



KING & SPALDING

Legal Issues for Nonprofits that Work with Children

**Meghan Magruder
King & Spalding**

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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
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- We host free monthly webinars on legal topics for nonprofits
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Agenda

- Common Legal Risks Faced By Nonprofits that Work with Children
- Operational Strategies Your Organization Can Implement To Minimize Risks
- The Role of Insurance In Your Organization's Risk Management Strategy

Recent Lawsuits

- Comprehensive Behavior Health Center, East St. Louis-based nonprofit: \$309,000 settlement announced in December 2014 in a case where Comprehensive Behavior Health Center allegedly violated the Americans with Disabilities Act by failing to provide an employee who had been diagnosed with multiple sclerosis reasonable accommodations in her working conditions and then retaliated against her by refusing to rehire her after she was laid off.
- Damar Services, Indianapolis-based nonprofit: sued in December 2015 for allegedly neglecting its duty to protect a young woman from sexual abuse by one of its former employees. Accuses Damar Services of failing to properly background, train and monitor former employee, who had pleaded guilty in 2013 to felony sexual misconduct for a situation with the young woman who had been living in Damar Services' residential facility.
- Archdiocese of Philadelphia: 2015 settlement of a lawsuit brought by a man whose testimony helped convict two Catholic priests and a former parish-school teacher on sexual abuse charges for an undisclosed amount.

Recent Lawsuits (con't)

- Deerfield Academy, private school and 501(c)(3) in Massachusetts: January 2016 settlement for \$500,000 of a lawsuit filed in 2015 for a sexual abuse scandal that occurred more than three decades ago when the victim was a 15-year-old student at the school.
- Big Brothers/Big Sisters: 2014 lawsuit seeking \$1.7 million in damages against Big Brothers Big Sisters of Metropolitan Chicago for a volunteer allegedly sexually abusing three siblings in the 1990s, continuing from 1990 until 1997. Separately, Big Brothers Big Sisters national organization, as well as three local Big Brothers Big Sisters entities, face a lawsuit in Pennsylvania claiming that one of the Big Brother mentors molested the plaintiff. In 2015, a judge refused to dismiss the national organization stating that it could not conclude as a matter of law that Big Brothers of America did not possess the means, the manner, or ability to control the acts and conduct of its New Jersey affiliate branch.

Risks that Nonprofits Face

- Limited Funding
- Limited Staff
- Limited Space
- Limited Time
- Reliance on Volunteers
- Plus all the operational risks that any business faces

Heightened Risks for Nonprofits Serving At-Risk Populations

- Children
- Disabled
- Poor
- Approximately 62.8 million people in the United States volunteer at least once annually, with so many volunteers providing services to vulnerable populations, the risks to those persons and the nonprofits they are volunteering for are high

Volunteer Statistics*

- Every 43 hours, a registered sex offender attempts to obtain a position at a nonprofit
- Every 37 hours, a background screening search for a nonprofit organization reveals a murder offense
- Nearly every 30 minutes, a background screening search for a nonprofit organization reveals a drug conviction
- LexisNexis audit of background screening services to nonprofit sector between 2007-2011 revealed hit rate for prior criminal convictions of 8.8% (identifying more than 479,000 individuals with criminal convictions)

*As reported As reported in LexisNexis 2012 Nonprofit Screening Review—available at <http://crsfportal.org/sites/default/files/LexisNexis-2012-Nonprofit-Screening%20Review.pdf>.

Common Legal Risks Faced By Nonprofits that Work with Children

- Risks to the children you serve
 - ✓ Emotional
 - ✓ Physical
 - ✓ Medical
 - ✓ Sexual Abuse
- Risks to your employees and volunteers
- Risks to your organization

Emotional Injury

- ✓ Verbal abuse, discrimination, and harassment
- ✓ Code of Conduct violations by employees & volunteers
- ✓ Bullying

Emotional issues vary among age groups

Physical Injury

- Sports/outdoor activities
- Dance/Gymnastics
- Arts & Craft activities
- Cooking
- Transportation
- Children hurting one another
- Accidents on premises

Medical Risks

- Children with chronic ailments
- Children with allergies
- Differently-abled children
- Sick children
- Vaccines
- Dispensing Medications
 - ✓ Over the counter
 - ✓ Prescription

Risk of Sexual Abuse

- Predatory child molesters may be attracted to nonprofit organizations that serve children
- Vulnerable populations at nonprofits may be more at risk
- Child pornography/internet crimes pose an increasing threat to nonprofit organizations
- Unsupervised one-on-one situations between employees/volunteers and children can enhance risk

Other common risks

- Meeting State Licensing Requirements
- Guardianship issues
 - ✓ Who is given the right to pick up the child?
 - ✓ Divorced parents
- Harassment / Discrimination
 - ✓ Children
 - ✓ Employees/Volunteers
 - ✓ Social media

