**Scenerio Development and Response**

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**The School Act: Possible or actual legal issues**

**Parent Volunteers**: What is the role that they are volunteering for, need to be aware of what duties they are performing, for example they cannot answer phones, process books or any other activities that can be identified as taking work from someone else in the building - bargaining unit work. Criminal Record Check is required if it is anticipated that the volunteer may have unsupervised access to students (Surrey Regulations 10310.1 (1.3).

Getting proper criminal record checks depending on the role they are volunteering for. For example, parents must have a criminal record check to coach or attend overnight field trips.

**Parents’ Advisory council**

They have to have quorum to vote on decisions, and AO from the school needs to be present at the meetings; restrictions on how they get funding; only one parent advisory council per school – so parents not happy with the current PAC cannot form another one. Their meetings will be managed by bylaws, set in the presence of the principal. Only one DPAC for the school district.  There are also rules governing spending money, legal issues could arise if they do not follow proper procedures for handling money.

**School Plan:** Must be approved by the board each year; therefore, must be in compliance with curriculum and teacher contract. For example, it cannot dictate how teachers will teach, as this will be a violation of the teacher’s collective agreement and autonomy. School plans need to be shared with parents.

**Access to Educational Program**: A student moves in to a neighbourhood and there is no room at the catchment school. The student’s name is kept on a waiting list. The closest school with room is a half hour away. What are the obligations of the district for transporting the student to the school? Does the school board have a responsibility to get them there or just to provide them with a spot? Surrey Regulation 9320.1G may decide that the provision of transportation from school to school is appropriate.

**Duties of Students** –Students must attend school. While at school, students must comply with the code of conduct and other rules and policies of the board or the Provincial School. Therefore, what happens when a student openly defies the code of conduct. What are the repercussions? So, when doing an investigation, the fact that students must comply with the code of conduct comes into play.

**Examination of Student Records:** Student and parents are entitled, on request and while accompanied by the principal or a person designated by the principal to interpret the records, to examine all student records kept by a board pertaining to that student, and for a fee can have a copy. Therefore, you must comply with parents if you are asked for these records. Legally, what records do you need to produce if asked? Does this include teacher notes and principal notes about disciplinary actions? Scenario a parent requests to see all records and correspondence regarding their child.

**Appeals:** Parent have the right to appeal the decision of schools. So, if they disagree with a suspension, they have the right, within a reasonable time, they can appeal. Legal implications include you not properly documenting events leading up to your decision. Keeping information to yourself during the process when you have an obligation to disclose.

**Management of School Property:** Using the school for personal usage on the weekend.

**Catchment Area**: A student cannot get into their catchment area school, what are the responsibilities of the school district. A teacher works in a different district and wants to bring their own children to their school.

**Class Size and Composition:** An administrator wants you take extra students and keep it on the ‘down-low’. Overlap of one student coming and one coming.

**Fees and Deposits:** You cannot charge a fee for something that you intend to grade students on. So, field trips with fees need to be optional, not mandatory. Alternate programing needs to be offered. Teachers collecting fees and not properly handling them and recording them. Teachers offering services on school property – ie tutoring.

**Use of Volunteers:** what is the role that they are volunteering for, need to be aware of what duties they are performing, for example they cannot answer phones, process books or any other activities that can be identified as taking work from someone else in the building.  Volunteers need criminal record checks depending on the roles they are taking on. Teachers still need to be the primary supervisor or negligence can be found.

**High Risk Field Trips:** You cannot participate in these without proper ratios of supervision to satisfy they requirement of the school board policies.  What would happen if you do not have enough supervisors and something goes wrong? Parents and students need to sign special permission forms and waivers? What happens if the form is returned and the signature is invalid? Volunteers for overnight trips need Criminal record check. Direct supervisors need to be school district teachers. Properly certified people need to supervise activities such as swimming.

