

Use Cool Head, Warm Heart® for Catastrophic Campus Incidents



As an insurer of K-12 schools, colleges, and universities, United Educators (UE) learned early on that claims against educational institutions are unique because of the relationship schools have with most of the people who are injured on campus: students, their parents, alums, employees, and others with a connection to the school. Claims handling must keep those important connections in mind.

Accordingly, UE responds to claims using a Cool Head, Warm Heart® approach, and we encourage members to adopt this philosophy too, especially in matters with potentially catastrophic outcomes. These stressful and emotional situations are best handled when those involved keep a cool head by following policies and protecting your institution, while also using a warm heart to bring compassion and empathy to the injured party.

This dual-track approach keeps the community connection at the forefront of decisions and actions, while also considering your institution's business needs. The Cool Head, Warm Heart® approach is applicable to all areas of campus, including student affairs and residential life staff, campus facilities and safety professionals, and executive leadership and legal counsel. It reminds administrators to act and react in line with the caring, community-focused principles that are at the heart of their educational missions.

Catastrophic claims resulting in severe mental or physical injury or death can arise from a variety of situations, including athletics, vehicle accidents, campus crime such as sexual assault or active shooters, natural disasters (including fires, hurricanes, and earthquakes), accidents involving alcohol or drugs, and mental health crises.

Some campus situations do not involve physical injury but still result in a personal catastrophe or trauma to the individual. Examples of these situations include layoffs

or terminations of employees, suspension or dismissal of students, discrimination or harassment incidents, and other situations leading to emotional distress and financial loss or reputational harm to the individual.

No matter the situation, remember the injured person is a member of your institution's community, and they need to know and feel that they matter. Do not assume you understand what they need; listen to their needs and work to address them. The Cool Head, Warm Heart® approach helps administrators manage situations effectively while acknowledging the needs of the injured.



React With a Cool Head, Warm Heart®

Establish Protocols for Difficult Situations

Whether it is through written policies or institutional protocols, create practices your administrators can follow when a difficult situation occurs. Having systems in place and roles properly designated in advance helps for smoother handling of crises, especially in a time of stress, confusion, sadness, or urgency.

These protocols should include a process for notifying appropriate personnel, such as the:

- Legal counsel
- Risk Manager
- President or Head of School
- Executive staff
- Board of Directors or Trustees
- Communications Director
- Insurance carriers

Make sure these people are familiar with your Cool Head, Warm Heart® philosophy and understand how it should guide their actions. The protocols also should include a process for working with the insurance carrier(s) and, in the appropriate cases, getting legal counsel involved, to begin providing counsel and assistance and protect the attorney-client privilege where appropriate. Discuss counsel selection with your insurer. For more information about recommended policies and protocols, please see UE's [Checklist: Responding to a Student Death](#).

Appoint a Liaison to Communicate with a Cool Head, Warm Heart®

All challenging events — whether it is a campus accident, a layoff, or a student mental health crisis — benefit from good communication. Prompt, proactive communication with those affected by the situation is key to managing the incident aftermath, aiding the injured, and minimizing resulting claims.

To ensure this happens, establish an institutional liaison as the main contact for the injured person (or their family or representative), so that they have a point person on

campus. This helps your institution provide information and resources in an organized manner and be responsive to the injured person's needs.

The liaison also can ensure appropriate outreach is made (such as on anniversaries and holidays) and inappropriate outreach (such as bursar bills or academic notices) is halted. When possible, select a liaison with a previous connection with the affected party.

Offer Assistance to the Injured Party and Family

The liaison should contact the injured party and/or their family right away to open the communication channels and inquire about what help is needed. Discuss with your insurance carrier (and legal counsel, if they have been appointed) to ensure you are following proper procedures and not doing anything that impacts the legal issues your institution may face if a claim is brought or a suit is filed. Involving your insurer early will also minimize any risk that your actions might have an adverse impact on insurance coverage.

Where possible, the liaison may be able to help facilitate medical care for the injured person or connect them with other resources or help. The liaison can arrange travel and accommodations for parents or immediate family, and can offer in-person support to the injured person until relatives arrive.

Depending on the circumstances, authorizing discretionary funds to meet the injured party and family's immediate needs, including medical costs, may be appropriate. Occasionally, an institution's insurance policy may cover these payments, so consult with your carrier. Characterize these disbursements as "good will" and not an admission of fault.

