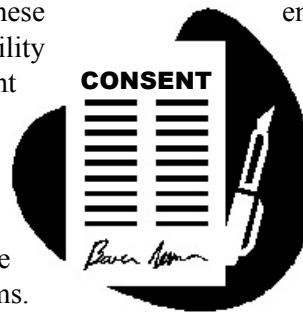




## School & Municipal Consent and Release Forms

Consent and release forms are universally used by school districts and municipalities to protect the district and municipality from liability that may be incurred from sponsorship of a wide variety of noncompulsory activities, such as athletic programs and field trips. These releases are not a substitute for liability insurance, but may have a significant impact on the amount of primary, excess, and umbrella insurance considered necessary to protect the community and the school district from financial losses, and on the entities' annual insurance premiums. Conceivably, the releases could also be a condition of insurability.

Consent and release forms generally curtail the filing of lawsuits and place full responsibility upon the participant engaged in the subject activity. Their use is strongly recommended before the general public and school children engage in voluntary activities.



We highly recommend that town administrators and school committees / school superintendents annually review with all department heads every activity that might result in a loss that could be avoided through a risk transfer mechanism, such as a contract, written agreement, bond, insurance contract (with updated certificates of insurance),

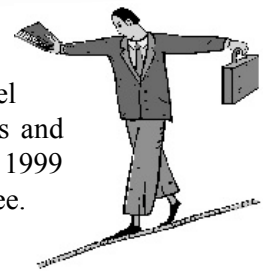
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## School Employees At RISK

Teachers and administrators in any school system are at some risk from violence-prone students. Also at risk are teacher's aids, nurses, school bus drivers, hall monitors, security personnel assigned to the school, tutors, coaches, and other employees and volunteers. The death of a teacher at Columbine High School in 1999 was neither the first nor the last attack against a school employee. More recently, in November 2005, in Jacksboro, Tennessee, a 14-year old student killed an assistant principal and seriously wounded two other administrators before being apprehended. Whether in a public or private school system, teachers and other school personnel are increasingly being confronted with rude, unruly, and sometimes violent students.



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# Happenings!

## Massamont Insurance Agency Receives 'Above and Beyond' Award



Massamont Insurance Agency was recognized for its outstanding support of 1SG Gerry Davis with the presentation of the Above and Beyond Award to company president Van Schenck on October 5<sup>th</sup>. 1SG Davis previously submitted his employer for the Patriots Award but felt strongly that his company was deserving of a higher award. Awards Program Manager Joseph Ryan agreed and coordinated this special event in Massamont's Boston office.

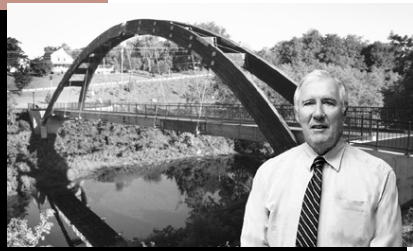
Massamont Insurance Agency has provided a pay differential since 9/11 for 1SG Davis who has been activated, for lengthy tours, no less than five times. They have allowed him to perform additional periods of duty when needed, restructured his salary to make up the difference in basic pay and continued their 401K matching funds. 1SG Davis reports the company is very supportive of the Reserve Program.

Mr. Schenck was presented the Above and Beyond Award by MA ESGR State Chair Ken Forchielli, Awards Program Manager Joseph Ryan and 1SG Gerry Davis, USAR.



## Bob Anderson: Building Bridges and Community Spirit

Community Projects supported by local people create "Community Spirit" — that something extra that makes a community a better place to live. The recently constructed "Gateway Crossing" Pedestrian Bridge, connecting a park and a walking trail to Market Square in downtown Houlton, Maine, has been such a project.



The idea was conceived in 1999, when a few interested citizens met to discuss improving the looks of the Meduxnekeag Riverfront entering the Houlton business district. Bob Anderson, CFO, of F.A. Peabody Insurance Agency in Houlton, has served as Chairman of the Committee since 2001, spearheading the effort to bring this vision to life.