**Our Scenario**

You are a principal at Made-up Middle School. You have returned to work on Monday morning and there is a parent waiting to meet with you. The parent, Mr. Smith is very angry because on Saturday, while  attending a wrestling clinic at your school, his son broke his leg. Mr. John Doe, the school’s wrestling coach and beloved PE teacher had been putting on the clinic for the last 4 weeks, a clinic which parents have paid for their children to attend. Mr. Smith has brought in a flyer that had invited wrestlers from around the district to attend the 6 - week clinic with Mr. Doe.  There was a fee attached to the clinic, with cheques to be made payable to Mr. Doe. In the flyer, it is stated that the fees are for supplies to run the clinic.  Due to the fact that this happened at your school, Mr. Smith is threatening to sue. This is the first you have heard of Mr. John Doe’s wrestling clinic. Through your initial discussion with Mr. Smith, you realize that the parents who sent their students to the clinic were under the assumption that it was an extension of the school’s wrestling program. There were 30 students attending the clinic each weekend. You also learn that the only other adult in the gym with Mr. Doe during the clinics was his brother, Mr. James Doe, a private citizen who runs a private wrestling club. Upon reassuring Mr. Smith that you would look into the matter, your first phone call is to facilities to see if Mr. Doe had booked the school gym through the proper channels for the clinic. The call to facilities reveals that Mr. Doe did not properly book the gym through the school district. What do you do?

Our Solution:

We have used SD36 Surrey’s Policies and Regulations

Major Issues surrounding this problem:

1. Facilities were not properly booked - Not proper usage of school property (School Act); Violation of School District Policy
2. The need to immediately shut the clinic down
3. Mr. Doe Collected fees outside of school regulations; used the property to make money
4. Mr. Doe’s brother has not had a criminal record check completed RE: Criminal Records Review Act – working with minors in any capacity
5. You did not know that this was occurring, even though it was being advertised as a school function
6. Student has been injured on school district property the student will be covered (School District Policy), but Mr. Doe could be sued in a civil suit later
7. FOIPPA violated because student information shared with another person (Mr. Doe’s Brother)
8. School Act – duty of care as a teacher; misuse of school property, improper fee collection
9. The investigation into Mr. Doe must follow the protocols of the collective agreement.
10. The investigation of Mr. Doe will also be forwarded to the Teacher Regulation Board as per The Teacher’s Act.

Clearly, Mr. Doe has made a big mistake.  Mr. Doe has violated SD36 Policy surrounding usage of school property outside of school hours. The facility needs to be rented and can be rented for recreational activities such as the wrestling clinic. However, it needs to be rented in order for it to be a sanctioned. However, according to the priority for use in Policy # 10400 Section 4 the allotment of school district facilities and grounds shall be made on the basis of the following priorities 4.1 - Regular school curricular and organized extra-curricular activities. Therefore, had Mr. Doe applied to use the property he most likely would have been allowed to if the clinic was viewed as an extension of the wrestling club, which is an approved extra-curricular activity at the school.

**Surrey Regulation 10400.1 Regulation Section 12:**

*All user groups of facilities and grounds must purchase and maintain throughout the license term, at its own expense, liability insurance must be Comprehensive General Liability insurance, including bodily injury and property damage.* If Mr. Doe was offering a private clinic and using the clinic for profit, then he should have booked the facility properly and had insurance.

Even though Mr. Doe did not book the facility properly, there is still an element through which it is perceived by the parents that they sent their child to a school function. Therefore, we assume that **Regulation 5815.1 Section 3.1** comes into play:

*Bodily injury occurring during a school activity (whether it took place on or off school property, during school hours or not) suffered by a student, parent, volunteer, or visit AND any of the following apply:*

*a) The school provides medical/first aid to the injured person, or recommends that the person obtain medical attention.*

*b) The injured person obtains medical/first aid attention from someone outside the school system.*

*c) The injured person suffers loss of class or work time.*

*d) The injured person, or the person’s family, expresses a concern or makes a complaint.*

*e) There is any indication that the injured person blames the school or a school employee for the injury.*

*f) There is any indication that the injured person may make a claim against the school or one of its employees.*

Not only did Mr. Doe did not follow the correct procedures for booking the facilities, he also did not ensure the following:

1. That his brother had the correct paperwork signed to work with students as per the Criminal Record Check Act

And

1. He did not Properly collect fees in accordance of the School Act. He should not have had parents write him personal cheques.

