



School Law Practice

Farm Animals at School?

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It is a Friday afternoon, nearly 4:00pm, and you are thinking about the upcoming weekend when a high school principal from one of the school districts you represent calls to talk with you about a new project. The school has a very active 4-H program and it is looking to expand the program with greater class involvement during the school day. Embarking on such a project, however, requires that the animals be housed on-campus, to provide immediate, daily access. The school district is considering retaining a company to build a pole-building on-site, and hopes to have animals moving in within a few weeks. The animals would be owned by the students, and would run the full gamut of 4-H animals, from bunnies to bulls. Everyone is sure that the project will be both simple and successful, and before they sign the contract for the new building, the principal just wanted to confirm that there are no legal issues to consider.

At first glance, the project may seem simple. However, there are a host of issues that have to be considered. Minor students interacting with 1,500 pound steers, on school grounds . . . that thought alone should make a school lawyer cringe. The first thing that

you should consider is whether there are any applicable state or local regulations on either the housing or care of animals and whether there are any zoning or other property use regulations that apply to the school site that regulate or prohibit the keeping of farm animals. Separate from those local or state law specific items, a number of “big picture” issues need to be kept in mind. Those issues focus around three primary areas: (1) the building and facilities; (2) the animals; and (3) the students to be involved in the program. There are many other forms of 4-H or similar programs that schools engage in, including civics, technology, firearms, vehicles, earth sciences, and plant-based agriculture, among other subjects. This article, however, is limited to animal-related projects.

Assuming local and state law would permit the project, the best thing a school attorney can do is convince your school district client to hire a local veterinarian to serve as a consultant on the project. For most 4-H ventures, a large-animal veterinarian would be most appropriate. The veterinarian should be involved from the very inception of the project, as he or she will have advice on all aspects of it.

Building and Facilities Issues

With respect to the building, obviously the place to start is building design. The building to be utilized will incorporate all of the ordinary public construction challenges (funding, contracts, land acquisition, etc.), and a host of project-specific issues. One interesting issue to confront is the intersection between traditional building codes and life-safety codes as those regulations apply to the design of a building to be used for animal husbandry. The building will need to be more than just a shell; it will need to be designed with impervious surfaces that can be easily disinfected and cleaned. Likewise, it will need to be designed to have one-way gates and chutes that can be used to direct animals and pens that will securely hold the animals when they are not being utilized (and which will prevent unintentional animal breeding experiments). The building will require areas equipped with good lighting and other improvements necessary to permit grooming of the animals. It also needs secure food and bedding storage, sanitary water facilities, and places to store latigo, brushes, ropes, halters, and other similar tools. Installing a telephone in the building also would likely be a good idea to ensure that occupants have prompt access to 911 in the event of an emergency.

The raw materials needed to maintain the animals (feed, bedding, etc.) should be considered as a part of the plans for the project. Some animals may require specialized feed that has to be segregated from other feed. However, it may be possible to arrange for bulk purchases of most of the feed and supplies used, which can result in significant cost-savings. If the school opts for such a “group buy” program, it will need to determine how those expenses will be covered. Will

students pay for supplies as they go? Will pre-payment be required? How will food and bedding use be accounted for and charged? Each of these issues has to be addressed.

The building design not only has a great impact on how clean it can be kept, it also can greatly influence rodent control. Secure feed storage and elevated feed bunks (installed on the wall instead of on the floor) are a number of design tips that can make the building much more functional. Simply minimizing the distance between feed storage and animal locations can minimize unnecessary transportation and feed spillage.

In addition, year round potable water service will be needed in the building. Depending on the climate where the school is located, weather can be a significant issue. Climate extremes on both ends of the spectrum must be considered. Summer heat requires doors and windows that can be opened, fans for ventilation, and potentially may require misting equipment or other specialized cooling equipment for some animals. Winter's chill may require insulation or even provisions for heating the building. In addition, you may need to consider emergency generators or other backup power. In the event of a power outage on a hot summer's day, the animals may not be able to survive without continuous fan operation. The advice of your veterinarian regarding temperature control for the animals will be invaluable. The veterinarian also may request specialized facilities, such as locking refrigerators or freezers to permit secure, on-site storage of medications and veterinary supplies.

Beyond those issues, you also will need to consider ownership and insurance for the building. Will the building be owned and maintained by the district? There may be advantages to having a not for profit organization own and maintain the building (for example, isolation from liability), if that is an option under your state law. Regardless of who owns the building, insurance must be considered. Insurance for the building is the easy part. The more troublesome part of the insurance equation is providing insurance for the *contents* of the building.

