



K-12

INDEPENDENT AND CHARTER SCHOOLS

RISK in Focus K-12 | Independent & Charter Schools

Background

In this paper, we'll explore some of the critical risks that faculty and administrators of K-12 independent and charter schools face on a daily basis and identify strategies that can help them reduce those risks.

Independent and charter schools educate roughly 10% of all K-12 students, but the overall number of students they support (5.7 million) has declined slightly in the last two decades.¹ That may be concerning given that these institutions offer an alternative learning experience and education environment compared to traditional, public K-12 schools.



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Teacher Staffing Level

Background

Due to COVID-induced remote teaching arrangements in the 2019 and 2020 school years, K-12 teachers faced extremely frustrating and challenging working conditions. It wouldn't have been surprising to see faculty and staff leave the profession in droves, burnt out from trying to monitor, let alone inspire, their students from afar.

However, likely as an indication of their devotion to their careers, schools, and students (and their personal finances), K-12 faculty resignation rates were not significantly different in 2020 and 2021 from previous years.² But that shouldn't be surprising given that few people in service industries voluntarily left their jobs in the midst of COVID.

With COVID health risks continuing to recede (and assuming the Omicron variant is not ultimately any more severe than the Delta variant), classrooms are returning to normal – with one exception. Educators anecdotally report that it may take a year of in-person teaching before students redevelop the necessary classroom discipline and study habits they displayed before 2020.

Thus, teacher frustration will not end when classrooms are full. And with a multitude of job openings in many other service industries, K-12 teachers will be tempted to join the Great Resignation. Those nearing retirement age may retire a few years early – just like workers in their 60s in other industries are doing.

If the leaders and administrators of independent and charter schools aren't actively working to retain their faculty and staff or preparing to replace those that do choose to leave, they may be faced with unworkable class sizes and budget overruns, given that K-12 faculty member turnover has been estimated to cost between \$15,000 and \$20,000 per teacher in urban charter schools.³

Hazards Contributing to the Risk**Hazard 1: Failure to Maintain Reasonable Class Sizes**

To their credit and society's fortune, one of the most important reasons teachers get into this field and remain in it is the opportunity to make a difference one-on-one with their students.

Further, teachers report that one of the working conditions that facilitates this connection the most is small class sizes.⁴ This not only keeps workloads manageable but allows for sufficient time for greater individual interaction and personal guidance.

This is more important than ever as students and teachers re-adjust to in-person teaching and the resumption of pre-pandemic performance levels for both.

Hazard 2: Not Offering Better-than-Competitive Financial Compensation

Independent and charter K-12 schools tend to reward quality teacher performance, perhaps more-so than their counterparts in a unionized work environment. But all too often teachers need to change jobs and move to other schools to realize a significant salary increase.⁵

K-12 teachers know their industry. They talk with teachers from other schools at independent and charter school professional conferences. They review job postings and make a note of salaries.

The school's administrative staff should not overestimate a teacher's commitment to the school itself. After a teacher's students have moved on to the next grade and that teaching professional is faced with preparing to "start all over again" with a new class, all other things being equal they're probably open to accept a salary increase to bring their talents to another school. Independent and charter school leaders must find a way to reduce that incentive by being that school through top salaries and the opportunity to earn salary increases.

Hazard 3: Inadequate New Teacher Onboarding

New teachers are a valuable commodity these days. If administrators provide a good experience in ways that matter in the first year or two, they improve their chances to keep them on staff for the long term. Providing a supportive initial experience is critical. A strong onboarding program includes⁶:

- + Getting perspective from last year's new teachers on what areas of support were lacking or most helpful.
- + Beginning onboarding activities with new teachers before other teachers arrive.
- + Structuring and facilitating professional bonding for new teachers by arranging sessions for them with existing faculty and staff in lunches, coffees, and other social settings.
- + Arranging for regular one-on-ones with school leadership teams. These should be structured as listening sessions rather than advisory sessions.
- + Providing mentors and coaches. The two functions are not the same. Mentors are the more experienced peers, while coaches are experienced professionals who can train teachers on certain skills.
- + Encouraging and facilitating informal discussion sessions strictly for the new teachers so they can compare notes and thoughts more openly.



