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Faculty Adviser, Beware: You May Be Liable

By NANCY E. TRIBBENSEE

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By NANCY E. TRIBBENSEE

Students who were stabbed while performing in college plays that used real knives instead of props have sued their institutions. Students and their families have sued for injuries and deaths when a bonfire being built as part of a university tradition collapsed. Students participating in collegiate sports have sued for injuries resulting from fights with other players and from the inadequate response of coaches to their injuries. Others have sued institutions and advisers for injuries and deaths related to drinking or hazing in student clubs or activities. In all those cases, the plaintiffs have alleged that injuries were caused or exacerbated by the negligent supervision of student activities by college personnel.

What is happening? Today, as institutions expand opportunities for learning and student development outside the classroom, they increasingly rely on faculty and staff members to go beyond traditional academic advising and to supervise students in a variety of campus experiences. New offerings for students increase educational options; but they also increase the possibilities for injury -- and college liability -- unless the associated risks are managed carefully.

Faculty and staff members must begin to consider the risks when first invited to become an adviser for a student group or extracurricular activity. Prospective advisers often focus on the literal description of a group's activities. Do I have the experience to direct a campus play? The interest in this sport? However, many potential advisers don't realize that they will also be expected to understand a broad range of other issues, including risk management, event planning, transportation, sexual harassment, emergency medical care, and alcohol liability, to name just a few. Similar demands are placed on academic advisers, particularly when activities like field trips and research take students outside the classroom.

In too many cases, busy schedules, lack of administrative oversight, and inadequate forethought result in advisers who are no more than names on rosters or signatures on forms. In some instances, advisers even believe they should remain "passive" participants, lest more direct

involvement increase their personal or institutional liability. They may see themselves as "benevolent volunteers," but they may not recognize the responsibilities associated with that role.

In particular, they may not be aware of the growing possibility that they have a legal duty of care to the students they advise.

A hands-off approach flies in the face of common sense. How can one effectively advise students without knowing what they are doing? In addition, passive advising fails the "what would you tell the parents?" test. What institution would announce to parents at freshman orientation that the people who advise their children won't be actively involved because the institution needs to protect itself in the event something goes wrong?

What we need to keep in mind today is that, long before any injury occurs or any lawsuit is filed, faculty and staff members have many opportunities to provide guidance in planning and managing activities and promoting a safe learning environment.

Next comes assessing liability. Many of today's cases allege that not only the institution, but also the individual adviser, were negligent, because the adviser failed to actively and effectively provide advice and, thus, contributed to the injury suffered by the student.

Courts may, in fact, be looking for opportunities to send a message to student advisers to take a more active role. For example, in *Kenner v. Kappa Alpha Psi Fraternity Inc.*, a student initiate at the University of Pittsburgh sued the national fraternity and the chapter adviser after he was beaten more than 200 times with a paddle, causing him to suffer renal failure and seizures. The appellate court applied a "duty analysis" and concluded that the defendants owed a legal duty of care to the student. Although the court did not find evidence to support any breach of duty by the fraternity and its representatives, it did find a breach by the chapter adviser. The decision focused on testimony that the chapter adviser attended a membership "interest meeting" but failed to discuss or provide students with information about hazing or any of the fraternity's policies on hazing. Additionally, expert testimony said that had the adviser been more involved in the membership process, the student would not have sustained his injuries.

Studies have shown that faculty and staff involvement can have numerous positive influences on student activities. At a minimum, the mere presence of an adult can have a moderating effect on extreme behavior. At best, an adviser can help students learn important planning and safety skills.

The courts have also increasingly held colleges, and not just advisers, liable for injuries attributable to a lack of competent supervision of student activities. The model of the "facilitator university," as described in 1999 by two law professors, Robert D. Bickel and Peter F. Lake, has influenced a number of recent decisions. In *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* (Carolina Academic Press), Bickel and Lake examined the degree to which colleges owed a duty of protection to students and others who participate in campus life. The authors encouraged college officials and students to share responsibility for risk assessment and management. Under the facilitator model, faculty and staff

members do not make decisions for students; through information, training, and active supervision, they manage the college environment to promote positive student decisions.

To advise the advisers, every institution needs to define a comprehensive strategy that will train and support them so they can anticipate potential problems, work effectively with students to manage risk, and understand their own responsibilities. Three elements are essential for successful advising:

- An underlying philosophy and goal to unite training programs for students and advisers and coordinate different initiatives.
- A simple technique or format for event planning and risk assessment that can be used by students and advisers to reinforce the basic concepts and facilitate training.
- An effort to assess the effectiveness of training programs.

After a bonfire collapsed at Texas A&M University at College Station in 1999, killing 11 students and 1 alumnus and injuring 27 others, victims and their representatives alleged that the university had acted negligently and with deliberate indifference to the welfare of the students. Without waiting for resolution of the litigation, the university immediately responded to the tragedy by creating a comprehensive student-risk-management program that incorporated those three elements.

Each institution must evaluate its own needs before adopting a successful program from another, but the Texas A&M model provides an excellent starting point. It uses the Bickel and Lake "facilitator university" as its underlying philosophy; it gives students and advisers a template for assessing risk; and it encourages assessment and evaluation of risk-management efforts across the campus. By requiring advisers to be fully involved in student activities and educating students in how to evaluate risks as they plan events, Texas A&M helps students and advisers share responsibility.

In addition, no adviser-training or risk-management program can afford to ignore the problems that arise from alcohol use on campus. Alcohol is a major factor in a variety of injuries, including those caused by vehicular accidents, assault, hazing, harassment, and the direct harm caused by excessive alcohol consumption. Alcohol also contributes to property damage on and off campus. For each event or activity, advisers and students need to realistically assess the likelihood that alcohol will become a factor and develop strategies to mitigate potentially serious harm. Whatever the underlying risk-management philosophy or assessment tool a program chooses, alcohol issues must be addressed directly.

Sports clubs, intramurals, and related activities can also benefit from a comprehensive risk-management approach. Some groups may hire coaches who are not members of the campus community, so institutional rules won't apply unless they are incorporated in the coaches' contracts. Some may engage in significant fund-raising activities or purchase expensive equipment, which may require additional fiscal and property management. Travel and appropriate emergency-medical response may be significant issues. Again, so may alcohol. Although students may assume the foreseeable risk of injury associated with participation in sports, the courts have increasingly found institutions and advisers liable for failure to respond

appropriately to injuries or for allowing dangerous circumstances to develop by tolerating drinking or fighting.

Often the issue is the level of supervision, in terms of both the presence and visibility of coaches and the adequacy of their training to respond to emergencies. Colleges, therefore, may wish to provide separate focused training to coaches who serve as advisers for such activities, as well as to institute a comprehensive institutional program to provide consistent guidance for students and volunteers.

Many institutions have already adopted policies and taken important steps toward managing the risks inherent in student life. They need to because the courts increasingly confirm that colleges and their personnel have a duty to provide students a safe and healthy educational environment.

Nancy E. Tribbensee is deputy general counsel at Arizona State University.

RESOURCES ON RISK MANAGEMENT

- "Facilitator Model of Risk Management," Texas A&M University (<http://studentactivities.tamu.edu/risk/facilitator.htm>). A model of a comprehensive risk-management program.
- *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* by Robert D. Bickel and Peter F. Lake (Carolina Academic Press, 1999). Provides a model for how colleges can meet their duty to protect students and others on campuses.

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