Going back to our 1,500 pound steer, or considering a show horse or other show animal, the value of the animals can be significant. The value of animals also can vary significantly. Depending on how animals show and are judged at competition, animal value can increase and decrease over time. For animals that have show value, traditional replacement coverage may not adequately cover a loss. The school may wish to require the students to procure and maintain their own insurance for the animals.

Separate from replacement insurance, liability insurance must also be considered. In the event an animal damages property or causes a personal injury, liability insurance (with med-pay provisions) should be provided either by the

school or by the students. In order to ensure that the coverage is purchased and maintained, it may make sense to have the school procure the insurance and simply charge the students a pro-rata share of the insurance cost as a participation fee, unless the school is covering the insurance cost itself.

The facility needed will extend beyond the building itself. The school also will need fenced outdoor exercise areas, chutes for loading and unloading animals, and adequate parking and driveway areas to permit trucks *and* trailers to access the site (both for moving animals and for bringing in bedding and feed). In addition, the facility needs to have a designated (and hopefully relatively shielded) area for short-term storage of animal waste. Animal pens will need to be cleaned on a very regular basis (at least every few days), and that waste needs to be stored at the facility while awaiting permanent disposal. The school will need a site very close to the building so that students can use wheel-barrows or other similar hand tools to move the waste to the on-site, short-term storage location.

School Law Practice Pointers

The components of waste disposal include the following:

- (1) animal cleaning and building sanitation;
- (2) transport to the on-site, short-term waste storage area (likely a small area, with transport by hand);
- (3) transport from the on-site storage area to a permanent or long-term off-site area (this will likely require a loader or skid-steer and a truck or trailer that can be loaded, moved down the road, and dumped at the long-term storage facility);
- (4) the long-term storage facility that will be used for 6-8 month storage of the waste;
- (5) a license, easement, or other agreement for access to property that can be used for waste application; and
- (6) a means of applying/spreading the waste on that property.

The school will need to provide for a permanent or longer-term solution for waste disposal as well. The most commonly utilized means of waste disposal is simply spreading and surface applying the waste to farm fields. Keep in mind that for much of the year, that spreading cannot be done—either because fields have crops growing on them, or because the fields are too muddy or cannot be accessed due to other adverse conditions. As a result, likely there will be only two narrow windows for ultimate waste disposal, in the early spring and late fall. For a list of components of waste disposal see the School Law Practice Pointers on the left.

It is incumbent upon the school to come up with such a comprehensive plan for waste disposal *before* the project is begun. Every step of the waste disposal process (from the animal all the way to the final application in the field) must be considered. The school's legal counsel must ensure that the school has an enforceable, written agreement for waste

disposal, so that the school does not find itself sitting upon a problematic pile with nowhere to spread it. Of note, the waste generated does have some agronomic value as fertilizer, and thus the “disposal” of the waste should hopefully be a low-cost or free undertaking. Portions of a sample waste disposal agreement are included on pages 8-10. That agreement contemplates the school locating a local farmer who has all of the required equipment to pick up and transport the waste and who has land available on which to spread the waste.

Issues with the Animals

The animals, which are the reason for the program, require careful planning. This is the area where your veterinary consultant will be most important. Every animal that is introduced into the program and kept on-site should receive a full veterinary workup and physical prior to being brought on-site. Proper plans for cleaning animals as they are moved in and out of the site for shows and other programs must be implemented, so as to prevent both the unintentional transmission of disease and bringing disease into the facility.

In addition, there must be provisions for regular veterinary visits and vaccinations (and recordkeeping for the same). Again, there has to be a mechanism for accounting for and paying the costs associated with these services. The school also must have an emergency response plan—when an animal acts erratically or shows signs of illness, there must be a protocol as to who is notified (preferably the staff contact for the program *and the veterinarian*), and how that notification is handled. The veterinarian also should provide recommendations on how to handle animal deaths (including removal, testing, and disposal of the dead animal). Also, note that if students are concerned about the cost of veterinary visits, they may be reluctant to self-report signs of disease. For that reason, inspections by the staff contact for the program must be regular.

In starting the program, there may be some resistance to the concept of using a single veterinarian (or single veterinarian clinic) to provide all required veterinary services. Many families may want to use a long-time, trusted veterinarian with whom they are familiar. However, because of the need to ensure consistent care, frequent visits, and adequate recordkeeping, use of a single, designated veterinary consultant *must* be a part of the program.