Other Risks To Volunteers, Employees, and the Organization

- Accidents involving children, volunteers, or employees
 - ✓ on or off the premises
 - ✓ car accidents
- Lawsuits
 - ✓ against volunteers, employees, officer, directors for negligence/failure to address the risks inherent in serving children
 - ✓ employment practices
 - ✓ breach of fiduciary duty
- Property Damage/Theft

Operational Strategies Your Organization Can Implement To Minimize Risks

1. Participant Agreements
2. Background Checks
3. Waivers
4. Employee Manuals
5. Maintain written procedures to follow in the event of accidents/incidents.
6. Social media policies

Participant Agreements

Should clearly address/define:

- ✓ Scope of services
- ✓ Rules
- ✓ Code of conduct

Should be signed by parents

Should request emergency contact and health care information

If providing infant/child care services, should request vaccination records

Background Checks for Employees and Volunteers

- ✓ Georgia law generally requires criminal background check for anyone who works directly with children
- ✓ Consider asking volunteers to pay for their background checks if funds are an issue
- ✓ Must obtain written authorization from applicant under Federal Credit and Reporting Act before performing background check

Pertinent information provided by background checks

- Education and employment status
- Criminal history
- Driving record/DUI convictions
- Usually go back seven years
 - ✓ Check national databases - don't limit search to Georgia
 - ✓ Perform checks for employees *and* volunteers

Background checks are not a panacea

No substitute for:

- ✓ Interviews
- ✓ Checking references
- ✓ Ensure appropriate guidelines and employee manuals are in place
- ✓ Training volunteers and employees
- ✓ Supervising volunteers and employees

Waivers

- Can help protect organization from lawsuits and set expectations of participants
- Should be drafted broadly, in clear, conspicuous, unambiguous language
- Should be signed by parents

Types of Waivers

- Liability
- Medical
 - ✓ Obtain consent to treat
 - ✓ Obtain health insurance information
 - ✓ Obtain emergency contact numbers
- Transportation
- Food
- Field Trips
- Sports and other physical activities

Enforceability of Waivers

- Georgia courts generally enforce written waivers if they cover the matter at issue
- No consideration is required for a waiver
- Georgia's anti-indemnification statute (OCGA 13-8-2(b)) applies only to construction contracts

Employee Manual & Volunteer Policies

- ✓ Rules regarding interactions with children
 - Gathering information; taking photos
 - Contacts outside of the nonprofit or through internet
 - Gifts
 - Child/Adult ratios; one on one situations; same sex v. opposite sex
- ✓ Code of Conduct & Code of Ethics
 - E.g., no tolerance for drugs/alcohol, no smoking, swearing, clothing expectations
- ✓ Agreement to abide by rules/manual/policies
- ✓ Make sure manual/policies are followed
- ✓ Make sure manuals are written in plain English

Maintain written procedures to follow in the event of accidents/incidents

- **Develop written procedures to follow in the event of an accident, injury, or other incident.**
 - ✓ Accidents happen
 - ✓ Train your employees/staff to follow procedures
 - ✓ Make sure procedures are easy to follow and understand
- **Prepare written incident reports**
 - ✓ Helpful to children if they need follow-on care/counseling
 - ✓ Protect the organization in the event of legal claims
 - ✓ Assist when making insurance claims
 - ✓ Have document templates ready in advance

Methods to Address Risks: Insurance

- Property Coverage
- General Liability Coverage
- Worker's Compensation
- Auto Liability Coverage
- Professional Liability Coverage
- Directors and Officers Liability Coverage

General Liability Insurance Issues To Consider

- Provide coverage against claims alleging bodily injury or property damage
- Who is the insured?
 - ✓ are your volunteers covered?
 - ✓ employees and volunteers may have coverage under personal homeowner/rental policies, but don't assume that they do
- Are there exclusions in your policy for activities that children you serve engage in, e.g. "athletic activities"
 - ✓ Coverage for field trips?
 - ✓ Coverage for fundraisers?
- Does not cover you or your employees against workplace injuries
 - ✓ Obtain workers compensation coverage

Auto Liability Issues

- Keep schedule of automobiles up to date
- Does your organization transport children in automobiles that are not covered by your policy - such as employees' or volunteers' automobiles?
 - ✓ Obtain waivers from parents to fill potential gaps in coverage

Professional Liability and D&O Insurance

- May provide coverage for costly sexual harassment or breach of fiduciary duty claims against a nonprofit, its employees, or its directors and officers
- These lawsuits are rare, but may place personal assets of board members and officers at risk, and can bankrupt a nonprofit if adequate coverage is not in place



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For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

www.pbpatl.org

info@pbpatl.org

404-407-5088