Be prepared to offer non-monetary support or resources as well. Because each situation is different, the liaison should identify needs and think creatively about ways to help. For example, injured students recovering at home may need assistance packing their belongings, or if staying at school, they may need a temporary relocation depending on the accessibility of their residence. In the tragic case of a death, the liaison can arrange on-campus support for visiting family members and can initiate plans for memorial services or other remembrances for the campus community.

Offer Counseling to Your Campus Community

Most institutions are aware of the need to offer counseling services to students who witnessed or were friends of the injured party. However, other students might find news of the situation triggering or otherwise distressing. For example, if a student is seriously injured or killed because of a violent crime on campus, other students will have legitimate concerns for their own safety and some may experience serious anxiety. Ensure counseling services are available for all who need help and that students know how to avail themselves of those services.

Do not overlook the needs of employees who witnessed, responded to, or were otherwise involved in a catastrophic incident. For example, coaches who witness a student-athlete injury or residence life employees who aid a student in crisis also may need support and assistance. Provide employees with support services for handling the distress they may experience. Ensure they are aware of how to access these resources.

Qualifying institutions also may be eligible for a counseling benefit through UE's **ProResponse®**, a supplemental crisis response program.

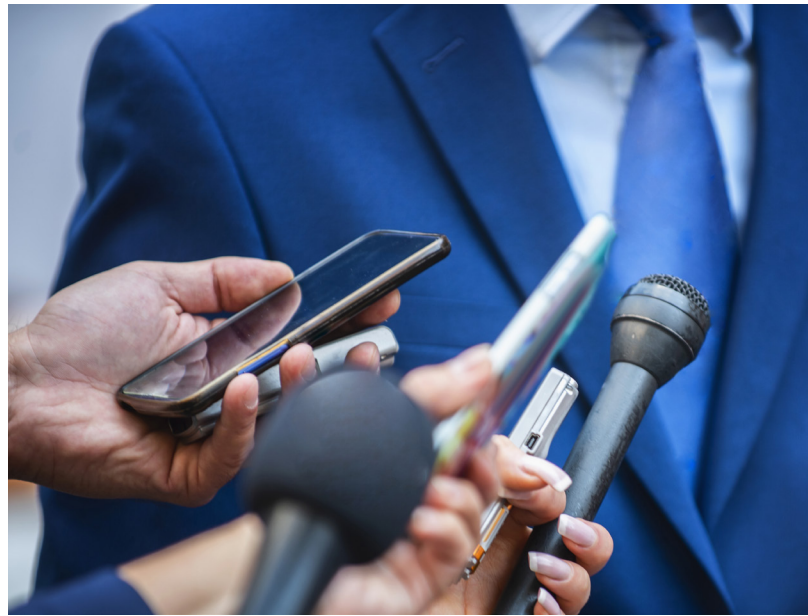
Communicate Carefully With the Media

Coordinate all external communications with the media through your institution's communications team and guided by campus crisis protocol, in coordination with advice from legal counsel.

Use a Cool Head, Warm Heart® in determining:

- The tenor of any statements
- What specific information will be released (if any)
- Whether the injured person or their family should be notified about the statement before its release

Legal counsel also should weigh in on the federal, state, and local restrictions that apply to any statement made, especially the restrictions and prohibitions regarding release of education records under FERPA. Depending on the situation, consider hiring a public relations firm that has experience with educational institutions.



In some circumstances, the ProResponse® benefit may apply to these crisis communications, too.

Investigate Incidents With a Cool Head, Warm Heart®

Careful and thorough investigation is a key component of the Cool Head, Warm Heart® approach. Collecting facts and preserving information is important and helpful for all those involved. Work with your insurance carrier to enlist the help of defense counsel at this stage, as they have expertise in conducting investigations and can preserve confidentiality where necessary.

Your institution should follow its investigation protocols, including involving law enforcement as required or appropriate. Document carefully, with factual records that do not attempt to determine blame and do not discuss responsibility or admit liability.

Following protocols in the investigation and documentation process helps maintain a consistent, fair process, which benefits all parties. Keep Cool Head, Warm Heart® in mind when sharing records with the injured person. If they request documents — especially items they could get on their own through open records laws or during litigation — consider the positive impact of sharing the records instead of pushing back, especially since withholding information can breed mistrust and suspicion.

