

LEGAL CONCERNS FOR CAREER ED. STAFF AND CTSO SPONSORS

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Agenda for Today

- Student fees
- Is it school-sponsored?
- Hazing
- Searches
- Immunity from liability

Student Fees Authorized:

- Extracurricular activities
- Admission fees and transportation charges for spectators attending extracurricular activities
- Postsecondary education costs
- Transportation in specific cases
- Copies of student files or records
- Property lost or damaged by student
- Before-and-after school or Pre-K Programs
- Summer school & Night School
- Parking
- Breakfast and lunch programs

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Fee Waiver

- Required (NEB. REV. STAT § 79-2,133)
 - Schools shall establish a policy to waive fees for students who qualify for free/reduced lunch
 - Waiver required only for participation in extracurricular activities
 - Schools may establish a policy to waive fees otherwise required to be provided by students

Notice of Fees

- School board shall hold annual "public hearing" on proposed student fee policy
 - Review amount of \$ collected in prior year
 - Review use of waivers in prior year
- School board shall provide copy of student fees in the student handbook

Notice of Fees

- Notice shall include, among other things:
 - Written guidelines for nonspecialized attire
 - Personal or consumable items a student will be required to furnish for EC activities
 - Any specialized equipment or attire a student will be required to furnish for EC activities
 - Fees for participation in EC activities

Notice of Fees

"No fee, specialized equipment or attire, or nonspecialized attire may be required pursuant to the [Act] unless the maximum dollar amount of the fee, the specifications for the specialized equipment or attire, or the specifications for the nonspecialized attire are specified in the student fee policy approved by the board."

Incidentals for Extracurriculars

- Incidentals (NEB. REV. STAT. § 79-2,128)
 - "may require students to furnish minor personal or minor consumable items for participation in extracurricular activities."

Nonspecialized Attire

- Attire (NEB. REV. STAT. § 79-2,129)
 - "may require students to furnish and wear nonspecialized attire meeting general written guidelines for specified courses and activities if the written guidelines are reasonably related to the course or activity."

Fee Issues for CE and CTSO Programs

2. Safety Equipment and Attire.

The district will provide students with all safety equipment and attire that is required by law. Building administrators will assure that (a) such equipment is available in the appropriate classes and areas of the school buildings, (b) teachers are directed to instruct students in the use of such devices, and (c) students use the devices as required. Students are responsible for using the devices safely and as instructed.

3. Personal or Consumable Items.

The district **does not** provide students with personal or consumable items for participation in extracurricular activities, but, notwithstanding, pencils, paper, pens, erasers and notebooks. Students who wish to supply their own personal or consumable items may do so, as long as those items comply with the requirements of the district. The district will provide students with facilities, equipment, materials and supplies, including books. Students are responsible for the careful and appropriate use of such property. Students will be charged for damage to school property caused by the student and will be held responsible for the reasonable replacement cost of any school property that they lose.

4. Materials Required for Course Projects.

The district will provide students with the materials necessary to complete all basic curricular projects. In courses where students choose to produce a project that requires materials beyond the basic materials provided by the district, the students will furnish the materials, purchase the materials from the school, or purchase the materials from an outside vendor with an order form provided by the school.

Fee Issues for CE and CTSO Programs

5. Extracurricular Activities.

The district may charge students a fee to participate in extracurricular activities to cover the district's reasonable costs in offering such activities. The district may require students to furnish specialized equipment and clothing that is required for participation in extracurricular activities, or may charge a reasonable fee for the use of district-owned equipment or attire. Attached to this policy is a list of the fees charged for particular activities. The coach or sponsor will provide students with additional written guidelines detailing the fees charged, the equipment and/or clothing required, or the usage fee charged. The guidelines will explain the reasons that fees, equipment and/or clothing are required for the activity.

The following list details the maximum dollar amount of all extracurricular activities fees and the specifications for any equipment or attire required for participation in extracurricular activities:

- Student activity card \$_____
- Covers admission to all extracurricular events
- Student participation fee \$_____
- Required of all students who participate in athletics and/or other extracurricular activities
- Future Business Leaders of America \$_____
- DECA \$_____

Fee Issues for CE and CTSO Programs

F. Fund-Raising Activities

Students may be permitted or required to engage in fund-raising activities to support various curricular and extracurricular activities in which they participate. Students who decline to participate in fund-raising activities are not eligible under this policy for waiver of the costs or fees which the fund-raising activity was meant to defray.

Where do we see schools struggle?



"Before you begin, I have a number of preconceived notions I'd like to spout."

Student Trips

- "Extracurricular activities means student activities or organizations which are supervised or administered by the school district, which do not count toward graduation or advancement between grades, and in which participation is not otherwise required by the school district[.]"

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Extracurricular Student Trips

- School sponsored
 - Fee waiver applies
 - Fundraising requirements for students
- Non-school sponsored
 - Fees may be charged

Student Trips—Factors Considered

- Use of school equipment and vehicles
- Facility rental vs. free use
- Sponsor compensation
- Contents of permission slips
- School policy
- Where money is deposited

Student Trips—Other Concerns

- Student Discipline Act: on school grounds, in a school vehicle, *at a school activity*
- Insurance coverage
- Compensation issues
- Work Comp
- Liability

Other Student Trip Issues



Hazing: It's Happening



Hazing

28-311.06. Hazing, defined; penalty.