Animal care is the center of the program. Animal care includes feeding, watering, cleaning, grooming, and waste removal. Many of these things (for example, feeding and watering) need to occur daily, if not more often. That includes not only school days, but also weekends, holidays, and any other times when the animals are present. That means that the school will need to have a plan for permitting student access at times outside the regular school schedule (and a

decision as to whether students be permitted to keep animals at the school facility during summer break or other extended vacation periods).

Issues with Students

Student access to the facility includes its own risks. Students participating in the program have to get in, but students not involved in the program have to be excluded, and the animals must be kept secure. Not only does the school need to account for weekend and after-hours access, but it also must ensure student safety. Students should *not* be permitted to be in the building by themselves. It may make the most sense to establish regular, daily feeding times when a number of students, or students and the faculty sponsor, will be in the building together to ensure each other's safety.

It goes without saying that the animals in the building can potentially inflict incredibly serious injuries upon students—either intentionally or inadvertently. That is why students cannot be permitted in the facility alone. The school also will need to create and impose regulations as to certain types of equipment or certain procedures that cannot be performed by students or that cannot be performed except under the direct supervision of a faculty sponsor. For example, the school likely does not want students to have access to shearing equipment except under adult supervision. Additionally, the school likely does not want the students to engage in quasi-veterinarian activities (draining abscesses, trimming hooves) or other potentially dangerous activities (shoeing horses) except under very limited, controlled circumstances, if at all.

As can be seen from the list of potential issues described above, there needs to be complete understanding between the school and the participants in the program about the students' obligation to cover costs (veterinary care, feed, bedding, etc.) and the students' obligation to feed, clean, and care for the animals on a daily basis. Animal transportation must also be addressed as the school will likely not be equipped with the vehicles necessary to move the animals. If there is any equipment to be used in the project (feed mixers, loaders to move waste or grade showing areas, etc.) the understanding has to clearly delineate who can and cannot operate that equipment. All of the foregoing should be covered in a written agreement between the school, the faculty sponsor, and the students involved. Ideally, the agreement would be based upon a comprehensive policy adopted by the school board as the governing policy for the program.

Both the policy and the agreement also should address the insurance and indemnity issues inherent in such a project. As mentioned above, the school may wish to provide insurance (at its cost or at the students' cost), or it may require

the students (or their parents) to provide their own insurance. Either way, the agreement needs to spell out the requirements. If students are required to provide any insurance, the school district should be listed as additional primary insured, and the students should be required to provide proof of coverage via an irrevocable certificate of insurance with advance notice of cancellation.

To the extent that it may be enforceable, the school should endeavor to secure an acknowledgement of risk and waiver of claims/liability, along with indemnification if possible (even if the indemnification is contractual and is limited to insurance proceeds). Sample waiver language is provided the box starting on page 11.¹ In the unlikely event that the animals in question are owned by the district and not by the students, the obligation to provide insurance would fall to the district rather than the students. In such instance the policy should indicate what happens with the animals at the conclusion of their raising/showing. Presumably, the animals are sold, and the proceeds are used for reinvestment in the animal program or some other purpose.

One of the most difficult points which must be addressed by the agreement is the question of a default. What happens if a student fails to feed or clean an animal? What happens if the student's parents lose their jobs and the student cannot pay for feed or veterinary care? What if the student violates the program's rules and goes into the facility on his or her own, or what happens if the student is suspended or expelled? Simply telling the student that he or she is out of the program is not enough. What if the student refuses to pick up the animal? On one hand, the school cannot simply release the animal into the parking lot. On the other hand, the school cannot simply claim ownership of the animal.

The agreement needs to outline these episodes of default and have progressive consequences, culminating in the student's (and animal's) removal from the program. In the event that ultimate consequence is reached and the student/his or her parents refuse to comply, the agreement should provide that the student and his or her parents are jointly and severally liable for any costs incurred by the district, including court costs and attorney's fees. The worst-case scenario is suing the students/parents to recover costs and forcing them to reclaim their animal. As an alternative, the agreement can provide that the failure to pay for costs results in forfeiture of the animal to the school. The school can then sell the animal to recover some of the costs.