Litigate Claims With a Cool Head, Warm Heart®

Approach Litigation Thoughtfully

When an agency charge or lawsuit is filed, feeling defensive or upset is a common reaction. But these emotions can exacerbate the situation or frustrate resolution options.

Keeping the Cool Head, Warm Heart® mentality can lower defensiveness by administrators and those directly named in the suit. Remember that the injured person is a community member who was harmed, and they may see no other way to remedy their harm than to bring a legal action. Stay level-headed when working with your defense counsel and insurance carrier to defend your institution's interests.

Strategy and decision-making will be more effective if all sides can keep perspective about the legal action.

Use Cool Head, Warm Heart® to Help the Defense

Many catastrophic situations that make the news can end in a large jury verdict. These verdicts can happen even

in cases where schools have used a Cool Head, Warm Heart® approach — but that does not make this a hopeless endeavor.

Legal counsel often lament the action or inaction taken in the heat of the moment. Training administrators to react with both calm, logical thinking and warm, caring compassion will improve the decisions they make during the crisis response. Actions that are logical and well-intentioned are helpful if legal counsel needs to defend or explain the steps that were taken. Your UE Resolutions counsel has experience in the handling of catastrophic claims, so notify UE as soon after the incident as possible.

Additionally, if a case makes its way to a trial, a significant amount of evidence will be presented to the court. If an institution has acted with a Cool Head, Warm Heart® approach, those actions will reflect well on the school. The judge or jury likely will be impacted — subconsciously or consciously — by the demeanor of the institutional representatives who handled the situation and interacted with the injured person. This can impact the judge's or jury's analysis as they consider the questions before them.



Resolve Claims With a Cool Head, Warm Heart®

Consider Creative Settlement Options

While the Cool Head, Warm Heart® approach can be helpful in warding off legal actions, it can be particularly helpful in resolving them. After a catastrophic incident, the harmed person may make requests that are out of the ordinary or not typically allowed by the institution.

For example, an employee may request leave beyond that to which they are entitled under policy or law; a student may ask to withdraw from a class after the required deadlines have passed; a family may ask to participate in events on behalf of a deceased student. When these requests are made, the Cool Head, Warm Heart® approach encourages schools to avoid reactionary decisions based on rules and policy, and instead consider the spirit of the request. Use a warm heart to look at the individual need, and a cool head to make careful situation-specific decisions about what is feasible.

Cool Head, Warm Heart® applies for monetary requests, too. Often a demand for financial compensation — be it for uncovered medical expenses, tuition reimbursement, or other outlays — may initially seem outsized, unjustified, or impossible. But a different conclusion may be reached if you maintain a curious mindset and objectively analyze the request in conjunction with your institution's legal counsel and insurance carrier. Sometimes, the request is a true need that a school can meet; and often that generosity can help resolve a legal action.

Negotiate Resolutions With a Cool Head, Warm Heart®

Remember that a Cool Head, Warm Heart® approach is still possible, even in the most adversarial or prolonged

litigation. Cases generally get more expensive as time goes on, so it is important to identify opportunities for settlement negotiations where appropriate. UE recognizes there are cases when issues of principle do not warrant settlement, that the demand is far outside a reasonable range or there is simply no liability on the institution's part. An institution's legal counsel and insurance carrier have the perspective and experience to recognize these opportunities and can provide insight into the benefits of settlement even in situations where an institution's officers may be reluctant.

It is often said about settlements that the best outcome is one where each side leaves equally dissatisfied. Given this potential that each side will feel that the outcome — while acceptable — is unfair to them, it is even more important to maintain an even-keeled approach. Remaining calm in the face of unreasonable attitudes or outrageous demands is important for making carefully considered decisions about settlement options. The Cool Head, Warm Heart® philosophy allows institutions to step back, remember their mission and the community they serve, and make rational, well-considered, yet compassionate decisions.

If the injured party and family have been treated with compassion and understanding from the start, they may be more inclined to reach a reasonable resolution.

This publication originated as a 1995 piece by Joseph B. McCullough, UE's then-Vice President for General Liability Claims. A 2021 update was written by then-Senior Risk Management Counsel Christine McHugh, with McCullough and then-Resolutions Counsel Lisa Mebane, Esq., serving as contributing writers.



For more information, visit ue.org or call (301) 907-4908.

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