Mr. Doe’s brother supervising students in a scenario where it is a perceived extension of a school club:

**General duty of registered specified organizations**

**(Criminal Record Check Review Act)**

***24.3****(1)Subject to subsection (2), a registered specified organization must ensure that every individual who will work with children or work with vulnerable adults as a volunteer with the registered specified organization and every volunteer who works with children or works with vulnerable adults with the registered specified organization undergoes*

*(a)a criminal record check, or*

*(b)a criminal record check verification.*

*(2)A registered specified organization may require an applicant for volunteering or a volunteer with the registered specified organization to undergo a criminal record check even if the applicant or volunteer could undergo a criminal record check verification.*

*(3)Despite subsection (1), a registered specified organization must not require an applicant for volunteering with the registered specified organization to authorize a criminal record check or a criminal record check verification, as applicable, unless the applicant will be working with children or working with vulnerable adults as a volunteer with the registered specified organization.*

*(4) The registered specified organization must inform applicants for volunteering and volunteers of the requirements of this Act.*

First Steps as an Administrator:

Ensure that you document everything, including your initial conversation with Mr. Smith. BE sure to write down all the steps you take and conversations you have.

You have already called facilities to confirm that Mr. Doe did not book the gym for the wrestling clinic. At this point your next phone call is to your Assistant Superintendent in charge of your school to inform him or her of the situation. It is important that they are immediately put into the loop, for if the parent is going to sue their intention is most likely to sue the school district and not Mr. Doe. A parent can not directly sue the school. The assistant superintendent needs to know so that he or she can immediately inform the rest of the leadership team and begin consultation with legal department and risk management.

Let Mr. Smith know that from now on, he needs to contact the district. Because he has threatened to sue, he now needs to now deal directly with the district. You need to let him know that you are informing your assistant superintendent of the situation and that you have advised him to now deal with the district. You are now also to refrain from talking to Mr. Smith and his family about the incident.

As for Mr. Doe, your next step is to follow the correct procedures around investigations as per the collective agreement. The district will provide you on guidance around this and at this point you are not to talk to Mr. Doe without following the lead of the district and the guidelines of the collective agreement. Chances are the district will immediately place him on leave with or without pay.

**Other things to note:**

We assumed that during the investigation by the district that other elements will also come into play, including did the principal properly inform his or her staff the policies around extracurricular activities through a handbook or a staff meeting

For example: See this excerpt from a teacher handbook in Surrey:

**Extra-curricular activities**are those school-based structured organizations, including sports/clubs or other activities, that occur outside of the classroom instructional program, extend beyond the normal school hours and operate under the supervision of a staff member or other designated adult supervisor approved by the Principal in accordance with Policy #10310 - *School Volunteers.*

**Sports and athletic activities**are competitive individual or team activities which are sponsored by the school and governed by the Surrey Secondary Schools’ Athletic Association (SSSAA), the Surrey Elementary Athletic Society (SEAS), and BC School Sports.

**Clubs**are structured groups of students who come together on a regular basis for a specifically defined and approved purpose. Clubs may be promoted and facilitated by the school as part of its established program of teaching and learning activities or may be created in direct response to student interest.

**3.0 INTENT**

**3.1**All extra-curricular activities will be consistent with the mission and policy statements of both the Ministry of Education and the school district.

**3.2**Extra-curricular activities will be conducted in a manner that is consistent with the Canadian Charter of Rights and Freedoms, the Human Rights Code of BC, and Board policy and regulations.

**3.3**Clubs will be governed by a charter that includes: • the name of the club,

• the name of the supervisor,

• a clear and precise statement of purpose,

• conditions of membership,

• description of operation, and

• a schedule of meetings.

**3.4**Copies of the club charter will be available on request to parents.

**3.5**Sports and athletic activities will be governed by the relevant district or provincial athletic organization.

**Mr. Doe’s Fate:**

Resolution will be based on the investigation by the school board. There are various outcomes based on the final result of the investigation.

 Mr. Doe’s ignorance around school and district policy is not a defence. He is still negligent for not following proper protocols.

Chances are that Mr. Doe will receive a letter of expectation around not following proper procedures. Depending on the outcome of the investigation he may or may not lose his job. The situation will also be sent to the teacher regulation board for the ruling as well.

Mr. Doe could be sued by the district in a civil suit to get back the money they will have most likely had to pay Mr. Smith’s son’s injury.