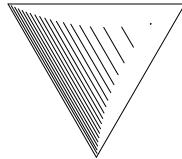


**LIABILITY EXPOSURE  
AND  
RISK MANAGEMENT  
FOR  
SCHOOLS  
WITH  
AUDITORIUMS OR THEATRES**

Courtesy of

**Teqniqal Systems, LLC**



By  
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*"At the time of the accident, due to required education preparation and certification requirements, teachers and school administrators in the case would have known that, under our constitution, each individual has the right to the inviolacy of his/her person, and not be the subject to injury caused by acts by public school officials. The circumstances revealed in this case clearly demonstrate indifference by school district employees for the safety and well being of students in their care and custody. That indifference is demonstrated in the district's lax development of policies and procedures, and the non-existent in-service training of personnel to ensure that the policies and procedures in the matter would be understood correctly and strictly followed....everyone involved demonstrated deliberate indifference to equipping or re-installing safety devices. If safety devices were actually removed and not re-installed, such removal by school employees was simply a much more egregious act of indifference toward the safety of students."*

Provided as part of the message to the Court where two children were fatally injured and a third child permanently injured while involved in school activities. The case is built upon the premise that the teacher involved, and the teacher's superiors, were allegedly negligent or at least indifferent to the expected standards of duty and care. [Ref: 1]

**What happens when a student is injured in your theatre?** The immediate concerns of medical attention and parental notification are readily handled by most teachers and school administrators, but the aftermath of the event can be a legal nightmare. Tort liability for negligence continues to be a nemesis for school managers of assembly spaces, be they auditoriums, arenas, stadiums, or gymnasiums. Preventive planning can reduce the possibility of litigation and provide a safer place for children and adults. This planning should include a formal risk management program that encourages proper instruction, supervision, and maintenance of the facility -- for managers and users alike.

**The focus of this article is to delineate the schools' liability for personal injury that may result from negligent maintenance or improper use of facilities or equipment.** Most Courts categorically state that because a school holds, manages, and maintains property and equipment, the school is accountable for damages resulting from an accident that is due to the school's improper maintenance, mismanagement, or negligence. The accident may involve injury to a person or damage to the property of others.

When an injury occurs on school property, the Courts must determine what a school should or should not have done in a particular situation to avoid the possibility of injury. When an injured party sues a school claiming the school was liable for knowingly allowing a dangerous condition to exist, they must show this to be true. If there was, in fact, a problem, the school does not even have to have been aware of it. **Knowledge of the condition of the equipment or building is not required for negligence to be a factor** (one cannot just say: "Well, we didn't know . . ."). However, if the Court rules that there were no "hidden or apparent" defects in the equipment or building, then, the case may be dismissed.

The criteria for liability includes whether school officials learn of facts or patterns of behavior pointing plainly toward negligence, and whether they demonstrate "deliberate indifference" by failing to take action that is "obviously necessary". This is where a good paper trail of accident, maintenance, and disciplinary reports can become important and useful.



In determining a school's liability for damages, Courts have traditionally asked, "What would a reasonably prudent person (the school) have done in a similar situation?" In typical negligence suits, various Courts have described this hypothetical "prudent person" as one capable of average knowledge and ordinary skills. However, because of the special relationship between the school and the students, and the professional status of educators; *Courts have consistently held educators to a higher standard of duty and care than is expected of average persons.*

Under normal circumstances, four elements must be present to constitute actionable negligence:

1. A duty [to provide protection or proper equipment] must be owed.
2. There must be a failure to perform this duty.
3. A close connection between this failure and the injury must exist.
4. An actual loss or damage (injury) must result.

Any action that falls below the expectations of the Court for "prudent" educators and results in an injury could be interpreted by the Courts as negligence. On the other hand, an accident that could not have been prevented by a reasonably prudent educator is not the result of negligence.

### **What is an accident?**

The definition of an accident is more complicated than one would think. The separation of the actual "accident" from the cause, the resulting damages and injuries, and the handling of the event, can be the fuel for a multitude of legal actions. **The National Safety Council states that an accident is "that occurrence in a sequence of events which usually produces unintended injury, death, or property damage."**

Several factors that weigh strongly in the determination of an accident are:

- **The degree of expectedness:** The less the event could have been anticipated, the more likely it will be labeled an accident.
- **The degree of avoidability:** The less the event could have been avoided, the more likely it will be labeled an accident.
- **The degree of intention:** The less the event was the result of deliberate action (or *inaction*), the more likely it will be labeled an accident.
- **The degree of damage:** The more injury, death, or property damage resulting from the transfer of energy during the event, the less likely it will be labeled an accident. The energy transfer may be chemical, thermal, electrical, and/or mechanical in nature.

