THE SCHOOL RULE:
Avoiding Litigation as Well as Liability

by David R. Hostetler, Esq.

This article continues the current "School Rule" series on risk management. The following case is an example of lawsuits arising from seemingly innocent and important curricular activities.

A student, as part of his probation, enrolled at two private Baptist boarding schools where all students were required to perform chores such as "laundry, cleaning, lawn-mowing, brush-clearing, painting, general maintenance, and other tasks" as an integral part of their curricula. The student and his parents eventually sued the schools. They claimed, in part, that under the federal Fair Labor Standards Act (FLSA) the student was entitled to minimum wages for the chores he completed while attending the schools.

The court applied a United States Supreme Court definition of "work" as a "physical or mental exertion . . . controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." This requires considering the economic reality of the whole arrangement.

Applying these principles, the Court held that the student's activities at the schools were not "work," and the schools were not "employers," under the FLSA. Examining the totality of the circumstances, the court determined that the "chores" were primarily for the students', not the schools' benefit even though the chores helped defray certain costs that the schools would have incurred had they hired employees to perform those tasks."[1]

Practice Points:

Although the private schools in this case escaped liability, they did not escape the costs and complications of litigation. School risk management practices need to be tailored, therefore, not only to avoid liability, but also to minimize the risk of being sued at all. Below are some specific points to consider.

- It is not uncommon for schools to implement well-intended and even well-designed programs and practices, without considering the types of litigation threats they may pose. Your schools should have a risk-management staff person or committee to monitor these kinds of concerns.
- School "work" and service activities are increasingly common these days. Carefully examine any such activities for safety and other legal considerations like wage and hour implications.
- Generally, "work" programs are unlikely to violate federal or state wage and hour rules if they are primarily for curricular purposes. Courts may look suspiciously, though, on a program that generates more financial than curricular benefit.
- When considering any new or innovative school program or change, it is important to include your school's attorney in the process; there is often a "legal angle" to such plans. Addressing them usually serves as a vital "ounce of prevention."

NOTES:

1. The case is *Blair v. Wills*, 420 F.3d 823 (8th Cir. 2005); *cert. denied*, 547 U.S. 1004 (2006).

Note: This column is for information only and not offered as formal legal advice. Readers are urged to consult a school law attorney to address specific legal questions.

*The "**School Rule**" column is designed to offer legal updates and practical legal recommendations. Mr. Hostetler, legal consultant for ACCS, specializes in education law, is founder and director of Lex-is School Law Services (Chapel Hill, NC), and is an associate professor of education law, policy, and ethics at Appalachian State University (Boone, NC). He may be contacted at hos@Lex-is.com or (919) 308-4652.*