

## Client Alert

March 11, 2015

### Education Law

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## Arizona Court of Appeals Clarifies Schools' Duties to Students On and Off Campus

Earlier this week, the Arizona Court of Appeals announced its decision in *Boisson v. Arizona Board of Regents, et al.*, addressing when and to what extent schools have a duty of care to their students. Although the decision specifically addressed the scope of a university's duty to its students participating in study abroad programs, the Court also addressed K-12 schools' duties to students in both on-campus and off-campus activities.

**Case Facts.** In *Boisson*, a University of Arizona student who was studying abroad in China died of altitude sickness after taking a trip to Mount Everest during the program. The Mount Everest trip was student-organized and occurred outside of the formal program curriculum, but one of the program's employees helped with the logistics of the Mount Everest trip. The parent of the student sued the State, the Arizona Board of Regents (which governs the University of Arizona), and the Chinese university connected with the study abroad program for the wrongful death of her son. The trial court dismissed the wrongful death suit, finding that none of the defendants owed a legal duty of care to the student in the context of the off-campus, extra-curricular trip to Mount Everest.

**Court of Appeals' Decision.** The Arizona Court of Appeals affirmed the decision. In doing so, it summarized previous court opinions regarding the duty that K-12 schools owe their students. It also identified the factors that govern a determination of whether an off-campus activity is sufficiently related to a school – whether a K-12 school or a university or college – to give rise to a duty of reasonable care.

- **K-12 Schools and On-Campus Activities:** The Court noted that the duty of care “most clearly applies” for on-campus activities, “where the relationship is custodial.”
- **K-12 Schools and Off-Campus Activities:** The Court noted that the law governing the duty of care for off-campus activities is “less clear,” but that it has been tied to activities that occur on the school site or while a student is “otherwise under the school’s control.”

- **Universities and Colleges and On-Campus Activities:** Arizona courts have found that colleges and universities owe their students a duty of care for on-campus activities, although many other states' courts have not imposed such a duty on their states' post-secondary education institutions, recognizing that the concepts of student "custody" and *in loco parentis* do not typically apply to that student population.
- **Universities and Colleges and Off-Campus Activities:** The Court recognized that a university or college's relationship with its students is not the same as a K-12 school's relationship with its students, but it relied in part on the factors that courts have used to determine whether K-12 schools owe a duty to students for off-campus activities. In addition to those factors, the Court added factors that other states' courts have used. Thus, although the Court appeared to recognize the difference between K-12 students and college or university students, that distinction was not actually reflected in its analysis.

**Relevant Off-Campus Factors.** The Court identified the following seven factors to determine whether an off-campus activity is a school activity that will give rise to a duty of reasonable care:

1. the purpose of the activity;
2. whether the activity was part of the course curriculum;
3. whether the school had supervisory authority over the activity;
4. whether the risk existed independent of school involvement;
5. whether the activity was voluntary;
6. whether a school employee was present during the activity, or should have been; and
7. whether the activity involved a dangerous project initiated on-campus but built off-campus.

In *Boisson*, the Court used these factors to determine that the Mount Everest trip was not an off-campus activity that gave rise to a duty.

**Case Impact.** Although on its face, the Court's decision is limited to post-secondary schools' duties of care to their students, the discussion is broader and provides a roadmap for all schools to determine what off-campus activities will be deemed "school activities" for the purposes of potential liability when a student is injured.