The Courts have consistently held schools liable for injuries when they have knowingly left or provided a dangerous environment. This "environment" may be classified as equipment likely to be frequented or used by curious or adventuresome students. Auditorium stages, scene shops, catwalks, and fly galleries are all areas that should have *monitored access*.



Additionally, **students and volunteer workers should be continuously supervised.** If a student is injured, whether or not that student should have been there, the student may be successful in bringing suit against the school for negligence-premises liability and for willful and wonton [mis]conduct. The Courts have stated: *"...a dangerous condition could be found to exist if the School . . . were shown to have permitted a situation where injury was likely for a child (student), who by reason of age and maturity, would not be expected to comprehend and avoid the attendant risk."* [Ref: 2]. The age of the child (student) and their ability to comprehend danger must be taken into consideration by school officials in establishing normal property management and equipment exposure.

Theatre Stages, Auditoriums, Scene Shops, Control Rooms, and Catwalks are obvious attractions for those curious individuals not trained in their use. This makes these areas an "attractive nuisance". An ugly label perhaps, but none-the-less, a potential problem. Policies regarding access, supervision, and use must be established and strictly enforced. It is possible to maintain positive control without alienating the students and staff — *its called politics.*

Drama and Music students should be trained to work in a theatre or auditorium and be made familiar with all of the equipment and safety procedures — not just turned loose to "be creative." The student's judgment will grow with their maturity and improve with the quality of education provided, be it verbal, textual, pictorial, or tactile. Instructors that use the facility and supervise the students, volunteer staff, and outside users must be trained as well, otherwise they can't provide instruction and oversight regarding the safe and proper use of the space.

**FACT:** Most drama and music teachers have no formal background in technical theatre or safety management. Their academic credentials are typically in English or Music, and occasionally they may have some experience with the dramatic interpretation for theatre. Therefore, it is imperative that the school have multiple staff members that are trained to safely manage a performing arts facility. One of these designated trained staff members should be present at all times the facility is in use.

### **Affirmative Duty**

A school has the affirmative duty to exercise reasonable care not to provide equipment or buildings that it knows, or has reason to suspect, are dangerous for their intended use. Some jurisdictions have rephrased this standard of care, requiring an affirmative duty to supply effective equipment. This does not mean that students cannot use table saws, counterweight rigging, or air staplers — it does however imply that **they must be shown the proper way to use, store, and maintain the tools to which they have access.** Safety comes through shared knowledge, not necessarily personal experience.

Students can file suit if they are injured during a required exercise. They can claim negligent failure to protect their rights, failure to provide a safe educational environment, and a violation of their civil rights [Ref: 1]. The Courts have consistently ruled against schools and their employees when equipment and/or facilities were shown to be improperly maintained. Almost every piece of equipment or technical system can become the basis for a lawsuit if it has not been regularly and properly maintained. **It should be noted that equipment inspection is part of a maintenance program and not a preparation for one.**



To avoid injury to students and others, as well as possible lawsuits for negligent liability, educators are held accountable for the proper maintenance of equipment, facilities, and real property under their control. To see that equipment is kept in proper working order, good records must be kept, warranties obliged, and proper accessories used. It is extremely important that everyone understands that they will not "get in trouble" or be punished for reporting damaged equipment. *If anything, they should be rewarded!* There should be no negative repercussions for the students, staff, and guests who report a safety concern in good faith.

## **Inspection**

The inspection of equipment and facilities has been defined by the Courts as a general responsibility that must be fulfilled continuously. The inspection must include both fixed and movable equipment, technical systems, floors, ceilings, walls, fixtures, and seats. Teachers, Principals, and all other school employees, even students and visitors, should be encouraged to report any dangerous conditions to the proper authorities. Problems should be isolated until the hazard can be made safe. If the school does not have personnel qualified to make a proper inspection and safety analysis, then they should seek out a non-proprietary specialist (i.e. a Theatre Consultant) to perform this function. Once a safety assessment has been presented, a regular safety program can be developed.