Conclusion

For most attorneys, working with animals is not a daily occurrence. However, with adequate background in the practical and legal issues, a school attorney can provide

1. Be certain to review any applicable state laws relating to the 4-H program and to tailor the documents accordingly. For example, many states have laws relating to equine activities that limit the liability and/or claims relating to participants.

the district advice in setting up a legally sound program. Hopefully no worst-case scenarios will be realized when schools agree to house animals on campus. The importance of a collaborative relationship with a veterinary consultant cannot be overstated. Likewise, a conscientious and comprehensive approach to the project will lead to a successful program that produces both educational opportunities and healthy animals. ■

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Sample Waste Disposal Agreement

This Waste Disposal Agreement (Agreement) is entered into as of the ____ day of _____, 20__, by and between the _____ School District (the District) and _____ (the Contractor, with the District and the Contractor collectively referred to as the Parties).

WHEREAS, the District is engaging in a school-related program (the Program) that will result in the housing of domestic and farm animals within a facility located on school property at _____ (the School); and,

WHEREAS, the animals to be utilized in the Program will generate manure and other animal waste; and,

WHEREAS, the District and the Contractor have come to terms on an agreement whereby the District will engage in short-term storage of the waste generated at the School, and whereby the Contractor will provide for transportation, long-term storage, and disposal of the waste in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the District and the Contractor agree as follows:

1. Incorporation of Recitals: The Parties agree and acknowledge that the foregoing Recitals are true and accurate, and are incorporated herein by

reference.

2. **Waste Defined:** For purposes of this agreement, the term Waste shall refer to used or unused, spoiled or dirty food or organic bedding (for example, straw or wood chips), manure, and other organic waste generated at the School in the feeding and care of domestic or farm animals participating in the Program. Waste shall not include medical waste, animal carcasses, or inorganic waste of any kind (for example, food containers, etc.).

3. **Waste Generation and Short-Term Storage:** The District shall be responsible for cleaning up Waste as it is generated in the Project, and for transporting such waste on the School grounds to the Short-Term Storage area marked on the attached Exhibit A. The District shall be responsible for ensuring that all materials placed within the Short-Term Storage facility are Waste only.

4. **Removal of Waste from Short-Term Storage:** Within seven (7) days of notification from the District, and not less than every thirty (30) days, the Contractor shall enter upon the School grounds and remove all waste from the Short-Term Storage facility. Said Waste removal activities shall not be conducted at any time that school is present in session, and shall only be conducted after-hours or on weekends. Contractor shall be responsible for performing such removal operations in a clean and sanitary fashion, and shall be responsible for any damage to the School grounds or to the Short-Term Storage facility.

5. **Long-Term Storage and Disposal of Waste:** Upon removal of Waste from the Short-Term Storage facility, Contractor shall be obligated to provide Long-Term Storage of the Waste, in a lawful fashion, at a facility not owned by the District. Immediately upon loading of any Waste at the Short-Term Storage facility, full responsibility for and ownership of the Waste so loaded shall transfer to the Contractor. The Contractor shall thereafter be responsible for storage of the Waste until its ultimate disposal or spreading, which disposal or spreading shall be performed in accordance with any applicable laws or regulations.

6. **Contractor Responsibility:** Contractor shall be responsible for the provision of all labor, certificates, licenses, registrations and equipment, and the payment of all taxes, charges, costs or expenses whatsoever that shall be necessary to lawfully load, transport, store, and dispose of the Waste after removal from the

Short-Term Storage Facility. Contractor also shall be responsible for locating sites both for the Long-Term Storage of the Waste, and for the disposal of the Waste. Contractor covenants and affirms that it has located sites for both of those activities and has lawful permission to engage in storage and disposal thereupon. Contractor further covenants and agrees that it shall not permit any minor to engage in the performance of any component of the performance of this Agreement.

7. Contractor Insurance and Indemnity: Contractor shall provide the District with a certificate of insurance evidencing both automobile liability and comprehensive general liability coverage with policy limits of not less than one million dollars (\$1,000,000.00) per person or occurrence, naming the District as additional primary insured. Such certificates shall be provided prior to the start of any activities under this Agreement, and shall indicate that they shall not be cancelled except after the provision of not less than sixty (60) days notice to the District. Contractor also shall provide Workers' Compensation and any other statutorily required forms of insurance in amounts not less than the applicable statutory minimums.² All insurance provided under this Agreement shall be from an insurer acceptable to the District, in its sole and absolute discretion, which insurer shall have a BEST rating of not less than A-. Further, Contractor agrees that, without regard to the limits of liability of such insurance, Contractor shall indemnify and hold harmless the District from any and all claims of liability or damage in any way arising out of Contractor's activities under this Agreement, or relating to or arising out of the transportation, Long-Term Storage, or disposal of any Waste by Contractor, its employees, agents, or assignees.³

