



Legal Counsel for Churches

Corporate Governance for Churches & Their Leaders

M SMITH | LAW_{PLLC}



January | 2020 www.LegalCounselForChurches.com

Church Preschools Open to Disabled Children

Some churches operate a daycare and/or preschool for the children of the congregation and the public. For many facilities, there is an application process for the admission of new students. Churches should consider their admissions policies for children with special needs. This point was illustrated in a 2018 church case.

Calvary Church operates Calvary Child Development Center in Charlotte, North Carolina. In 2016, a group of five parents sued Calvary Church with a claim of discrimination against their children. The children had various disabilities. The lawsuit claims the Center expelled some of the children because of their medical conditions.

The parents said they were made to feel unwelcome by the Center because of the disabilities of their children. In addition, the parents stated the Center failed to make reasonable accommodations for the children.

The lawsuit alleges several illegal acts and violations of law by the Church. The charges included Violation of the NC Persons With Disabilities Act, Breach of Contract, Unfair and Deceptive Trade Practices Act, Tortious Interference With a Contract and Negligent Infliction of Emotional Distress.

Each of these claims include different legal elements and must be defended

separately. This can be costly for any defendant, especially a church. Based on the legal statements, the parents allege they were harmed in multiple ways.

For churches that operate a preschool, this case offers some guidance on how to avoid disgruntled parents and litigation. The case was settled on October 3, 2018, two years after the lawsuit was filed. The published terms of the settlement provide a list of precautions other churches should consider in their own practices.

As part of the settlement agreement, Calvary Church said it would take several steps to make improvements.

1. The Church agreed to change its admissions policy to allow children with disabilities. Special needs children will be admitted with the condition the Church is able to provide reasonable accommodations.
2. The Church officials decided to retain the services of a registered nurse during the school year to serve students.
3. The Church will also provide support and training for special education.
4. Finally, the Church management agreed to allow third-party occupational therapists and other medical professionals access to the classrooms to work with special needs students.

This case points out what can go wrong when church policies and practices do not



comply with the legal standards. Church officials should review their policies and practices concerning the treatment of children with special needs. If a church is uncertain about its own practices, an outside expert's help may be consulted.

Your church lawyer can help you examine your policies to ensure the provisions are in line with North Carolina law. Your church insurance carrier may have model procedures that can be adopted to police your processes. State officials may be called upon to give the church guidance on best practices. Members of your congregation may have professional experience that can be utilized.

Open communications is a good way to avoid misunderstandings and lawsuits. It is important to have regular conversations with parents who entrust their children to the church daycare and/or school. These parents or caregivers may have advice or grievances that have not been shared yet.

The treatment of special needs children is an important governance and risk management matter. Have a conversation with your church management to make sure this topic gets the full attention it deserves. ■



The Moment

You realized you had not thought of all the risks.

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Risk Management for Churches

Risk management for church boards comes with the responsibilities to minimize threats to the ministry. It is important that church leaders recognize and reduce the perils that can harm the church.

Churches are confronted with some of the same challenges as other types of organizations. These risks can disrupt the operations, pose legal liabilities and damage the church's reputation. Being a church or nonprofit religious organization does not lessen the need to be diligent in risk management matters.

The reason why this article focuses attention on church directors is the board members of all organizations share a fiduciary duty of care. Courts have ruled that this means that directors should act reasonably. The standard of care for church boards is the same as that for Fortune 500 Companies' directors.

The church board should contemplate a plan to address the exposures to all risks. Here are some areas of risks that face churches.

DATA MANAGEMENT

If a church has member records, it faces data management risks. This situation is elevated if the church uses online services,



transmit information via the Internet or keeps records on a computer. Data thieves are poised to exploit vulnerable systems and steal confidential data.

Churches have a duty to safeguard the information they hold for members. To this end, the church should employ steps to avoid data leaks from human errors or an external data breach. Such an event can be legally, financially and publicly damaging.

NEGLIGENCE

Churches are particularly susceptible to a negligence claim. Church facilities are open to the public. Members and visitors could be injured in multiple ways. The church owes a limited duty to ensure its facilities and grounds are safe.

Church leaders should have policies and procedures in place to look for hazards that could result in injury on church property.

VENDOR DUE DILIGENCE

Many churches use vendors to provide services. Church leaders should vet vendors

carefully to ensure they have adequate qualifications, skills and resources to perform. Vendor due diligence is critical because sometimes a vendor's mistake can lead to liability for the church. Vendors should be carefully considered before hiring and periodically reviewed afterwards.

GOVERNANCE PRACTICES

We often write about the importance of sound corporate governance for churches. Effective governance is important for efficiency and legal compliance. Strong governance is also a way to mitigate risks. Church leaders who focus on good governance help reduce the liability of making procedural errors.

Risks exist for all churches and their governing boards. A sound system of recognizing and minimizing risks is an important governance responsibility. Take a close look at the way your church does business. Making improvements can be the difference between suffering from risks and protecting your church. ■

Legal Counsel for Churches is a service provided by M Smith Law, PLLC for members of the religious community. This periodical is intended to help churches and their officials become better prepared to address important legal and governance issues. We hope you find *Legal Counsel for Churches* a valuable resource. For each issue, we try to raise relevant issues and offer some practical alternatives. We welcome your comments and input.

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