



101 Greenwich Street, 22nd Floor
New York, NY 10006

An illustration of a man in a black suit and white shirt standing between two tall, orange pillars. He has his arms outstretched, touching the pillars. In the background, several white pillars are leaning at various angles, creating a sense of instability or crisis. The entire scene is set against a solid blue background.

Managing Crisis Before the Crisis

BY: KENNETH PITCOFF AND ANDREA ALONSO

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I. Examples of Poor Crisis Handling

Student Racial Gestures



Student Racial Gestures

Date of Occurrence: December 9, 2021

What Happened: Racial remarks from a student at a primarily white school were made at students from a primarily black school during a basketball game.

How the Crisis was Handled: The student got a three-day suspension.

The Bellmore-Merrick Central School District Superintendent sent parents a letter to address the incident.

The Mepham superintendent said he reached out to officials at the Elmont School District. He also wants parents to have a heart-to-heart conversation with their children about the harmful effects of racism and intolerance.

Sexual Misconduct by Teachers and Coaches



Sexual Misconduct by Teachers and Coaches

Date of Occurrence: December 8, 2021

What Happened: Over a dozen former students at Babylon High School came forward with sexual abuse allegations against their former teachers.

How the Crisis was Handled: Five teachers were placed on paid leave during investigations. No charges have been filed.

Babylon's schools' superintendent did not respond to the allegations. A spokeswoman for the school district declined to respond to any specific incidents but stated that the school was investigating.

The Crime Victims Center will begin providing sexual harassment training for all school personnel. The center will also conduct training for employees on their obligation to report child abuse or neglect.

Death at Football Practice



**BREAKING
NEWS**

**L.I. Teen Dies From Injury
During Football Practice**

12:00 80°
CBS 2
CBSNewYork.com

CBS
New York

Death at Football Practice

Date of Occurrence: August 18, 2017

What Happened: A 400-pound log struck a Long Island high school football player in the head during a preseason conditioning practice, killing him instantly.

How the Crisis was Handled: Several coaches declined to comment.

The superintendent of the Sachem Central School District said that the district was not involved in the training camp. The practice was overseen by the Sachem East Touchdown Club, which raises money for the football club. The president and vice president for the club did not return calls requesting comment.

The district said that in addition to a police investigation, an internal district investigation had been opened.

High School Football Hazing – Locker Room



High School Football Hazing – Locker Room

Date of Occurrence: November 8, 2014

What Happened: Two high school upperclassmen used an unsupervised locker room as an arena to haze and bully a freshman teammate, going far beyond any reasonable limits and into criminality.

How the Crisis was Handled: School officials cancelled that Friday's football game and announced a committee to revise the code of conduct to more explicitly lay out language, expectations, mechanisms to prevent recurrences.

Parents allege that school officials took an overly aggressive approach to discovering information.

The district hired an outside investigator to look into hazing culture.

Football Coach Abuse



Football Coach Abuse

Date of Occurrence: November 17, 2016

What Happened: A football coach of over twenty years was sued in 2009 for sexually abusing students throughout his quarter- century tenure at Poly Prep.

How the Crisis was Handled: Multiple students were threatened when they attempted to come forward about the incidents.

The dean spoke with several teachers regarding the incident but did no further investigation.

The coach later retired without penalties. When a new headmaster of the school was hired, an investigation was conducted and a lawsuit against the coach was filed.

What is a Monell Claim?

Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978).

- The City of New York, its Mayor, its Department of Social Services, the Department's Commissioner, the City's Board of Education, and the Board's Chancellor were sued by a class of female employees for compelling pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons. They claimed that the defendants were liable under 42 USCS 1983, which imposes civil liability on every "person" who deprives another of his federally protected rights.
- The Supreme Court held that local governments, municipal corporations, and school boards were "persons" subject to liability under 1983. Therefore, local governing bodies could be sued directly for monetary, declaratory, or injunctive relief where the action that was alleged to be unconstitutional implemented a policy statement, ordinance, regulation, or decision officially adopted by that body's officers, or where constitutional deprivations were visited pursuant to governmental "custom," even though such custom had not received formal approval through the body's decision making channels.

