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Field trips: Liability issues and best practices

by Michelle H. McGinnis, Veronica Getskow, and Brian S. Dicker

A field trip for preschool children can be a rewarding experience, but if not properly planned and executed it can be a legal nightmare for teachers and owners. This article will take you through a hypothetical outing. If you spot mistakes before we highlight them, great, and if not, you will learn some fine points during this little excursion.

The older class at Tiny Tots PreSchool was studying the letter 'F' when five-year old Sally, a precocious little blue-eyed blonde with a full head of steam blurted out, "F stands for field trip!"

"I know all about field trips," Sally continued. "My brother is in the third grade and they just went on a field trip. We should go on a field trip! We should go to the Rose Garden!" And with that, the wheels were set in motion for the first-ever Tiny Tots PreSchool field trip.

Mrs. Richardson (the school's owner) and Mrs. Runyan agreed the Rose Garden would be the perfect location for a field trip and picnic lunch. It was decided that Mrs. Martinez should join Mrs. Runyan in leading the outing with the 15 children.

Although the required ratio of teachers to students varies by state, two teachers for 15 students is generally acceptable in the school environs, but is risky for an outing to an unconfined area where there could be many people. The recommended ratio in such circumstances is one adult per two children.

"What if a child gets hurt?" Mrs. Richardson mused.

"I'm sure the school's liability insurance would cover it," answered Mrs. Runyan.

"Yes, I suppose that's right," Mrs. Richardson said.

The school's liability insurance certainly covers injuries that happen at the school, but may not cover activities off campus. The owner should review the policy, or if she is not comfortable interpreting all the legalities, discuss the coverage issue with the agent that sold the policy or with an attorney. Do not accept verbal assurances from anyone: get it in writing. In all events, when a preschool is planning something new and different (like a first field trip), an insurance policy review is highly recommended.

A note was sent home with each of the children advising their parents that

there would be an 'all school day' field trip to the Rose Garden, and the parents were asked to acknowledge that they had been advised of the field trip by signing and returning the note.

A note to the parents, even if signed that they have been 'advised' regarding the field trip, is insufficient. When a parent sues because they did not consent to their child's participation in the field trip, your lawyer might argue that signing an advice slip is tantamount to consent, and maybe he will win, at great expense to you — and maybe he will lose. It is better to avoid complications by using a properly drafted consent form and refusing to allow a child to participate unless that signed consent form is on file.



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On the appointed day Mrs. Martinez came to school with her Universe Van, configured for a driver and nine passengers. Mrs. Runyan brought her Redwood Country SUV, a mammoth that could seat seven passengers. Both teachers were responsible adults and had the auto insurance required by California law.

The usual auto insurance policy for personal vehicles does not afford coverage when the vehicle is used for a commercial purpose, and transportation of the children would be commercial in nature. Unless the teachers obtained a one-time commercial-use rider from their auto insurance companies — perhaps unavailable and possibly expensive — the teachers would be driving the children around without any auto insurance. It is highly recommended that a school abstain from use of personal vehicles for a field trip. Hire licensed and insured bus or van operators — or a couple of stretch limos. And about those high-capacity vehicles — if you are going to use them (properly insured), make sure there are seatbelts for everyone.

Backpacks and lunch pails in tow, the children piled into the two vehicles and the trek began, Mrs. Runyan following Mrs. Martinez because the latter knew the best place to park. As they drove along Rodeo Drive, Sally, who was seated in the second row window seat of the SUV, shouted, “Look at the puppy!” The puppy on the sidewalk suddenly had the attention of all the children. “Aw!” they sighed in unison. Curious, Mrs. Runyan glanced out her passenger side window just as Mrs. Martinez came to a quick halt in front of her. A slight fender-bender, and the ladies in charge simultaneously asked the children, “Is everyone all right?”

Molly, riding shotgun in the lead car, cried out, “I cut my hand.” Sure enough, there was a deep scratch on the back of her right hand, a bit bloody, and

probably caused by the metal buckle of the safety belt.

Mrs. Martinez handed Molly a pack of tissues and instructed her to hold tissues tight on the scratch. “When we get to the Rose Garden, I’m sure they’ll have some first-aid cream and a bandage.”

Ordinary negligence as exhibited by Mrs. Runyan happens every day on our streets and highways. While transporting preschool children Mrs. Runyan might be held to a higher standard than ordinary negligence, but the real issue here is, again, the lack of insurance. Molly’s injury was slight, but had there been more serious injuries to drivers or passengers Mrs. Runyan and the school would be liable for associated medical treatment as well as claims for compensatory damages for pain and suffering. And, of course, Mrs. Runyan will have to pay for any damage to Mrs. Martinez’s car. Get the insurance right ahead of time or hire the bus, van or limo.

All preschools are required to have on hand the first-aid kits necessary to treat the minor injuries that can be expected in the normal course of a school day. That requirement travels where the children go as part of their class, and is even more important on a field trip that takes the children out of a closed and controlled environment. It is clear from the manner in which Molly’s injury was treated that the vehicles were not properly equipped for first aid. With an inexpensive first-aid kit Molly’s injury easily could have been treated; had infection set in before the injury was properly treated, the school and supervising teachers could be liable in a lawsuit.

A Rose Garden security guard cleaned and bandaged Molly’s wound. The teachers walked the children through the lower half of the Rose Garden and then everyone was assembled for lunch at picnic tables arranged in rows under a

cement shelter that looked like the crown of a capital building.

While it is nice that Molly’s wound was treated, the guard should not have treated her without presentation of a form allowing the teachers to authorize treatment to Molly. Had the guard mistreated the wound, the teachers and the school would have been liable for obtaining medical treatment without proper authorization. Presumably the school had in its files medical authorizations signed by the parents of each student. Copies of those authorizations or special medical authorizations designed specifically for the field trip should have been in the teachers’ possession on the field trip.