With seed money from the local Rotary Club, plus years of planning and fundraising, construction started in late 2004. Over \$400,000 of private funding was raised and leveraged to obtain funding from other sources, including a major cost-sharing grant from the Maine Department of Transportation. The project, costing over \$1.1 million, has become a reality. Massamont is proud to work with people like Bob Anderson, who give their time and talent to build, literally, bridges that foster community spirit and local pride!

**Would you like to be on our mailing list?**

**Want more info on our programs? Contact:**

**Patrick Connors**

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800.444.3916 ext 640

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## MOLD

### Restoration Work in Public Schools

Using a few ordinary fans and a dehumidifier to dry out a wet indoor environment may be acceptable in some circumstances. But when there is a lot of moisture in the affected rooms, that procedure may take too long to prevent the buildup of mold.

There are an estimated 16,000 water-damage-restoration companies, including franchises, in the U.S., yet there are no universal restoration standards. But some “best practices” are evolving, and more technicians are going to remediation/school each year to learn better and quicker ways of drying water-drenched interiors.

Industrial water extraction equipment works quickly in most circumstances to reduce the water load and shorten the drying period, especially on carpets and floors. Methods such as drilling holes in walls to air out internal spaces work well in some circumstances, but the drying may be too slow in other situations.

Multiple high-powered fans in conjunction with several dehumidifiers are very efficient; the fans get water out of carpets, walls, floors, and furniture and into the air where the dehumidifiers can capture the moisture and collect it. Advanced remediation

firms use water vapor instruments, e.g., those that measure relative humidity and vapor pressure, to determine if the drying is proceeding at an optimum rate. These firms often apply heat to speed the drying process. Scientific practices can cut drying time in half, or better, thus reducing the opportunity for mold to form and propagate.

If you find a need to employ a restoration firm, ask them if their technicians have attended a drying school. Ask them if they use vapor measurements as part of their drying process.

Ask them to provide you with an estimated drying time; request references. After all, it is your property that is at risk, and time is of the essence.

**According to the Insurance Information Institute, U.S. insurers paid \$3 billion in mold-related claims in 2002. Insurance coverage for mold is generally limited. The true annual cost of insured and uninsured losses due to mold is unknown.**

#### Closure of Classrooms

School officials in one town west of Boston closed ten elementary classrooms in two school facilities two years ago when air quality deteriorated due to mold. During a routine summer cleaning of the schools, mold was discovered growing in carpeting. After professional cleaning removed the visible fungus in the carpet, air quality tests were ordered and additional cleaning of the classrooms was instituted to extract the mold in the air. Admirably, during the process of removing the mold, the town kept the school district and parents informed by

## Consent and Release Forms, cont'd from page 1

or consent and release form.

It would be helpful to have town counsel review all

releases and other risk transfer documents. Many existing agreements and consent and release forms currently in use are imperfect and need attention.

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### ***What Kinds of Student Activities Might be Covered by Consent, Release, and Indemnification Forms?***

*The principal use of consent and release forms is for school-related activities. Some schools limit student extracurricular activities to avoid liability entirely, e.g., some districts do not permit field or overnight trips. Most school districts make broad use of the forms. The following are some common applications:*

- ✍ Interscholastic or intramural athletic activities, including tryouts, practices, team participation, cheerleading, student coaching, individual sports participation (e.g., weightlifting), and ancillary athletics functions*
- ✍ School-sanctioned field trips (theme parks, museums, concerts, etc.)*
- ✍ School committee authorized student travel, including overnight trips, late night trips, and foreign travel (private autos and vans may be prohibited for the transport of students for travel in some states, including Massachusetts)*
- ✍ Fund raising activities*
- ✍ Participation in various activities with pre-existing medical conditions*
- ✍ Emergency medical permission and authorization*
- ✍ Application or administration of medications, epinephrine and other injections, and inhalers*
- ✍ Physical education programs*
- ✍ Theater and drama; dance; aerobics; clubs*
- ✍ Disabilities (screening, testing, evaluations, therapy, special education, and various federal Individuals with Disabilities Education Act requirements)*

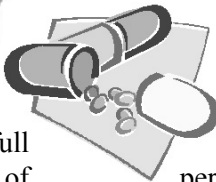
***Consent and release forms may also be developed for use with intellectual property and for other purposes not associated with injury or property damage. For example:***