(1) For purposes of this section, hazing means any activity by which a person intentionally or recklessly endangers the physical or mental health or safety of an individual for the purpose of initiation into, admission into, affiliation with, or continued membership with any organization. Such hazing activity includes whipping, beating, branding, an act of sexual penetration, an exposure of the genitals of the body done with intent to affront or alarm any person, a lewd fondling or caressing of the body of another person, forced and prolonged calisthenics, prolonged exposure to the elements, forced consumption of any food, liquor, beverage, drug, or harmful substance not generally intended for human consumption, prolonged sleep deprivation, or any brutal treatment or the performance of any unlawful act which endangers the physical or mental health or safety of any person or the coercing of any such activity.

(2) It is unlawful to commit the offense of hazing. Any person who commits the offense of hazing is guilty of a Class II misdemeanor.

Hazing

28-311.07. Hazing; consent not a defense.

Notwithstanding any provisions to the contrary, consent shall not be a defense to a prosecution pursuant to section 28-311.06.

Hazing We've Seen in Nebraska

- "Paddling" by upper classmen
- "Freshmen eat a pepper" day
- "Russian dick-lette"
- "goosing"
- "fishhooking"
- The Impossible Situp
- Donuts...

Searches and Seizures



The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

What is a search?

- Any government conduct that intrudes into protected privacy interests, including looking into places not out in the open or otherwise exposed to public view – it includes peeking, poking or prying into non-transparent containers such as lockers, desks, purses, backpacks, folders, books and articles of clothing

What is a search?

- Examining items or places that are not exposed to public view
- Touching or patting down a student's body or clothing
- Opening and inspecting personal possessions

What is a search?

- Handling a closed item to determine its contents
- Using extraordinary means to enlarge a view of something, or to listen into closed or locked areas
- Reading a book, journal, or notes, whether ephemeral or not

What is NOT a search?

- You observe an object in plain view where it is exposed to the public
- The student authorizes you to conduct the search
- You examine an object after a student denies ownership of it

What is NOT a search?

- You examine an object that a student has abandoned
- You detect anything openly exposed to the senses when you are in a place where you have a right to be
- You use extraordinary means to enhance perceptions in open areas

What is a seizure?

- Government action that interferes with:
 - A person's freedom of movement (seizure of a person)
 - A person's possessory interest in property (seizure of an object)



4th Amendment

- New Jersey v. TLO (1985)
 - 9th grade students, teacher sees smoke in restroom
 - Teacher takes girls to vice principal
 - One girl confesses, TLO stays strong
 - Vice principal demands TLO's purse
 - Searches purse

4th Amendment

- New Jersey v. TLO (1985)
 - Purse contains:
 - Cigarettes
 - Rolling papers and a pipe
 - Bag of weed
 - \$41 in \$1 bills
 - List of "people who owe me money"
 - TLO confesses to police
 - TLO is adjudicated and argues the search was unlawful so evidence should be excluded

4th Amendment

- Is the search reasonable?
 - Is the search reasonable at its inception?
 - Is the search reasonable in its scope?

Reasonable at Inception

- A search is justified and reasonable at its inception when there are reasonable grounds to suspect that it will reveal the violation of a law or school rule
 - Not in the opinion, but must be considered: does the person searching have authority?
 - SDA authorizes "a principal's designee" to carry out any function permitted by the SDA

Factors of Reasonableness

- The student's
 - Age
 - History
 - Record in school
- Prevalence & seriousness of problem
- Exigency – need to search
- Value and reliability of informant

Reasonable in Scope

- A search is reasonable in scope when the measures are reasonably related to its objectives and are not excessive in light of student's age and sex and nature of the infraction

Other Search Issues

- Vernonia* held that students have a diminished expectation of privacy in participation in extracurriculars
- Random drug tests authorized and gaining popularity
- What about searching bags before you leave on a trip?

A special note on cell phones

Dear students,
 I know when you're
 texting in class.
 Seriously,
 No one just looks
 down at their crotch
 and smiles.
 Sincerely,
 Your teacher Lili ☺

Tort Liability and Negligence



"Listen, you're not on the range anymore.
 Sometimes you're going to hear discouraging words."

Torts in Nebraska

Tort claim shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his or her office or employment, under circumstances in which the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

NEB. REV. STAT. § 13-903(4)

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Qualified Immunity



"As your lawyer, I feel I must recommend against calling the voices in your head as character witnesses."

Qualified Immunity

"[I]f a plaintiff has sued a state official in the official's individual capacity, a court must determine whether qualified immunity shields the state official from civil damages. Qualified immunity shields state officials in their individual capacities from civil damages if their conduct did not violate a clearly established statutory or constitutional right of which a reasonable person would have known."

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Qualified Immunity

Qualified immunity consists of two inquiries:
 (1) whether the facts that a plaintiff has alleged make out a violation of a [statutory or] constitutional right
 (2) whether the right at issue was clearly established at the time of the defendant's alleged misconduct.

Example 1: searching a student's phone

Example 2: punching a student

Qualified Immunity

"The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, . . . but it is to say that in the light of pre-existing law the unlawfulness must be apparent."

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Qualified Immunity

"Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments and protects all but the plainly incompetent or those who knowingly violate the law."

Questions?



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