“Long day,” Mrs. Martinez yawned as she nibbled on her chicken salad sandwich.

“Yeah, and no breaks because we have to have our eyes on everything all the time,” said Mrs. Runyan as her eyes swept the children.

“Do we get extra pay or something?” Mrs. Martinez asked.

“No. It’s just part of the job,” Mrs. Runyan answered.

Most states have labor laws that govern break-time and mealtime periods for employees. Employees may sue when they are denied breaks and mealtimes fully away from their duties. More on this at the end of our story.

As Mrs. Runyan and Mrs. Martinez bemoaned the lack of break time, a drama was unfolding two tables away. A bee, a most common creature in a Rose Garden, dropped into Sally’s cup of juice. Sally didn’t panic; she just used her plastic straw to ease the critter out of her drink and onto the picnic table. The bee struggled to escape the small puddle of brown sticky liquid and ran

into a small ice cube that had dropped into the puddle during Sally's maneuver. Afraid the bee would freeze, Sally nudged the bee with the end of her straw. The frightened insect held onto the straw for dear life; once it was lifted away from certain death, it rewarded Sally by making a beeline up the straw, and stinging her on her upper lip.

Sally's scream got full attention and when the adults learned what had happened, the teachers assured Sally that it would hurt only for a few minutes. Mrs. Martinez took some ice cubes out of Sally's drink, wrapped them in a tissue and told Sally to hold the tissue to the sting. Just as Sally's tears ebbed, she began to hiccup for breath and a red rash appeared.

Terrified, Mrs. Runyan asked Sally if she was allergic to bee stings. Sally nodded as best she could, but the evidence was already clear. "Call 9-1-1," Mrs. Runyan yelled to Mrs. Martinez.

Children do the unexpected, and supervising teachers cannot guarantee against all hazards. Had there been a better teacher-student ratio, a teacher probably would have been sitting at Sally's table and might have intervened early to avoid the bee sting.

As in the school environs, teachers supervising a field trip should have adequate first-aid supplies, as well as any special medication or equipment necessary to ensure the safety of a child with special medical needs (usually provided by the parent). Presumably the medical part of Sally's school application would have revealed her allergy to bee stings. Certainly there should be a section in the application where parents are required to disclose such conditions. Had this information been reviewed ahead of time, the parent and school could have equipped the teachers with an epinephrine dosage as part of the (missing) first-aid kit. If Sally's condition

were known, the school should have a trained adult present to administer epinephrine (EPI pen®) at all times. This special needs requirement is not limited to medication for bee stings, of course, as there are many other conditions that pose dangers.

Paramedics arrived quickly and, apprised of the situation asked whether the teachers had authorization to allow medical treatment. The teachers looked at each other blankly; the paramedic shook his head, and administered a life-saving shot to Sally.

"We have to take her to the hospital for follow-up and observation," the paramedic said. "The hospital will want to know about insurance."

"The school has full coverage," Mrs. Runyan replied.

The insurance and medical authorizations crop up again here, emphasizing how important they are. The hospital probably would not decline treatment, but the school could be liable for all hospital charges should there be no insurance coverage for incidents outside the school environs. Having authorized transport to a hospital for follow-up and observation, the supervising teachers may have acted beyond the scope of existing medical authorization. Although perhaps rare, there are parents who do not believe in recognized medicine and could sue if their child is subjected to medical treatment the parents find inconsistent with their beliefs.

Seven hours after they had embarked, the tired crew, minus one little girl, arrived back at Tiny Tots. After all the children were discharged to their parents and Sally's mom had been advised to go to Memorial Hospital, the teachers met with Mrs. Richardson for a debriefing. "You both did yeoman's work," Mrs. Richardson said. "I'm sorry you had such troubles and couldn't take

a break. I'll keep that in mind when you are up for next year's salary review."

Until they came to pick up their daughters, the parents of Molly and Sally had no notice their children had suffered injuries. The parents should have been notified immediately so that they could participate in decisions regarding treatment. Keeping them in the dark until the end of the day would likely cause anger and thoughts about contacting a lawyer.

Note: Many states, including California, require that an employee working in excess of six hours on a given day be given at minimum one 15-minute rest break and a 30-minute meal break. These breaks are to be fully away from any job-related duties. Our Tiny Tots teachers were working as guardians and observers throughout the entire field trip, including during their lunch time. Failure to allow rest break and meal breaks for employees subjects the school to monetary penalties (payable to the employee) in most states. The nature and amount of these penalties is beyond the scope of this article, but know that they exist.

But, you may say, it is not practical to schedule rest and meal breaks for employees supervising students on a field trip, and you may be correct. The solution, available in many states, is to have the teachers sign a form whereby they waive their rest and meal breaks on the day in question. These forms must be specially drafted to be enforceable, and are authorized by law to be used only in limited special circumstances. A field trip, where constant vigilance is required, does meet the special circumstances requirement. However, do not go overboard with the use of waivers. The waivers are designed for special circumstances and not for the general convenience of the employer. Abuse of the waiver form will result in labor law troubles. If you are not sure about whether waivers are appropriate in a given situation, consult your attorney.

Conclusion

This article could not possibly address all of the 'dos' and 'don'ts' associated with planning and executing a field trip, but it highlights some common mistakes you could avoid with best practices.

Editor's Note: The information in this article is intended as general practical advice based upon legal considerations, but is not intended as legal advice. Applicable laws vary from state to state. Consult with a lawyer for your specific legal needs.

Draft language

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