- ✍ Physical or virtual (world wide web) display or publication of student art or written material, e.g., poetry*
- ✍ Research consent (marketing and other surveys, questionnaires, skills testing, psychological testing) involving potentially sensitive or confidential information*
- ✍ Opt-out forms (health education programs; personally identifiable directory information; student photographs; sex, family life, disease, and drug education programs; biology classes; specific books or films; medical screening tests; etc.)*
- ✍ Access and use agreements relative to the use of school computers and the Internet*

# the MANAGER

## School Employees at Risk, cont'd from page 1

A large portion of these students have troubled lives. Their parents are split-up, or too engaged in their own careers or in making ends meet to immerse themselves in their children's lives or to provide sufficient values, discipline, or a learning environment at home. Some parents might be poor role models in the home and may, themselves, exhibit violent behavior. Add to this environment drug or alcohol abuse, peer pressure, teen pregnancy, student job pressures, TV and other media violence, and everyday stresses, and it is no wonder the students sometimes come to school full of anger or on the edge of committing an act of violence. Such students may also have learning disabilities or emotional problems. Many have behavior disorders, are apathetic, lack motivation, or are antisocial.



reports of assaults on teachers may be severely under-reported for a variety of reasons, including embarrassment and fear of job loss. In some instances, teachers may report an assault to their supervisor, but that administrator may carry the report no further – for reasons of embarrassment; fear of newspaper, radio, and TV reporters; unwillingness to be combative with parents or senior administrators; feelings of personal failure; or lack of knowledge of what action to take.

Student violence raises the cost of running a school. There is lost time among the faculty, higher turnover of personnel, added workers' compensation costs, property damage, and increased insurance costs, to name a few.

Classroom management is faltering in many schools. Teachers are increasingly asking for assistance in dealing with disturbed youngsters. Some schools take the problem seriously while others in effect ignore all but the most egregious cases.

According to a report from the National Center for Education Statistics for the 1999-2000 school years, 11

percent of urban teachers and 5 percent of suburban-rural teachers were threatened with injury. Actual injuries were incurred by 5 percent of the urban teachers and 3 percent of the suburban-rural teachers. Experts believe that

Among the suggestions we offer for improvement are employee and administrator brainstorming sessions on how to deal with the problems of student violence, increased employee and volunteer awareness and training, firm rules on unacceptable behavior and weapons and drugs on campus,

**Students who act up in school are likely to be seeking attention, something they may not be getting at home. When challenged by a school administrator or teacher, they may react with violence. Anger management classes for school employees may help mitigate future confrontations.**

unwavering discipline, emergency lockdown procedures, realistic emergency drills that are repeated until they are done correctly, and better communications among all concerned parties, including parents and local law enforcement. //

## Mold Restoration Work, cont'd from page 3

posting progress reports on the school's website.

At least eighteen other towns in Eastern Massachusetts and fifty across the state had like experiences in 2003. Similar problems occurred in 2004. The culprit in most of the cases had been high temperatures, high humidity, and a lot of rain.

In some cases, the problem of mold in 2003 and 2004 could be blamed solely on a wet summer. In other cases, leaking pipes contributed to the damage.

Problems are generally seasonal. Normally shampooing of school carpets would be done during the summer vacation. But if there is a wet summer, trouble may arise. For example, in 2003 carpets shampooed in July but not properly dried were found moldy in August. Proper drying after shampooing is very important, especially if the weather is damp for an extended period of time.

The typical cost of disinfecting a damaged school ranges from \$100,000 to more than \$500,000, but can be much higher. In some cases, the start of the school year was delayed up to two

weeks as crews cleaned up the green, white, black, and brown fungi masses. Some school districts incurred replacement costs – e.g., desks, chairs, books, computers.

In Connecticut, Rhode Island and northern New England, many towns had problems with mold in 2003 and 2004. In a single southern Connecticut community, five school buildings had to be

remediated. In another Connecticut town, a school was closed for three years; it cost \$26 million to remediate the facility. In Ohio and Illinois, some teachers filed lawsuits over mold in their schools.