Hazard 4: Neglecting to Offer Well-Being Support

In the midst of the remote learning environment (which was a remote learning experience for most faculty as well), most teachers reported feelings of stress, anxiety, sadness, loneliness, and being overwhelmed. In short, they were feeling burnt out.⁷

As noted, the return to in-class instruction has come with its own area of stress as K-12 students and teachers try to make up for lost time and regain prior learning and teaching habits and school year rhythms. No doubt in many ways the K-12 experience will be changed forever and certain of these areas of teacher stress will remain, such as occasions of remote learning.

Ongoing mental health and well-being support for teachers will be a critical element of employer-provided faculty benefits for the foreseeable future. Schools that offer it will be favored in the labor marketplace and will be in a better position to minimize the impact of the Great Resignation at their schools, as discussed below.





**Cases of
Inappropriate
Sexual Conduct
and Abuse**

Background

One of the most troubling threats and scenarios facing K-12 independent and charter school administrators are instances of inappropriate sexually charged interactions between students and teachers to the point of criminal behavior in this regard. Psychological damage to the student is the most concerning outcome of these cases. And the resulting damage to the school's reputation, its ability to retain current students and attract new students, and parental lawsuits all can combine to threaten the school's very existence.

There's good reason for faculty and staff to be vigilant about inappropriate sexual conduct. A 2017 report from the Office of Justice Programs within the Department of Justice estimates that 10% of K-12 students will be victims of sexual abuse before they graduate.⁸

Appearances can be deceiving. All too often the teachers that violate a student's trust in this way are overachievers. They're likely to be popular teachers who are especially adept at relating to students and who can create empathetic bonds based on trust and understanding – situations that the student may not enjoy in their home life. It's a small step from there for the relationship to become inappropriate for a vulnerable young person.⁹

Hazards Contributing to the Risk

Hazard 1: Inadequate Attention to Preventive Training

Well over half of the states have passed Erin's Law, which requires public schools to implement a training program to prevent sexual abuse. The training is directed in three primary areas: students, school personnel, and parents/guardians.¹⁰

Independent and charter schools in all states should follow this model to prevent these situations before they arise and halt them quickly when certain situations come to light.



Hazard 2: Failure to Maintain a Clear and Specific Code of Conduct

All staff at an independent and charter school – from the administrators to teaching assistants to the school’s maintenance team members – must conduct themselves in accordance with a rigorous and detailed code of conduct regarding interaction with students.

The code should be clear that there is no such thing as an appropriate, “consensual” relationship between a staff member and a student. The code should address a variety of situations in detail, including meetings and excursions off campus and the conduct of one-on-one meetings at school.

Students should be made aware of these policies as well, with age-appropriate explanations, so they can avoid these situations and understand when a situation is inappropriate. Students should be strongly encouraged to ask questions about these standards and to talk with trusted counselors. They should also be encouraged to report situations (via an anonymous system) where they suspect a faculty or staff member is crossing boundaries with them or a classmate.

The codes of conduct are first and foremost for the protection of students, but to the extent that underwriters choose to offer liability coverage for sexual misconduct, they’ll insist on seeing these standards in place and enforced.

Hazard 3: Lack of a Detailed Reporting Structure for Claims of Misconduct

Unfortunately, many recent sexual misconduct scandals widely reported in the past involved cases of repeated offenses by the same assailant. This may be an indication that the victims did not feel empowered (or knew how to) report the situation. It’s also an indication that administrators may not have followed up regarding an initial accusation.

Schools should implement an incident reporting process that will thoroughly address every student complaint and accusation. The reporting processes should comply with legal requirements and address how complaints are received, the investigation requirements, data and information management, and confidentiality assurances.

Similarly, when a faculty or staff member suspects that a colleague is violating these standards there should be clear, mandatory reporting procedures in place using safe reporting processes.¹¹ They should understand that failure to report in this way might later be considered enablement.

And as with the code of conduct, insurers will more often than not insist that independent and charter K-12 schools have these strong reporting processes in place.

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Hazard 4: Failure to Obtain Legal Liability Coverage

As noted, it may be difficult to find an underwriter willing to provide a D&O rider or other liability coverage for sexual misconduct by a faculty or staff member at a K-12 independent or charter school. This coverage will likely be easier to obtain, though, if the institutions are doing the right thing in terms of enforcing standards and procedures as described above.

But when it comes to retroactive claims for accusations regarding faculty or staff conduct in years past, there's little the institution can do but investigate it as best they can, perhaps using a credible third party, and then be open and forthright about their findings. They may not be able to avoid a monetary settlement but at least this transparency and ownership might help minimize reputational fallout from the matter.