## **Risk Management and Assessment**

The best alternative to litigation is precaution. To reduce the risk of litigation and to protect the health and safety of students, guests, and employees, schools should develop a Risk Management and Assessment Program that is *unique to each facility*. Every theatre is different, and they are certainly not the same type of space as a gymnasium, classroom, or library.

A good **Risk Management and Assessment Program** should include, at a minimum, the following:

1. Policies, procedures, and records which could demonstrate that reasonable care has been taken in the purchase, use, teaching, and maintenance of facilities and equipment.
2. Training of Employees, Students, and other users of the facility. Training should include First-Aid, CPR, knowledge of location and proper use of fire control and alarm systems, and accident reporting procedures. Training should also include proper and safe operation of the technical systems.
3. A regularly scheduled inspection program indicating dates and describing all the items inspected and their condition.
4. Standard procedures for notifying all users of the space and equipment when potentially hazardous conditions are known or suspected. Procedures for isolating hazards from use.
5. Ensure all personnel that NO penalties will be directed toward them for reporting damaged or hazardous equipment. Make *everyone* part of the safety team.



## **Maintaining a Safety Program**

With a good safety program in place, the need for outside consultation is reduced, but not eliminated — an outside, unbiased perspective should always be brought in on a regular basis to see that the program has maintained its goals and effectiveness. It is recommended that this type of assessment occur approximately every three to five years. It may have to occur more frequently if there is a turnover in staff for the theatre facility. Another factor that can deteriorate or dilute the safety training is that much of this ‘tribal knowledge’ is passed-down from class-to-class each year by the students. Although well intentioned, students are notoriously unreliable when translating or repeating facts from one student to the next.

Many facilities require that new students and staff complete a ‘safety boot camp’ before they are permitted to use a facility. This can give them first-hand knowledge from the designated trainer so nothing is ‘lost in translation’.

## **Renovation Planning**

When renovation of buildings or equipment is planned, safety improvements should always be part of the program. Replacing a worn-out piece of equipment with the wrong item can be just as dangerous as leaving the system in disrepair. New equipment, if it is inappropriate to the task, provides a false sense of security to the user. This can lead to an accident just as surely as broken-down or worn-out equipment.

When in doubt, hire an independent consultant to make recommendations on a course of action. Good intentions count for little in the courtroom. The same is true for disposing of equipment that is replaced: Do not leave condemned equipment lying around to be scavenged — dispose of it immediately and properly. Always obtain written warranty statements for new equipment from manufacturers, suppliers, and contractors. These statements should explain the limits of the warranty and the expiration date, if any.

All persons must make every effort to ensure that the facility and equipment is as safe as possible through an on-going process of risk management. Preventive maintenance can save more than money — it can save lives.

## **Epilogue**

Now that you have read this treatise, are you any more insulated from charges of negligence? Unfortunately, *no*. In the Court’s view you now have heightened awareness of your responsibilities. Therefore, you should know better than to allow unsafe activities, equipment, or facilities to be used by yourself or your students.

So, what can *you* do? **Get to work on your safety program!** Document any and all items of concern and pass them up the chain of command to your superiors. Copy this treatise along with it. It can be used freely to help those not familiar with theatre to recognize their responsibilities and, hopefully, act upon them.



### What to look for:

- Building Code Violations (Steps, stairs, railings, doors, aisles, exit routes, signage)
- Fire Code Violations (Fire containment, suppression, & extinguishing systems, alarm systems)
- Electrical Hazards (Wiring, grounds, lighting, dimming, control)
- Personnel Hazards (Sharp corners, trip hazards, fall hazards, training, security)
- Chemical Hazards (Make-up, paints, adhesives, solvents, fire retardants, ventilation, asbestos)
- Mechanical Hazards (Rigging, portable staging, platforms, lifts, cables, ropes, stage anchors)
- Tool Hazards (Guards, wiring, protective clothing)
- Thermal Hazards (Heat shields)
- Drapes, Costumes, & Properties (Correct use of fire retardants, non-flammable materials)

**Remember:** Just because you've "always done it that way", *doesn't make it safe!*

Sign observed on scene shop wall:

**Please feel free to ask stupid questions.  
They are a lot easier to deal with than stupid mistakes.**

### REFERENCES

Ref: 1: Con. Cas. vs. Hall, 761 S.W. 2d 54 Texas App. Ct.-Houston, 1988

Ref: 2: Kirby vs. Macon Public School District Number 5, 523 N.E. 2d 643 Ill. App. Ct., 1988.

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