### Modern Buildings Pose a Host of Problems

The new construction methods adopted by architects over the past two decades are contributing to the problem. At one time plaster walls and ceilings and tile floors were commonplace. Today, architects order softer materials that look better and absorb sounds, for example drywall boards, manufactured drop ceilings, and carpeting. These materials are more conducive to the growth of mold.

Mold is but one of the air pollutants affecting schools. Cleaning solutions, lab vapors, mites, carbon monoxide, chlorine from an indoor pool, and a host of other gases, vapors, dusts, fumes, and organisms permeate many facilities. The Government Accounting Office has estimated that 20 percent of the nation's schools have indoor air-quality problems, many of them due to mold. In 1999 the U.S. Dept. of Education's National Center for Educational Statistics said that 43 percent of U.S. schools had at least one indoor air-quality problem in the preceding year.

Before hiring a testing or remediation firm, be sure their reputation is solid. One contractor was arrested for fraud in Connecticut in 2004. He allegedly created false lab reports to acquire school remediation work that was unnecessary.

*For more information of mold, see the Summer 2004 issue of The Manager. //*

**The best way to prevent mold from developing in wet areas is to rapidly dry the affected zone. Once mold begins to grow, restoration becomes much more expensive. Scientific methods will expedite the drying process.**

# the MANAGER

## Consent and Release Forms, cont'd from page 4

For example, most forms do not have an indemnification statement. Poorly worded releases may fail to pass muster in court, including forms that are overly broad in scope, open-ended in time, undated, or do not address the hazards or the activity for which the form is to be used.

Consent and release forms may be full consent, partial consent, or a waiver of consent. They should be in written, not oral form. In rare cases, a videotape consent may be used.

The Massachusetts Supreme Judicial Court ruled in 2002 (*Sharon v City of Newton*) that consent and releases for extracurricular school activities are enforceable and have a public purpose. This protection, however, does not extend to liability arising out of compulsory school activities.

Releases may not protect a school district or a municipality from all liabilities. For example, a consent and release may not eliminate liabilities arising from physical, mental, or emotional injuries associated with inappropriate touching inflicted upon a student by a volunteer or district-employed athletics coach who happens to be a known sex offender, especially if the district has not done a criminal offender records information (C.O.R.I.) check on that individual in the past three years. Consent forms may not protect the district from intentional misdeeds by a district employee or administrator, or from gross misconduct.

In the September/October 2005 publication of the National Association of Elementary School Principals, Perry A. Zirkel, University Professor of Education and Law, Lehigh University, Bethlehem, PA, named consent and release forms

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### ***Consent and Release Forms for Municipal Entities and Activities***

*The forms may be used by:*

*Police and fire departments that allow town citizens to participate in citizens' academies, accompany police on patrols, take classes on first aid or CPR, demonstrate proficiency with fire extinguishers or firearms, or engage in other activities that could result in injuries to self, other persons, or property damage.*

*Other municipal departments may have a need for such forms; for example, health departments (immunization shots), recreation and parks departments (playground equipment, bus trips), historic commissions (volunteers engaged in restorations, archeological digs), and councils on aging (field trips, cooking and serving meals).*

## Consent and Release Forms, cont'd from page 7

one of the ten most important legal issues of the past twenty-five years for K-8 principals. The article, [The Top Legal Issues for K-8 Principals: A 25-Year Retrospective](#), Professor Zirkel says that litigation results have varied by state, legal debate is on-going, “the specific language of the form and the immediately surrounding circumstances [are] controlling,” and principals should “carefully assess the tradeoffs rather than automatically assume that such forms are either absolutely worthwhile or absolutely worthless.”

State law, regulations, and the courts of the state

determine the extent of protection allowed and granted by consent and release forms; and one cannot rely entirely on precedent. Insurance programs provide coverage for defense costs and expenses as well as liabilities should the consent and release forms not provide full protection from loss. For more information, consult with your insurance broker and your school or town counsel.



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to Actively Participate with Public Officials in Protecting Their Communities and  
Schools***

*Note: Any coverages described in this newsletter are summarized and subject to terms, conditions and exclusions printed in policies. References to specific policy language, terms or conditions should not be construed as binding. Refer to policy forms for specifics on the coverages and limits. All coverages are subject to state law, which may vary materially from the stated information.*