Youth Protection and Organizational Liability in Digital Spaces

Wednesday, April 22nd, 2020
12PM – 1PM

Presented by

Bloomberg
Welcome

OUR GOAL TODAY

Provide a basic foundation on virtual communication and explaining and gaining consent from participants, guidelines for appropriate engagement, and potential organizational liabilities.

For Questions:

Please use the chat function in zoom so that we may answer them without talking over each other.

To open the chat, hit Alt and H on your keyboard.
Kim Domilici Rutan  
Counsel; Co-Chair Legal & Compliance Pro Bono Program

Kim has been with Bloomberg since 2007. Kim's practice focuses on reviewing, negotiating and advising on technology transactions, intellectual property, commercial transactions, software licensing, and general corporate matters. She has also been the co-chair of Bloomberg's pro bono program since 2019.

Ciarra Chavarria  
Staff Attorney, Education

Ciarra is responsible for Lawyers Alliance’s Quality Education program area, which focuses on providing business and transactional legal services to nonprofits that support, deliver, and improve education and increase access to educational opportunities for low-income New Yorkers. Prior to joining Lawyers Alliance in 2017, she was a senior capital markets associate at Covington & Burling LLP. Ciarra is also a former Lawyers Alliance extern.
Overview

- Organizational liability
- Online communication and interaction between youth and staff and limiting liability
Organizational Liability
When might an organization face liability for an injury to a child in a digital space?

1. Intentional action
   • this is the most publicized and most feared, but not the most common form of liability
   • examples: cyberbullying, online harassment

2. Negligence
   • unintentional injury caused by unreasonable action or inaction
   • most common form of liability
   • has four elements:
     – duty, breach, causation, damages
Negligent hiring

• A organization breaches its duty to adequately screen an applicant before giving that applicant access to children (does not use reasonable care in selecting employees)

• Three step test:
  1. Was/is the employee unfit for employment?
  2. Did the employer have actual or constructive knowledge of the employee's unfitness?
  3. Was the employer's hiring of the unfit employee the cause of the third party's injury?

• An organization is responsible for any damages caused by an employee negligently hired

• Negligent “hiring” or “supervision” can also apply to volunteers’ actions
Discrimination and Harassment

Harassment includes:

• Employee on student harassment
• Student on student harassment
• Employee on employee harassment
• Student on employee harassment
Harassment case law example

• In digital world:
  – Cyberbullying:
    • Two 12-year-olds in Florida were arrested for cyberbullying in connection with the death of a middle-school student
Online communication and interaction between youth and staff – limiting liability
Types of digital engagement

• Group sessions
• 1:1 youth engagement
• Pre-recorded videos
Relevant laws

• **COPPA ("Children’s Online Privacy Protection Rule")**
  – Applies to the collection of personal information of youth under the age of 13
    Not-for-profits generally exempt but best practice is to comply with privacy laws (provide notice and obtain parental consent)

• **State and City education privacy laws**
  – If an organization is a vendor of or getting personal information from NY schools there likely are additional contractual limitations placed on them from the schools. These can include the Family Educational Rights and Privacy Act ("FERPA"), state and city education privacy laws.
What can you do to limit liability?

Anti-harassment policy

- Comprehensive written policy
- Include anti-harassment policies in employee handbook or code of conduct
- Make sure that it includes cyberbullying and other online harassment!

• Make sure staff is trained on what’s in the policy
  - Even if your policy already covers it, make sure you staff understands how it applies in the digital environment
What can you do to limit liability?

Waivers, releases or parental consents

- Participation consent/waiver
- Media release
- Parental consent

A note on enforceability:

- Waivers/releases have limited enforceability
- BUT can serve as a deterrent to litigation, help evidence that parents were informed
What can you do to limit liability?

Media releases

– Photo, video, interview, voice
– Include all uses, including online meetings or videos
– No compensation will be given
– Permission to use the name of the child
What can you do to limit liability?

Recording an online session

- NY is a one–party consent state, meaning you can record so long as you have consent of one party
- But you should notify students and parents if you plan to record
- If to be made available to anyone outside of those participating in the session, *should* have consent – this can be added to your media release
- recording should *not* be used for marketing and publicity
What can you do to limit liability?

Codes of Conduct

• For employees and staff
  – agreement to follow laws and regulations
  – agreement to behave professionally
  – specific responsibilities
  – limitations on relationships between staff and youth
  – provisions on confidentiality
  – anti-discrimination and harassment

• For students
  – abide by rules of program
  – explain how misconduct will be handled
  – anti-harassment
  – bullying/ cyberbullying
What can you do to limit liability?

Communicate with all parties involved
- Employees, students, parents
- Create updated documents that address changes to learning due to coronavirus
- Obtain updated parental consents
What can you do to limit liability?

Insurance

• Existing coverage should be sufficient
• Notify your malpractice carrier so they are aware the risk profile has changed (presumably the carrier is already generally aware of this anyway)
Breakout Discussion

Prompt Questions

• What issues (on this subject) are you most concerned about?
• What other information have you learned about this topic outside of today’s presentation?
• What questions do you still have that could be addressed in a follow-up session?

Instructions:

Please copy + paste the link in the chat box to open the google slide deck to use for the breakout discussion. Select someone in the group to take notes and capture additional questions.
Reflection

What is one thing you learned or will take away from this session?

Please write your response in the chat box for us to read a few out loud.
A BIG THANK YOU TO
Kim & Ciarra
Announcements

Webinar
Making the Ask – Fundraising through a Pandemic
*Thursday, April 23rd 11:00 AM – 12:00 PM*

Learning Collaborative
Fundraising: Transitioning to Virtual Event (Meeting #2)
*Tuesday, April 28th 12:00 PM – 1:00 PM*

Webinar
Metrics Program and Hello Insight Update
*Thursday, April 30th 2:00 PM – 3:30 PM*
Recommended for: Current Metrics Programs, Alumni, and Hello Insight Users ONLY.

*Find the registration link in the chat box or email Marc Fernandes, mfernandes@youthinc-usa.org*