



Priority Risks for Independent Schools



This report is designed to help independent K-12 school members mitigate their collective frequent and severe losses, as reflected in recent UE claims. For each of five key risk categories, we identify recurring liability themes in our members' claims and provide a composite, hypothetical scenario drawn from the claims, followed by practical risk management advice to help schools avoid or reduce their liability exposure in similar situations. Use these examples and mitigation practices to examine your policies, practices, and procedures and improve your prevention and response efforts.



**Employee-on-Student
Sexual Misconduct**



Slips, Trips, and Falls



Athletics Injuries



**Employment
Discrimination**



Wrongful Termination



Employee-on-Student Sexual Misconduct

Liability Themes

- Private or semi-private access to students outside normal class settings (including in residence halls or apartments, employees' cars, and during coaching sessions or travel) facilitated misconduct allegations.
- Other staff frequently noticed initial employee boundary violations (such as overt favoritism, excessive personal attention, and hugging, tickling, or other physical contact) — but ignored, minimized, or excused the violations long before sexual contact allegedly occurred.
- Allegations that schools ignored reported red flags — sometimes for years — such as inappropriate social media contact, repeated reports of “horseplay,” or giving students gifts and money, significantly increased liability exposure.
- Schools also increased liability exposure by conducting no investigation or slow, incomplete, or cursory investigations, failing to review and improve their employee training protocols, or violating state mandatory reporting laws.
- Attempts to avoid or reduce liability by arguing that alleged victims were older teenagers (sometimes over 18) capable of consenting to relationships with employees, failed because the adult employees' school roles gave them special access and created an imbalance of authority, regardless of victims' ages.
- Several high-loss claims that began with one or two known victims and a single bad actor developed into larger-scale scandals after an investigation uncovered additional victims and perpetrators, sometimes over a span of years.

Employee-on-Student Sexual Misconduct Claims at Independent Schools, 2018-23

17.1%

Share of General Liability (GL) Claims

61.3%

Claims Over \$100K

92%

Claims Open Longer Than 12 Months

Scenario and Mitigation Tips

A dorm parent at a boarding school begins allowing a 17-year-old female student experiencing problems at home to spend occasional time alone with him in his apartment during the fall semester. These periodic incidents escalate to almost daily unsupervised visits, private meals, and off-campus trips in the employee's car. Other staff (most of whom know of the student's personal issues) are increasingly aware of these visits and become uneasy, but the dorm parent is well-liked and they hesitate to report interactions that seem essentially harmless. Just before the spring semester ends, the student (who is now 18) tells a friend she and the dorm parent have a sexual relationship. The friend immediately reports this to the school. A criminal investigation follows, along with a separate civil lawsuit by the student against the school and the dorm parent.

What should your school do in similar circumstances?

- Prohibit school personnel (including teachers, coaches, and administrators) from meeting alone with students in their residences, whether on or off campus.
- Educate all personnel, especially residential and student life staff, about common grooming indicators in employees (such as a pattern of overstepping physical boundaries or seeking to isolate a child) and students (such as sudden behavior changes or unexplained possessions).
- Train and require personnel to report any boundary violations or concerns they witness or hear about, even if they have no evidence of sexual misconduct.
- Document all reports and act promptly; consult with legal counsel, comply with your state's mandatory reporting laws as necessary, place the suspected employee on administrative leave during an internal investigation, notify parents or guardians, and support affected students and families during the process.
- Cooperate with any criminal investigation by law enforcement while (to the extent possible) continuing your internal investigation.
- Appropriately train staff who conduct internal investigations and use an external investigator when necessary (such as if an employee is high-profile or influential or multiple victims may be involved).
- Review your written policies and procedures, employee training, and response protocols related to employee-on-student sexual misconduct; look for and address gaps or weaknesses.



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Slips, Trips, and Falls

Liability Themes

- Failing to properly and contemporaneously document the location and circumstances of a slip, trip, or fall was a significant factor increasing liability exposure. Inadequate or missing documentation often hampered a school's ability to disprove a defect existed or to refute a claim that an alleged defect caused someone's injury.
- Deferred maintenance is problematic, especially when affecting the safety and usability of sidewalks, steps, or other campus access points.
- Whether a school had clear prior notice of an alleged defect was important in determining liability. An unreliable system for tracking reported problems and repairs left the issue of notice and the school's response unclear.
- Weak contractual risk transfer practices create problems; schools could not tender claims because of missing or unclear indemnity language and related provisions.
- "Routine" low-risk slips, trips, or falls escalated and became costly to resolve because of unexpectedly severe injuries requiring surgery or extensive treatment.

Slips, Trips, and Falls Claims at Independent Schools, 2018-23

25.3%

Claims Over \$100K

50.6%

Claims in Litigation

“Inadequate or missing documentation often hampered a school's ability to disprove a defect existed or to refute a claim that an alleged defect caused someone's injury.”

