



DEEP DIVE

## **NPC 2018: Principals must avoid these 6 legal hazards**

Erring on the side of caution can save administrators headaches in these key scenarios.

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In a packed Wednesday afternoon session at the 2018 National Principals Conference in Chicago, attorney Brian D. Schwartz gave what he called one of his favorite presentations: a rundown of a half-dozen legal hazards principals and their faculty must remain mindful of to avoid headaches in court.

While he joked that everyone knows there are really anywhere from 6,000 to 6 million legal hazards that go hand-in-hand with being a principal, his goal was to focus on the most pressing concerns in a fun but informative rundown.

### **Avoid scenarios where you're personally liable for students outside your duties**

“There are so many more lawsuits every year that name principals, teachers — everyone involved,” Schwartz said, adding that the answer to “Can I be sued?” is always yes.

Principals are generally protected as long as they act within the scope of their duties and act reasonably in the situation. They bear personal liability if they fail to act within the scope of their duties or fail to act reasonably.

As an example, he cited a common scenario especially important to share with teachers, because they do a lot of things that fall outside the scope of their duties, like giving students a ride home. If you're going to have a student in your vehicle, he said,

make sure someone else is present or that someone else is on a phone call with you so you're protected from any sort of potential accusations.

### **Appreciate the visibility of your position**

Around 97% of students remember the name of their 1st grade teacher, Schwartz said. And they always have fond memories of them. The anecdote serves as a reminder that educators tend to be held to a higher standard in their communities. Students and their families will remember, for example, if they see their principal in a place that could be deemed unsavory.

One attendee cited a scenario where she was entering a liquor store when she heard a young student exclaim, "There's my principal!"

"If you're going to drink, just drink alone in your basement," he said he always tells educators.

### **Beware of social networking sites**

On a similar note, social media can wreck havoc on educators' careers — and being friends with students on these platforms is especially perilous. One educator noted that her school tells students once they graduate, they can do so, but not before.

"If you're going to have an account where you communicate with students, do it separately from your personal account," he said.

Schwartz also mentioned a separate example of a talented, first-year 1st grade teacher who was forced to resign after a parent did a Google search and found a photo of her from college, double-fisting drinks, captioned "Sometimes school is so boring, I drink my lunch." The parent sent that photo to every parent of every student in her class, as well as every school board member, and the resulting pressure led the teacher to leave the field of education permanently.

### **Limit physical contact with students**

Physical contact should be limited to safety reasons, like breaking up fights, or educational purposes, Schwartz said.

When breaking up fights, use no more force than necessary to separate students, and break contact as soon as the students are separated. With educational purposes, consider if an action is punishment or does it serve as a teachable moment.

A teacher, for example, was sued for “intentional infliction of emotional distress on a child” for setting up a standing desk for a student who kept sleeping in class. The judge ultimately ruled that it was for an educational purpose because the teacher had taken steps to keep the student awake without embarrassing them first. The practice of having a student draw a circle on a chalkboard and stand with their nose in it is, however, questionable.

Huggers must also err on the side of caution.

“I’d never tell you in a million years not to hug a kid,” Schwartz said. There’s a lot of reasons to hug a student and they can benefit from it, but there’s also a fine line between what’s “creepy” and what’s “kosher.”

If you must hug, Schwartz advises that you control the situation, limit it to younger students, and make sure you are in a public area. You can also encourage educators to resort to the fist bump or the one-armed hug to add an extra layer of protection for themselves.

### **Don’t put yourself in the middle of family problems**

With divorced parents, both have the right to participate in their child’s education, but only the parent with custody can make educational decisions. And equal parental responsibility means don't make any changes until a joint decision is made.

Schwartz advised that when or if the second parent moves to town and requests their child's records or to be involved in educational decisions, for example, that administrators use the allotted time of 45 days to figure things out by getting a copy of

the second parent's license, checking with the other parent, etc., before providing relevant documentation.

He also said that the general rule of thumb should be that until both parents make a decision, everything stays the same.

### **Do not search student cell phones**

The U.S. Supreme Court has said cell phones are protected from unreasonable search and seizure by the 4th Amendment. And beyond that, you could also see sensitive content due to the prevalence of sexting, causing a major rift with students and parents while creating a larger legal issue.

Embracing a “bag & tag” practice can protect administrators in these scenarios. Simply have the student turn the phone off, place it in a plastic bag and seal it, and then write the student's name on the bag and take it to the school office.

Administrators only have the right to look at the cell phone if they have reason to believe something on that phone violates school policy — such as evidence of a drug sell, academic cheating, or so on. And even then, they should have the police look at the phone on their behalf.