a contract or policy related to employment, a student's education or behavior, or an agreement with a third party
- **Reputational Damage** — Claims alleging defamation, invasion of privacy, and/or damage to a student's or employee's reputation that affects their ability to advance in their education, career, or personal life

Many of these claims overlap other critical risk areas and can be mitigated through the risk management practices this report discusses. For instance, documentation practices in the Employee and Student Discrimination section may help mitigate wrongful termination and breach of contract claims, and processes detailed in the Sexual Assault Against Students section may mitigate reputational damage claims.



To learn more, please visit www.ue.org.

United Educators (UE) is education's answer to the distinct risks and opportunities K-12 schools, colleges, and universities face. As a member-owned company, UE is committed to providing the coverage and tools needed to confidently operate your campus while managing education-specific risks. We've devoted ourselves to education alone since our founding in 1987 and continue to find new ways to meet your insurance coverage needs, manage risk, and efficiently resolve claims.

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