Scenario and Mitigation Tips

A school hires an outside contractor to install new bleachers in its gym. Several weeks after the work is completed, an older visitor attending a volleyball game trips on a rough, protruding metal bleacher edge and falls heavily. School staff help him to a chair and provide basic assistance, including first aid for cuts and scrapes. Nobody documents the location of the fall, takes photographs or measurements of the area or the visitor's injuries, or completes an incident report. Six weeks later the visitor's attorney sends the school a demand letter, claiming her client suffered a significant leg injury requiring expensive treatment due to the unsafe bleachers and alleging other people previously complained of the same issue, although the school is unaware of any other complaints. The school tenders the claim to the contractor but discovers the written agreement, which the contractor provided, lacks clear indemnification language and does not require the contractor to name the school as an additional insured.

What should your school do in similar circumstances?

- Require anyone responding to an incident (including event management and security staff) to complete a written incident report immediately after learning of any slip, trip, or fall on school property, especially those involving injuries to a student, parent, visitor, or vendor.
- Train personnel to document the precise location and time of the incident, the area's condition (such as lighting and weather, when applicable), and any apparent defects. Documentation should include witness statements and photographs/videos when possible.
- Establish a central maintenance system for logging reports of defective conditions and repairs.
- Create and follow a regular timetable for inspecting sidewalks, stairs, and other walking areas on campus for defects; either repair them promptly or restrict access until the repair can be completed.
- Have your school's attorney draft or review/approve written contracts for all construction, installation, and maintenance work on school property.
- Ensure contracts include appropriate indemnification language and, whenever possible, certificates of insurance or endorsements showing the school as an additional insured on the contractor's insurance policy.



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[Slips and Falls Resource Collection](#)



Athletics Injuries

Liability Themes

- Liability exposure for an athletics injury frequently increased when it was combined with one of the following: lax supervision of the activity, poor post-injury handling, or family frustration over medical coverage and reimbursement.
- Head injuries (concussions and other traumatic brain injuries) usually resulted in high losses, particularly when the claim also involved a procedural failure (such as violating return-to-play restrictions).
- Parents often alleged student injuries were caused by supervision gaps (occurring when staff were distracted, physically distant, or otherwise not actively monitoring the activity) during free play or loosely structured games.
- Coaches sometimes made an athletic activity more dangerous by altering the activity, its rules, or setting (such as holding practice at a private home with the coach participating virtually or moving a game indoors in bad weather to a space that was too small for the activity).
- In some cases, exposure was increased by allegations that school staff failed to immediately treat an injury, promptly notify parents, or accurately document what happened.
- Allegedly defective athletic equipment (such as poorly fitting helmets), unsafe surfaces (such as no mats under monkey bars), or inadequate safety measures (such as poor gym lighting or absent/inattentive pool lifeguards) contributed significantly to schools' liability exposure.

Athletics Injuries Claims at Independent Schools, 2018-23

50%

Claims Over \$100K

50%

Claims in Litigation

Scenario and Mitigation Tips

A star high school softball player is struck in the head by a ball during a game and experiences nausea and headaches over several days. The school's athletic trainer instructs her to avoid practice until she is medically cleared but does not communicate that restriction to the coaches. The next day, the head coach lets the student participate in conditioning drills because the student wants to keep her starting position. The student's symptoms recur and worsen after the drills. Her parents seek independent medical advice. On the doctor's instruction, the student misses the rest of the season and for several months continues experiencing symptoms that prevent her from participating in other activities she enjoys, including horseback riding and swimming. The family hires an attorney who claims the student's injury was exacerbated by the school's failure to enforce its return-to-play policy after a head injury. He also criticizes the school's allegedly poor documentation.

What should your school do in similar circumstances?

- Establish a single, written concussion management protocol, including return-to-play guidelines, that applies across varsity and club athletics, physical education, and other activities.
- Require school medical providers, including nurses and athletic trainers, to communicate — in writing to coaches and other relevant staff — restrictions following a head injury.
- Prohibit coaches in writing from overriding return-to-play restrictions.
- Mandate written documentation of every step related to a student's head injury and recovery (including the initial report of symptoms, removal from activities, parent communications, medical guidance, and clearance decisions).
- Create a centralized system that tracks the status of injured students for coaches, health staff, and administrators.



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Employment Discrimination

Note: This category includes employment discrimination claims based on age, sex, disability, and race. The fact patterns and claimant allegations in discrimination matters tend to be similar; in addition, claimants often allege discrimination on more than one basis.

Liability Themes

- Many discrimination claims ultimately hinged on whether a school provided an adequate process to an employee, consistent with its written handbook/policy, before imposing adverse employment action (discipline, termination, or nonrenewal), along with properly documenting those steps.
- Alleging poor performance as a defense was repeatedly undermined by missing or inconsistent documentation (such as a history of “acceptable” ratings despite claiming an employee had performance issues “from the beginning”).
- Older and medically vulnerable employees increased risks for schools in general; medical leave, disability, and accommodations issues resulted in high losses.
- Schools’ reliance on explanations for imposing adverse action that appeared subjective or pretextual increased liability (for example, claiming without evidence that an employee was “toxic, divisive, and unprofessional”).
- Evidence suggesting a general culture of bias or pattern of similar allegations against the school increased liability risk.
- Despite an individual claimant’s actual economic losses (such as back pay) being relatively low, a school may face high liability exposure because of attorneys’ fees and potential emotional distress damages.

