

ALERTS

Independent Schools Should Review Student Travel Policies in Light of Recent Jury Verdict

April 22, 2013

A former student at The Hotchkiss School won a \$41.75 million dollar jury verdict against the school for injuries sustained after contracting tick-borne encephalitis while on a school trip to China. The student's attorneys argued that Hotchkiss, a private boarding school in Connecticut, was negligent in allowing students to walk through an area known for insect-transmitted diseases without taking safety precautions. The lawsuit further alleged that the trip leaders "did not appreciate the significance of the initial symptoms of the illness" and lacked protocol for handling medical emergencies. Plaintiffs alleged that parents were told that the trip went to three urban centers: Beijing, Shanghai and Tianjin. The school's trip leader failed to communicate that a hike in a rural area, 100 kilometers from Tianjin, was part of the trip.

Hotchkiss argued that infections of this sort are so rare that they are not reasonably foreseeable or preventable. After eight hours of deliberations, the jury found that the school was negligent. The school intends to appeal the verdict.

In light of this verdict and regardless of what happens on appeal, all independent schools should review their travel policies and procedures, including medical documentation, emergency protocols, and permission forms and releases. Some specific considerations/best practices include:

- *Permission forms/releases.* Schools should always have students and parents sign permission slips specifically allowing a student to attend a

trip, and a release to protect the school and school employees. In New York, releases from gross negligence are rarely enforceable, but a well drafted release can still serve to protect a school from most other claims. It is important that permission forms and releases be as detailed as possible. They should include detailed lists of the risks specific to the trip. The U.S. State Department and the Center for Disease Control should be used as resources to identify current risks in particular areas. Additionally, all permission forms should indicate how much supervision by school employees will be provided during the trip and clearly state if students will be unsupervised at any time during the trip.

- *Emergency procedures.* Every school should review their emergency procedures during trips, especially when travelling abroad. The procedures should be reviewed and updated regularly and, where appropriate, should include procedures specific to the location of the trip. The procedures should specify who has the authority to decide when there is a crisis and next steps. Emergency protocols should be clearly communicated with faculty, trip supervisors, students and their families. In the Hotchkiss case, it was alleged that the trip leaders had no medical training, did not appreciate the significance of the initial symptoms of the illness, had no protocol for notifying parents and failed to undertake pre-trip planning and make pre-trip arrangements for the transfer back to the United States of students with medical emergencies.
- *Insurance.* Schools should contact their insurance providers to ensure that they have appropriate coverage for all trips. Some schools purchase kidnap/ransom coverage, for example, if they are travelling to a dangerous area. In light of the Hotchkiss case, schools should review their coverage with their providers.
- *Due diligence.* Schools should research travel plans in advance, including itineraries and accommodations. If students are staying with host families, schools should ensure background checks are conducted, living accommodations are satisfactory, etc. In the Hotchkiss case, it was found that the trip leaders failed to require the students to take proper precautions against potential mosquito or tick bites, such as requiring the students to wear protective clothing or utilizing protective insect repellent.
- *School sponsorship.* Schools frequently permit a faculty member, parent or outside organization to organize a trip. If a school allows such an

arrangement, the school must make it clear to students, parents, teachers, insurance providers, etc., that the event is not school sponsored or endorsed. The organizer and all participants and their parents should be required to acknowledge that they understand that the trip is not school sponsored.

School-sponsored travel always involves some risk. By properly identifying risks, communicating the risks with students and families, and maintaining proper releases, insurance and emergency protocols, schools can both minimize liability and protect students.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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