II. Managing Media in Cases Involving Student Athletes

Pre-Incident Planning: Hold a crisis planning meeting

CHECKLIST

- ✓ Appoint a spokesperson or team ahead of time. Head of Athletic Department, Coaches, Superintendent of School or Principal of School.
- ✓ Alert broker/carrier. Assemble list of insurance contacts and cell phone numbers and emails and get information.
- ✓ Assemble a legal team. Pre-approve experienced attorneys. Obtain counsel's cell phone numbers.

Pre-Incident Planning: Hold a Crisis Planning Meeting

HOW, WHEN AND WHERE WILL THE ANNOUNCEMENT BE MADE?

- At the scene?
- At school?
- At hospital?
- Choose a setting.



Pre-Incident Planning: Hold a Crisis Planning Meeting

WHO WILL BREAK THE NEWS?

Attorney/legal team? Who on the legal team? Senior or named partner?

The police department? Coach, Head of Athletes, Superintendent of Schools? Principal? School Board President?

The news media? Does the school have a media consultant?

Who will participate in the news conference? In what order?

Obtain employees involved. No statements from employee involved in the accident to the press.

Pre-Incident Planning: Hold a Crisis Planning Meeting

DETAILS OF THE INCIDENT

LESS IS MORE.

- Defer public statement until more facts are released through a thorough investigation.
- Acknowledge only known facts.
- Do NOT prematurely take a position before all facts are in.

Pre-Incident Planning: Hold a Crisis Planning Meeting

SAMPLE LANGUAGE:

“This is what we know so far. It’s too early to determine the cause, but we are investigating it and are devoting all necessary resources to it. Reasonable and proper safety precautions have been taken, to protect the student body, and there is no continuing danger to the public. We will provide updates as we get more information.”

Pre-Incident Planning: Hold a Crisis Planning Meeting

HOW CLOSE TO ALLOW THE MEDIA TO THE SCENE?

- Have a conference with legal team and employees involved.

CONSIDER SUSPENDING EMPLOYEES INVOLVED, WITH OR WITHOUT PAY.

Pre-Incident Planning: Hold a Crisis Planning Meeting

MANAGE TEAM AND SCHOOL'S SOCIAL MEDIA.

- Put social media policies in writing.
- Constantly train on proper social media usage.
- Monitor social media presence.
- Advise employees about their verbal and written communications and/or a letter. They have legal privileges.
- Consider a social media SHUTDOWN or BLACKOUT.

Immediately Post Incident

MONITORING OF SOCIAL MEDIA.

Consider calling a pre-screened public relations company.

Carefully choose language in all contact with press i.e., interviewed and press releases.

Inform coaches and athletes of the legal status of their communications.

Explain the risks of “casual” email conversations.

SHUT DOWN COACHES, TEACHERS AND STUDENTS FROM INTERVIEWING AND DISCUSSING TOPICS ON SOCIAL MEDIA OR HAVING ANY DISCUSSIONS WITH THE MEDIA.

Immediately Post Incident

PRESERVE EVIDENCE

Documents

- Issue document hold orders to suspend routine records destruction
- Review source of electronic media including emails and other internal data boxes.

Witnesses

- Identify and interview witnesses, consider hiring outside law firm or investigator to do so; pre-approve investigator, preferably retired police officers familiar with procedure.
- Instruct witnesses on privileges, creation of new documents and email;
- Determine use of internal investigation;
- Respond to investigative agency requests or subpoenas;
- Collect and manage relevant documents including electronic records.

Videos

- Obtain and Preserve

Immediately Post Incident

EXAMPLE OF SPOLIATION:

The Village of Pomona in Rockland County was ordered to pay \$42,940 in attorney's fees based on a federal judge's finding last year that two village officials knowingly destroyed evidence in a zoning and land-use case.

The Court found that the Mayor and former village trustee were guilty of spoliation of evidence for destroying a Facebook page and related materials germane to the underlying case.

This represented a “rare case where bad faith, and a clear intent to deprive plaintiffs of evidence at issue, was sufficiently clear from the face of the record” for him to grant the sanctions. The fees pertain to the plaintiffs' cost of pursuing the sanctions for spoliation.

