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Article

Supporting the education sector in addressing sexual misconduct risk

From hiring practices, the use of third parties, and the impact of social media and AI, the education sector is increasingly vulnerable to the risk of sexual misconduct. Felt most keenly amongst education providers, such as daycares, public and private schools, colleges and universities, it is essential that leaders in this sector provide themselves, staff, student bodies and other stakeholders with a full understanding of exposures and responsibilities. They must further seek out the most current and effective risk management and risk transfer tools to safeguard those under their care. Recent announcements from the US Department of Education reinforce the importance of maintaining strong vigilance around this issue.

Understanding the risks

Education providers often face allegations of negligent hiring or supervision, with claims of inadequate background checks, ignored "red flags," or failure to follow proper procedures.

And the risk and responsibilities extend beyond those hired for the classrooms, to ancillary staff such as security guards, sports coaches, transportation workers and contractors. Such roles are crucial in the functioning of educational institutions, but they often take place away from core areas such as busy classrooms, heightening the risk and opportunity of isolation and abuse.

The issue of negligent hiring was raised before the Minnesota Supreme Court last year, which determined that a charter school could be found liable for hiring a teacher with a previous dismissal for sexual abuse, where references had not been obtained and contacted prior to being offered employment[1].

In recent years, we have also seen a growing concern amongst education bodies about risks associated with third parties. For instance,

contractors coming on site to deal with building or maintenance, or outside parties using facilities for leisure activities. This concern has been reflected by many school districts, municipalities, states and universities introducing mandatory insurance requirements to address this exposure, with third parties obliged to purchase cover (often on a standalone basis and with specified limits) and we see an increasing demand for cover from such contractors.

In July these issues were given even greater urgency by an announcement from the US Department of Education of what it described as a “crackdown” on how school districts handle allegations of sexual misconduct by teachers against students[2]. The announcement can be summarised as follows:

- Respond promptly and appropriately to allegations of sexual misconduct, including by teachers, administrators, staff (including contractors) and other students, consistent with Title IX. This includes providing supportive measures to students.
- Prevent practices (sometimes called “passing the trash”) that help school employees, contractors or others to secure new employment where there is knowledge or probable cause to believe they engaged in sexual misconduct involving students.
- Accurately collect and report data on instances of sexual assault against students to the Office for Civil Rights.
- Conduct meaningful independent investigations as required by Title IX, meaning that schools may not merely refer suspected sexual misconduct to law enforcement, and must ensure that grievance procedures provide for the timely and thorough resolution of reported incidents.
- Ensure that officials with authority to take corrective action are trained to recognise and respond to sexual misconduct.

The Department also identified 20 school districts that would be subject to specific investigation.

Also in August, the US Attorney for the Northern District of Texas announced an initiative dubbed “Project Safer Schools”[3] with similar ambitions and scope to the Department of Education. It has already brought two enforcement actions against school districts, one resulting in a $1M settlement[4]. We can expect to see similar local initiatives in other states.

School districts can therefore expect greater scrutiny around their risk management, prevention and response efforts in relation to sexual abuse, not only from federal authorities but from other agencies, as well as stakeholders such as parents.

The evolving insurance market

This leaves the education sector increasingly vulnerable and exposed. Considering the changing and heightening risk environment, education providers and their brokers should explore standalone SML coverage, with prevention and response resources alongside expertise and sufficient limits.

Total immunity from risk is impossible, but effective risk mitigation can lead to safer environments for all. And should the worst happen, the nature and speed of the response is everything. Building a culture of safety requires time and effort, but standalone SML insurance can support educators in fulfilling their duty of care.

Beazley Safeguard, Beazley's market-leading standalone SML policy, was designed with this need in mind. The policy offers risk management tools, pre-claim coverage for circumstances, and liability insurance. With the Beazley Safeguard policy, we strive to help organizations create safe environments within their organization.

1- https://mbiworldwide.com/resources/blog/minnesota-supreme-court-sets-the-record-straight-on-municipal-employer-liability

2- https://www.ed.gov/about/news/press-release/us-department-of-education-launches-national-k-12-initiative-protect-students-adult-sexual-predators-schools

3- https://www.cbsnews.com/texas/news/sex-abuse-public-schools-dallas-us-attorney/

4- https://www.justice.gov/usao-ndtx/pr/project-safe-schools-investigation-uncovers-reporting-failures-dallas-isd-leading

Home

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