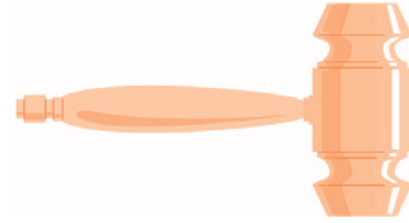


Legal Corner



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The School District Subculture - Foreign Travel



There is a subculture in the public schools that involves such things as foreign travel for students, summer sports camps and booster club activities. With the increase in litigation, these activities have the real potential for leading to legal liability for school districts and for school building administrators. I refer to this as a subculture because, like other subcultures, it is largely unregulated.

Many districts have no policies or administrative protocols pertaining to these subjects, and those that do have not necessarily addressed all issues that need to be addressed.

Reported in the Nov. 21, 2000 issue of the *Intelligencer Journal* in Lancaster County was a situation where a teacher allegedly sold seats to students for a winter excursion to Russia in return for a variety of incentives. According to the article, the teacher arranged excursions through a Boston-based travel company that reportedly “compensates teachers handsomely for getting students involved.” The newspaper reported that another travel company “encourages aggressive marketing by increasing a teacher’s bonus according to the cost of the trip and the number of students buying tickets.” According to an example described in the article, “if 36 students participate, the teacher receives six free seats on the plane for friends and family members. The teacher also may offer up to a 20% discount to other faculty and family members.” The newspaper also reported that one assistant superintendent who was interviewed about such trips said: “They are chaperoning, they are providing an opportunity for these kids that they may not have otherwise. If a lot of teachers were paying their own way, they wouldn’t be taking kids.” According to the newspaper, the assistant superintendent said the district has “no responsibility at all for the trips.” However, the school district may have legal responsibility unless it takes affirmative action to disassociate from the trip.

Foreign student travel is quite common and certainly has an educational value. The school board decision about such

travel should be reflected in appropriate district policy. If foreign student travel is prohibited, the prohibition should be reflected in district policy and the policy should be implemented in such a way that district employees do not circumvent it. For example, promotional information and literature should be prohibited in schools. Teachers should be prohibited from discussing such trips in school, and no brochures or other literature should be allowed to be distributed in school. If teachers or other district employees organize or sponsor such trips on their own free time, school districts legitimately could be required to advise students that the trip is not school sponsored or sanctioned and that the employee is not acting for or on behalf of the district in connection with the trip. Moreover, the district should consider requiring a school district employee who is involved with such trips to disclose to parents the nature and amount of rewards, compensation, discounts, stipends or other remuneration being provided to the employee for arranging the trip.

If the school board allows foreign student travel, a number of issues need to be addressed including:

- What procedures and criteria will be mandated for approval of the trip?
- Who will have approval power for foreign trips— the school board or the administration?
- What types of trips will be permitted by the school district?
- Will trips to specific countries be prohibited because of safety concerns?
- How will trips be financed?
- Who will be eligible to attend the trip?
- In establishing the eligibility criteria, what accommodations will be made for students with disabilities? For example, if eligibility is generally determined based upon the courses taken by the student, would

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that be discriminatory against a student with a disability who is taught pursuant to an Individualized Education Program (IEP) and who does not take those courses?

- How will the teacher be paid, compensated or rewarded?
- What will be done to ensure that proper insurance is in place for such things as workers' compensation, legal liability, medical and hospitalization expenses? For example, will surety bonds be required to protect student funds?
- How and when will such trips be advertised or promoted?
- When will such trips be permitted to take place—during school time or only during vacation periods?
- If foreign student travel is permitted during the school year, how will the costs be paid for obtaining substitute services for the teacher's regular teaching responsibilities?
- What relationship, if any, should exist between a school-sponsored foreign student trip and the curriculum?
- Which travel agencies will be authorized to arrange the travel and who will decide which travel agencies will be used—the teacher leading the trip, the administration or the school board?
- What safeguards will be put in place to ensure that the district has no liability for money paid by parents for the trip?
- If foreign trips are allowed during the school year, will students have a responsibility to make up missed class work?
- How many adults will be required to attend a foreign trip to ensure safety and to act as chaperones?
- If the travel agency arranging the trip offers incentives such as free travel, cash discounts, stipends or rewards? Who should benefit from those incentives—the students, the district or the teacher(s) leading the trips?
- How will the students or the district receive such incentives?