8. Compensation for Waste Removal: The Parties acknowledge that the Waste which Contractor retrieves under this Agreement shall be provided to the Contractor at no cost, and Contractor shall be entitled to the free and full use of such Waste in such manner as Contractor deems appropriate, subject to compliance with any applicable laws or regulations.⁴

9. Miscellaneous Provisions:⁵

2. The district also may wish to require additional coverage for environmental hazards.
3. The district may wish to expand the insurance or indemnity language. Be certain to address any statutory or common law limits on indemnification or on the relationship between liability claims and workers' compensation claims, or waivers of subrogation or liens, for example.
4. The district also may find that it has to compensate the contractor monetarily for waste removal. Such compensation can be calculated based: (1) on a lump sum; (2) by the trip for waste removed, based upon a specified transport vehicle size; (3) by weight or volume; or (4) on an hourly basis, depending on the operation that the contractor is engaged in (for example, loading vs. transport vs. spreading). Obviously, hourly compensation creates the most uncertainty and greatest potential expense for the district.
5. Insert standard boilerplate language regarding jurisdiction/venue, merger, amendment, and related provisions.



Sample Waiver of Claims⁶

In consideration of being permitted to participate in any way in the _____ (Program), I, for myself individually, my heirs, personal representatives or assigns, and as Parent or Guardian of _____ do hereby release, waive, discharge, and covenant not to sue or otherwise pursue or permit any person to pursue on my behalf, or on behalf of my child _____ any claim for damages or compensation against the _____ (the District), its officers, employees, and agents, resulting from or related to any personal injury, accidents, illness, death, property or other loss or other damages arising from or relating to participation in the Program.

I acknowledge that participation in the Program carries with it certain inherent risks that cannot be eliminated regardless of the care taken to avoid such risks. The specific risks vary from activity to activity, but the risks range from: (a) minor injuries such as scratches, bruises, or sprains; (b) major injuries such as eye injury or loss of sight, joint or back injuries, broken bones, heart attacks, and concussions; and, (c) catastrophic injuries including paralysis and death. I recognize and acknowledge that there are certain risks of physical injury to participants in the Program and I agree to assume, on my behalf and on behalf of my child, the full risk of any such injuries, damages, or loss regardless of the severity which I or my child may sustain as a result of participating in any activities connected or associated with the Program.

I acknowledge that the District shall not be obligated to supervise, control, or manage the Program or the activities of individual participants therein. I shall undertake a thorough investigation of the premises to be utilized in the Program to verify the existence or presence of any defects or potentially harmful conditions, and I shall conduct myself, while participating in the Program, in a cautious and reasonable fashion.

I further acknowledge that I will be responsible for any damage caused to any private property, whether belonging to the District or to a third party, as the direct or indirect result of my conduct or my child's participation in the Program. In the

6. This waiver is adapted in part from the University of California Division of Agriculture and Natural Resources 4-H Youth Development Program Waiver.

event that I become aware of any such damage or any condition which is or which appears to be unreasonably unsafe, I will immediately notify the District and will cease any activity which relates to the damage or condition.

I have read the previous paragraphs and I know, understand, and appreciate these and other risks that are inherent in the Program. I hereby assert that my child's participation is voluntary and that I knowingly assume all such risks. I waive and relinquish all claims I may have, either on my own behalf, or on behalf of my child, against the District and its officers, agents, servants, and employees from any and all claims from injuries, damage, or loss which I may have or which may accrue to me on account of my participation in the Program.

I also agree to INDEMNIFY AND HOLD HARMLESS the District from any and all claims, actions, suits, procedures, costs, expenses, damages, and liabilities, including attorney's fees and court costs, brought or incurred as a result of my child's involvement or participation in the Program, and to reimburse them for any such expenses incurred.

I further acknowledge that this waiver of liability, assumption of risk, and indemnification agreement is intended to be as broad and inclusive as is permitted by the laws of the State of _____, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I have read this waiver of liability, assumption of risk, and indemnification agreement, fully understand its terms, and understand that I am giving up substantial rights, including my right to sue or be compensated for injuries. I acknowledge that I am signing the agreement freely and voluntarily, and intend by my signature to be a complete and unconditional release of all liability to the greatest extent allowed by law.⁷



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7. Amend as necessary to reflect signatures by parents/guardians on behalf of minors.