The Limited Availability of Excess Liability Coverage for Education Institutions

Due to the recent proliferation of very high judgments for cases of sexual abuse and molestation (SAM) and inappropriate contact, as well as "reviver laws" that allow for the rollback of statutes of limitation in these areas, insurance providers have become extremely cautious in their underwriting of Excess Liability policies for educational institutions. They are often excluding many areas of coverage or reducing limits, while simultaneously increasing their premium rates.

Background

Excess Liability insurance (sometimes called an Umbrella policy) is purchased by organizations of all types to increase limits of their underlying General Liability (GL) policies. The amount of coverage is often driven by the potential severity of liability claims as benchmarked against the historical loss history in their industry.

Excess Liability policies are usually (but not always) "following form." That is, they are subject to all of the terms and conditions of the primary layer of insurance. This creates a particularly unique challenge for educational institutions, given the broad coverage contained in the underlying forms, including the consideration of high-severity claims like SAM and Traumatic Brain Injury (TBI).

Actuaries at Excess Liability carriers now find themselves challenged to accurately price premium, prompting many carriers to leave the market, which, in turn, reduces capacity for coverage. Furthermore,

given the level of risk educational institutions face, those carriers that remain are highly selective in the risks they choose to underwrite. The resulting impact on the simple economic law of supply and demand has driven rates higher for the past three years and is making many schools wonder if this is the "new normal."

Implications

In the current environment, an education institution (especially one that's experienced a SAM or similar judgment) may not be able to obtain any Excess Liability coverage. And even schools with clean loss histories should prepare for increases in their premium, while carefully reviewing policy terms for changes in coverage.

While proactive risk management has always been a key component in controlling insurance costs, it has become more imperative than ever for school leadership and the board of directors to develop strategies that mitigate the possibility of claims. We strongly encourage the development of Enterprise Risk Management Committee, with stakeholders from throughout the organization. The ERM Committee would be charged with identifying, implementing and monitoring a full range of safety policies and employee training. They should collaborate with trusted advisors like legal counsel and insurance brokers who often have access to resources and services to make the school's risk management program comprehensive and effective.



Cyberattacks + Data Security

Background

According to a recent U.S. Senate report, cyberattacks at K-12 schools increased three-fold between 2018 and 2019 and climbed another 18% the following year.¹² As the schools continue to deal with in-person, remote, and hybrid teaching environments, opportunities for cyberattacks will remain.

Cyber threats, such as data breaches, denial of service attacks, and ransomware can significantly disrupt education, expose sensitive personal information of students and staff, and result in high recovery costs.¹³

Hazards Contributing to the Risk**Hazard 1: Inadequate Staff Training**

In nearly every working environment, including K-12 independent and charter schools, user error proves to be a critical weak link that opens the door to cyber infiltration. When faculty and staff click links or open documents within a phishing email, they can grant cybercriminals access to the user's account and ultimately to the institution's entire system. Accessing the school's IT systems via public Wi-Fi is also a significant risk staff members must avoid.

Once they've infiltrated the system, cybercriminals can also begin a new round of internal and external phishing by taking over that user's account and sending seemingly legitimate emails asking for additional confidential information.

Cyber criminals are experts at social engineering,¹⁴ the art of subtly leading an employee to divulge sensitive information or take other dangerous steps they would never make if they stopped to think twice about that action. These kinds of attempts and attacks will continue, and this valuable personal identification information will be vulnerable, if schools don't offer ongoing training about cyber risks and what to look for with these phishing emails. Some organizations go so far as to periodically send test phishing emails to their staff to evaluate vulnerability and provide training moments.

Cybertheft prevention training must stress the need for strong passwords, the dangers of using public Wi-Fi, the risks of using removable media like USB sticks, the importance of keeping personal accounts and professional account activity separate, adherence to rigorous backup protocols, the use of multi-factor authorization (MFA), and how to report an issue or incident.¹⁵

Hazard 2: Assuming that All Risks are External and Criminal

Not all data breaches are due to active hackers. “Inadvertent insider” missteps and the loss of equipment can expose personal sensitive data as well. These lapses include:

- + Attaching confidential data within unsecure messaging or sending secure information to the wrong party
- + Failing to secure property (such as laptops and USB drives) from theft
- + Neglecting to shred confidential written information
- + Misplacing material and devices

Hazard 3: Failure to take a Comprehensive Approach to Minimizing Cyber Risk

Unless K-12 independent and charter schools adopt a holistic, high-level approach to minimizing cyber risks, they'll continue to be behind the threat curve, responding to hacks and piecemealing their preventive actions.