Obviously, if school district-sponsored trips are permitted, an appropriate and systematic procedure will have to be designed to ensure all relevant issues are properly addressed. The details of the trip should be determined before the proposal is submitted to the district and those details should be set forth in the proposal. The proposals should describe the trip in sufficient detail that all time on the trip is accounted for. The airline, itinerary, hotels or other overnight accommodations should all be identified on the proposal. It is recommended that proposals or applications for such trips be submitted by a specified time in advance of the proposed trip to ensure enough time for careful evaluation of the proposal. It is highly recom-





mended that trips be curriculum related and that the proposal detail the relationship between the trip and the curriculum.

The proposal should describe how the trip will be promoted and which students will be eligible for participation in the trip. A procedure will have to be set forth describing how

students will be selected for the trip, in the event that more students apply than can safely be accommodated. Adults who will be taking the students on the trip will have to be identified on the proposal and if an adult going on the trip is not a school district employee, the policy should require the individual submit a current criminal background check and a Department of Public Welfare Clearance Statement. The qualifications of all chaperones should be required to be set forth.

Further, the proposal should describe how the employee(s) leading or chaperoning the trip would be paid or compensated. The travel agency that is to be used to book the trip should be identified. Perhaps the school board should determine whether only certain travel agencies may be used to assure that money paid for the trip will be properly accounted for and that the students receive the best price. A description of how the money will be handled should be included in the proposal to ensure that the money is not lost. Thought should be given to whether a surety bond should be required to be provided by the employee(s) handling the money or the travel agency to whom the money is paid. If a surety bond is going to be required to be posted as a condition for district approval for such trips, a specimen bond should be submitted with the proposal to ensure that the surety company meets minimum standards the district might wish to establish. The policy should make it clear that if the required proposal is not submitted on a timely basis and is not complete, the trip will not be approved and may not be promoted.

District policy should identify who will be reviewing proposals and should establish the standards that will be used in determining whether the trip will be approved. The policy should state whether the administrator responsible for

reviewing the proposal should accept the information on the proposal at face value or whether "due diligence" by the district should be required. For example, are the accommodations selected and described in the proposal appropriate for school students and located in appropriate neighborhoods?

If a surety bond is to be required, will the administration be required to ensure that the surety bond is valid and is issued by a reputable company? If a travel company or agent is used and will handle money, will the administration be required to investigate to determine whether the travel company is a reputable company?

An important issue that needs to be addressed in the policy relates to compensation for school district employees who are going on the trip. Will the school district pay a stipend for the trip, consistent with how other extracurricular activities are handled? At the current time, it is not unusual for teachers to lead and promote such trips, but not be paid anything by the district. Instead, in the subculture of school trips, teachers act almost as agents or sales people for travel agencies promoting the trips to sell to students and, in return, receiving free travel, travel discounts and/or cash stipends. One travel agency previously advertised that the teacher will "travel free with just six full-paying students" and that "first-time teachers travel free with only five." Among enticements currently being promoted are: Sign up for an EF tour, and you're automatically enrolled in the best rewards program in educational travel! **It's simple: you travel with us, you earn rewards.** Whether you want a free computer for your classroom, a free tropical vacation or free round-trip tickets to anywhere in the U.S., it's easy: you travel, you earn points and you get rewards." See, *Educational Tours* at www.eftours.com.