General Advice

1. Pre-plan.
2. Control the narrative.
3. Accommodate reporters.
4. Compassion and sympathy to all. DO NOT respond with denials, blame shifting.
5. Never panic, never lie.
6. Never respond “NO COMMENT”.
7. Never use bad language or criticize the media.
8. DON'T SPEAK OFF THE RECORD. There is no “off the record”.
9. Always have a crisis plan.

Post Crisis Analysis

1. Revise existing crisis response plan as needed.
2. Conduct crisis post mortem and make needed changes to procedures.
3. Prepare “lessons learned” evaluation of the crisis.
4. Evaluate insurance needs and policy limits.
5. Consider need for public relations consultant – on retention.
6. Consider additional athletes and coaches employee training.
7. Consider additional preventive legal counseling.

Crisis Prevention

1. Hold workshops on crisis prevention. Instruct athletes and coaches about legal issues arising from what they do daily.
2. Implement crisis response plan.
3. Conduct crisis response drills.
4. Review and update compliance programs.
5. Conduct audit of “high risk” incidents.
6. Review procedures for document retention.
7. Advise employees how to write incident reports.
8. Advise coaches and athletes on the document retention policy.
- 9 Advise coaches and athletes on proper social media usage and media contact.

III. Legal Hold Letter

Preservation of Evidence

1. Send to all individuals who may have direct knowledge or be in custody of documents related to the matter.
2. Ask each individual:
 - To preserve all documents, whether in electronic form or paper form, potentially relevant to the claim;
 - Conduct a search for any and all potentially relevant documents and gather them in one location; and
 - To identify all other individuals employed by the municipality who may have direct knowledge or potentially relevant documents.
3. The destruction of relevant documents is prohibited and the failure to comply could result in disciplinary action, such as dismissal and/or civil or criminal penalties.
4. Documents should be persevered until further instruction.
5. Documents should NOT be created in order to provide the requested information.
6. Send throughout the litigation.

Preservation of Evidence

Documents include, but are not limited to, the following:

- Letters
- Contracts
- Memoranda
- Spreadsheets
- Images
- Emails
- Voicemails
- Text messages
- Calendar entries

NEW YORK, NEW YORK 10005
(212) 766-1888
FAX (212) 766-3232
www.ny.gov

2022

Attn:

RE: Date of Loss: December 16, 2016

Dear _____:

Please be advised that _____ has assigned us to represent the School District in the above referenced claim.

You have received this letter because you have been identified as someone who may have direct knowledge or custody of documents related to this matter. It is incumbent upon you to preserve all documents potentially relevant to this claim. If you are aware of any other individuals employed by the School District who may have potentially relevant documents, kindly notify this office immediately so that we may send a similar letter to said individual.

The destruction of documents pertinent to litigation, audit or investigation is strictly prohibited. Compliance with this request requires your immediate attention. Employees who fail to comply are subject to disciplinary action, including dismissal, in addition to potential civil or criminal penalties.

Documents may include letters, contracts, memoranda, notes, presentations, spreadsheets, graphs, animations, images, e-mail messages and attachments, voicemail, instant messages, word processing documents and calendar entities, and it does not matter whether these documents are stored on a hard drive, network database, network drive, back-up tape, laptop, thumb-drive, CD ROM, DVD or similar removable storage media, home computer, mobile phone, smart phone or mobile device (such as a Blackberry, iPhone or iPad).

ALL DOCUMENTS MUST BE PRESERVED.

- Do NOT delete e-mails or electronic files relating to the matter (whether sent or received);
- Gather all of your paper documents in one location and remember nothing can be discarded;
- Nothing may be deleted from your network drive or local hard drive (i.e. laptop or PC) relating to this matter; and
- Voicemails related to the matter must be preserved.

When in doubt, DO NOT delete or discard. Be reminded that we are required by law to take these steps. It is important that you adhere to the Legal Hold until you receive further instructions. You are required to conduct a diligent search even if you don't find any responsive documents, electronic files or e-mails. You should not create documents in order to provide the requested information.

If you have any questions or concerns with regard to the Legal Hold, please contact me immediately. Thank you in advance for your cooperation and attention to this important matter.

Very truly yours,

Example of Legal Hold Letter

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