Employment Discrimination Claims at Independent Schools, 2018-23

64.7%

Share of Educators Legal
Liability (ELL) Claims

83%

Claims Open Longer
Than 12 Months

Scenario and Mitigation Tips

A 58-year-old male longtime housekeeping employee with a generally positive employment record is injured on the job and takes medical leave, returning with verbal restrictions from his doctor that include limited walking and no lifting or climbing stairs for an indeterminate period. The school's multiple buildings are spread across its large campus, and other housekeeping employees soon complain about covering too much of their coworker's workload. A month later, a newly hired housekeeping supervisor hears the complaints and decides the arrangement is not workable. She tells the male employee the restrictions cannot continue because all housekeeping employees must work throughout the campus and perform all normal physical tasks of the job. The employee objects and says the situation feels to him like discrimination. Without reviewing his file, the supervisor immediately writes a short memo to Human Resources (HR) calling the employee "argumentative" and "difficult." After another heated confrontation a week later, the supervisor fires him and soon hires a 23-year-old woman in his place. The male employee files an external discrimination charge, alleging he was fired because of his age, sex, and disability, and in retaliation for complaining.

What should your school do in similar circumstances?

- Treat all employee complaints or allegations of discrimination involving any "protected class" (such as age, sex, disability, or race) seriously, regardless of the language an employee uses. For example, an employee need not specifically request an "accommodation" to trigger disability law protection. If an employee refers generally to being treated "unfairly," HR should interview the employee to determine if the complaint actually involves unlawful discrimination.
- Because retaliation allegations can survive even if underlying discrimination allegations do not, explain to employees and supervisors that retaliation against anyone who complains of discrimination is prohibited. Provide examples of behavior (such as exclusion from meetings or denial of training opportunities) that could constitute retaliation.
- Making a discrimination claim does not excuse an employee from meeting legitimate performance expectations. However, be careful to separate your performance management process from discrimination allegations by consistently requiring clear, contemporaneous documentation of specific performance problems.
- Promptly begin a formal, documented interactive accommodations discussion when an employee raises medical restrictions or concerns.
- Train supervisors to avoid problematic or subjective language in verbal and written comments. For example, avoid age-related terminology such as wanting "fresh blood" or referring negatively to an employee's "stamina," "pep," or "energy." Do not label an employee generally "difficult" or criticize their "attitude," "tone," or "cultural fit." Supervisors should limit comments to documenting specific employee behavior.
- Have HR or outside counsel review and approve any proposed action against an employee who complains of discrimination.

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Wrongful Termination

Liability Themes

- In a large share of wrongful termination claims, the school stated an employee's termination was justified by misconduct (such as dishonesty, financial improprieties, or harassment) or poor performance, but the employee alleged the real motive was retaliation for engaging in legally protected activity, including taking leave protected by the Family and Medical Leave Act, filing a workers' compensation claim after suffering a workplace injury, or engaging in whistleblower activity by reporting suspected misconduct or refusing illegal or improper instructions.
- Poor documentation and process practices (such as missing personnel files and inconsistent internal complaint handling) significantly weakened schools' ability to defend wrongful termination claims.

Wrongful Termination Claims at Independent Schools, 2018-23

47.6%

Claims Over \$100K

28.6%

Claims in Litigation

“Poor documentation and process practices significantly weakened schools’ ability to defend wrongful termination claims.”

Scenario and Mitigation Tips

A teacher confronts an administrator after hearing from several hourly employees that the administrator instructed them not to record overtime. The administrator admits this, citing the school's budget problems, and tells the teacher to "drop it." The teacher instead complains to the Head of School, who promises to look into the matter. During the teacher's performance review several weeks later, he is criticized for the first time for poor judgment, lack of professionalism, and failure to collaborate. His supervisor informs him verbally that he is on a performance improvement plan (PIP). The plan has an unrealistic timeline and goals. The teacher is terminated one month later for cause. He sues for wrongful termination, claiming he was fired for reporting suspected misconduct, not his performance.

What should your school do in similar circumstances?

- Establish and enforce a written policy requiring prompt investigation of all complaints alleging misconduct or raising legal or ethical concerns and prohibiting retaliation against employees who make complaints. Train administrators and employees on the policy.
- Provide several avenues for employees to report concerns, preferably including an anonymous option.
- Require that all PIPs be in writing, contain reasonably achievable objectives, and be approved by HR.
- Consult HR and legal counsel before disciplining any employee who engages in protected activity, which includes reporting possible misconduct by any school official or employee.



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