If school boards believe there is value to foreign travel, few people would argue that the teacher taking the students on the trip should have to pay for the trip. Free travel for the district employee who is organizing and supervising the trip is not necessarily improper. But should a teacher, or other school district employee, be rewarded with extra compensation, whether in the form of free trips, travel discounts or cash stipends, depending upon the number of students recruited for the program? Some people believe it would be a breach of ethics for a teacher to receive such compensation. Although teachers are not subject to the state Ethics Act, the State Board of Education has prepared a Code of Conduct for Educators. That code provides that a professional educator may not: "(1) accept gratuities, gifts or favors that might impair or appear to impair professional judgment; (2) exploit a professional relationship for personal gain or advantage." 22 Pa.Code § 235.9

Some would argue that if a teacher receives compensation, not upon the basis of services rendered, but upon the number of students recruited to travel, there is at least a possibility or an appearance that the teacher may exploit the relationship with students to convince students to attend the trip. At the very least, if the teacher is traveling free based upon the number of students going on the trip, it is recommended that promotional material published in

connection with the trip include that information. A stigma that may be associated with such a disclosure may be offset, for example, if additional incentives paid by the travel agency are used for such purposes as reducing the costs to all students on a proportionate basis or compensating the district for the cost of substitute services if the trip takes place during the school year.

There may be income tax implications associated with travel where teachers are “rewarded.” If the teacher was simply having his or her travel expenses reimbursed by the employer, the teacher would not have income that needs to be reported. However, if the compensation paid to or on behalf of the employer is being paid by the travel agency as a reward or compensation for recruiting students, the compensation or rewards or stipends, by whatever name, are taxable. For example, it was reported in the *Intel-ligencer Journal* that an Internal Revenue Service spokeswoman said there is “no question that, if someone were given a free trip for service, that would be income.” Consequently, it is important for teachers or other district employees to ensure they do not violate the income tax laws when being involved in such activities.

If a travel agency builds into its prices free travel for the teacher and other compensation or rewards, the school board should determine how those “incentives” would be used. Obviously, the costs for these incentives are coming from the “full-paying” students. Is that fair? Can the district minimize costs for students by using travel agencies that do not build teacher incentives into the cost of the trip? Should requests for proposals from competing travel agencies be required to be solicited to assure the costs to students will be at the lowest possible level? If incentives or rewards are “earned” because of the number of students recruited, should those incentives or rewards be used to reduce the costs to students to travel, rather than go to the employee organizing the trip? Although few would argue that teachers should not “ride free” or be compensated in some way for their efforts to have students obtain an enriching experience, it is suggested teachers should not be rewarded with extra compensation by the travel agency based upon how many seats they sell to students.

If districts authorize and approve foreign travel, they must be aware of the potential legal liability associated with such trips. Students and teachers sometimes are seriously injured or become ill on such trips. Will all children have access to proper medical care in the event of illness or injury on the trip? It is recommended that a safety plan be required before trips are authorized. Adults going on the trip should be trained in first aid. Names, addresses and telephone numbers of hospitals and doctors in the locations the students will be visiting or traveling through should be obtained and made a part of the safety plan. The hospitals and doctors should be contacted to determine what payment options are available. Health insurance should be required for all students and the health insurance companies should be contacted in advance to determine what requirements are imposed for foreign travel. Emergency



telephone numbers for each child should be obtained and kept readily available with chaperones and at the district. To add to the educational value of the trip, perhaps the students should be involved in developing the safety plan and obtaining the necessary information pertaining to doctors, hospitals and emergency services.

Not only can liability arise from injury or illness, but also it can come from improper conduct by students or staff. Sexual harassment or sexual assault on a district-sponsored trip is as wrong in Europe as in Pennsylvania. Hazing types of activities are as wrong in Europe as in Pennsylvania. It is recommended that policy relating to student foreign travel incorporates the district’s Code of Student Conduct and all district policies governing the behavior of employees, such as the sexual harassment policy. The policy should require an orientation session be held with students and parents where the safety and conduct rules are reviewed. An orientation packet should be given to parents and students and there should be a record maintained of who is given what information.

When discussing legal liability and risk, insurance is an important issue. Does the school district have insurance that will protect it from lawsuits that third parties will file against it because of the kinds of activities in which it is engaged? It may come as a surprise to some, but many insurance policies exclude from coverage activities that occur on foreign soil. Claims that would be covered had they occurred in this country are frequently excluded from coverage when the claim arises outside the country. Consequently, a foreign travel proposal should be reviewed by the district’s business manager and insurance broker in light of the district’s insurance policies to determine whether there is proper and adequate insurance coverage to protect the interests of the district.

In conclusion, school administrators need to be aware of the issues associated with such things as student travel and take action that is appropriate.