The ideal systemic, proactive approach requires establishing baselines, protocols, and standards regarding:

- + The range and volume of confidential information the institution requires
- + The range and volume of the confidential information that's in their custody
- + All of the pathways for cyberthreats the institution must account for
- + The overarching security principles that should guide the implementation of specific solutions. (These can include, for example, limiting access overall, utilizing MFA procedures to grant access, firewalling caches of confidential information, and integrating other hardware and software solutions)
- + Accountability for putting the agreed-to cyber-risk mitigation strategies in place, keeping them updated and suggesting enhancements moving forward
- + Thoughtful and efficient system configuration

Hazard 4: Not Keeping Cybersecurity Top of Mind

Administrators at K-12 independent and charter schools have many imperatives on their plates as they manage their programs day to day. Obviously, student education, experience, and safety should be their primary considerations. But they must also make cybersecurity an ongoing staff and student focus through daily reminders about risk scenarios and by sharing true stories of cyber intrusion at other schools – the errors that were made and the consequences.

Faculty and staff should be made acutely aware that cybersecurity is critical ... to the point that educators and support teams are also in the business of data protection. To have the most impact, these messages must come from the very top, not delegated to the assigned IT security staff member. And these leaders must completely understand the issues and speak the language of cybersecurity so they can credibly communicate that message.



RISK in Focus



**Active
Assailants**

Background

Overall, K-12 schools are relatively safe (children are far more likely to be shot in a restaurant, for example¹⁶), but no one should overlook the fact that a 2020 analysis found that over the past 50 years, there have been 1,273 K-12 school gun violence incidents in which 728 children were killed and nearly twice that many injured.¹⁷ In the later grades, students can struggle with social/interpersonal challenges, substance abuse, group rivalries, mental health crises, and impulsive behavior that can spark these assaults.

We'll never forget the horrific events at Columbine High School in 1999, the Red Lake Indian Reservation High School in 2005, the West Nickels one-room Amish schoolhouse in 2006, and Sandy Hook Elementary School in 2012.

Hazards Contributing to the Risk

Hazard 1: Failing to Offer Sufficient Mental Health Support in Schools

While most if not all independent and charter schools have counseling services – especially at the high school level, all too often these services are, or are perceived to be, crisis intervention-related only. Crisis support is an important service to be sure, but this perception may prevent a student from seeking the kind of ongoing support from a mental health professional that can keep the student on an even keel. Non-crisis counseling can prevent the kinds of festering and spiraling situations that can bring a seemingly well-adjusted student to the point of despair and revenge.

All through their K-12 experience, students must be reminded that a periodic mental health check-in is as important and conventional as a medical well-visit exam. Students should also be assured that no problem or concern is too small to bring to a counselor so the student can maintain a proper perspective about the matter and explore solutions.

In turn, by encouraging this volume of student access, the school will need to maintain a robust staff of qualified counselors.



Hazard 2: Failing to Conduct Student Training/Education

Most people in the vicinity of an active assault situation freeze. That's an understandable reaction when something so foreign happens in such a familiar and nurturing place – the learning and social environment of a K-12 school.

The goal of active assault response training is to shorten that freeze reaction by reviewing threat scenarios in a variety of campus settings: cafeterias, classrooms, gymnasiums, the football field, and other unique locations. This exercise will help students, faculty, and staff recall and take the right response steps in the critical first moments of an actual assault situation.

This training should also include guidance on recognizing signs of danger, how to safely report a situation, reviewing "safe spots" for sheltering in place, and identifying various exits at each location. No detail is too small. The drills should include minor matters that can make a big difference, such as how the windows open and the doors lock.

Whether the first sign of the assault (perhaps a stabbing or a single shot) is part of a confrontation between two people or the beginning of a larger even more unfortunate event, the training should reinforce the message that students, faculty, and staff should assume the worst and respond accordingly.

Hazard 3: Failure to Maintain Appropriate Insurance Coverage

Just as in any other work setting, administrators at independent and charter schools should clearly understand the institution's liability and financial exposure has regarding violence that occurs on their grounds. Beyond medical bills, there are costs related to psychiatric care, counseling, public relations, facility closures, facility repair, and much more.

The liability and the expenses related to these violent acts and/or threats become very real very quickly. Many standard policies don't cover an active shooter or school violence incident. The policies that do, however, likely won't pay for ancillary things like crisis management and related expenses.





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