



# MEMBER ALERT

## DRONES IN PUBLIC SCHOOLS

Unmanned Aircraft Systems (“drones”) have become a topic of conversation in schools across the country. They are being built and used in science and technology classes, being used to videotape sports and band practices and games, and being used to take still photographs used in yearbooks, school newspapers, and other publications. Some Districts have also sought to use drones as part of campus safety initiatives. Despite the novelty and (at times) potentially useful service of such devices, they also present heightened safety, privacy, and regulatory risks, with rapidly changing federal, state, and local laws creating risk exposures that need to be carefully measured.

### **I. KEY LEGAL CONSIDERATIONS**

The legal framework surrounding the use of drones is still evolving under the Federal Aviation Administration’s three classifications: (1) **Public**, in which a governmental law enforcement or public research entity obtains a Certificate of Authorization (COA) to perform public safety or public research purposes; (2) **Civil/Commercial**, in which a commercial entity obtains a Special Airworthiness Certificate (SAC) to use a drone for business purposes; and (3) **Model Aircraft/Recreational**, in which an individual may use a drone for recreational purposes if certain criteria are satisfied. While these rules are expected to change in 2016, the current standards are as follows:

- **Public.** Members (unless they have employees – not contractors – who are sworn peace officers) will not qualify under this category. The current regulations would not support the use by “resource officers” or general campus administrators because they are not immediately performing safety activities within the limited scope of the regulations; general surveillance by non-sworn peace or fire officials does not fall within those definitions. Members also cannot fall within the “research” prong of this definition, which generally relates to grant-funded true research projects.
- **Civil/Commercial.** By its definition, pertaining to corporations/business entities operating drones for a commercial activity, this prong would not apply.
- **Model Aircraft/Recreational.** High school athletic leagues (i.e., CIF, <http://www.cifstate.org/coaches-admin/resources>) and other resources note that the only likely authorization for drone use in schools would be under the Model Aircraft/Recreational Use provisions. To potentially fall within this category, the drone must (a) fly no higher than 400 feet above the ground, (b) be flown strictly for hobby or recreational use, (c) be operated using specified FAA safety guidelines, (d) not weigh more than 55 pounds, (e) be operated in a manner that would not interfere with any manned aircraft, and (f) provide notification to the airport operator and the airport air traffic control tower of any planned use within five miles of any public airport.

On March 6, 2014, the National Transportation Safety Board (NTSB) issued an opinion suggesting that drone use in school sports programs could be a “recreational use.” In *FAA v. Pirker*, the NTSB reversed a \$10,000 fine levied against an individual who used a drone to film promotional footage for the University of Virginia. The NTSB concluded that the operator had satisfied the Model Aircraft standards as defined by the FAA. The FAA then updated its regulations, and confirmed that unless the drone operator could conclusively establish compliance with each of the recreational standards, the FAA had a right to issue fines. Defendant Pirker then settled his fine.

### **II. KEY PRACTICAL AND SAFETY LIMITATIONS**

Under existing FAA standards, while a “drone” might properly and legally be built in a science or similar class, a primary enjoyment for students is to fly the drone once completed. The problem is that such operation must fall

within the “recreational use” standard defined above, with even more restrictive standards expected to be imposed in 2016. Even now, students flying a drone around campus might be a “recreational use,” but still violate nuisance or privacy laws. A drone used to record games or events by a staff member or a volunteer “coach” might also fall outside of the definition of a recreational activity because the paid/unpaid coach or volunteer is performing a required or designated “function” for a team or squad, as opposed to conducting a personal “hobby.”<sup>1</sup> Members should therefore take additional care to ensure that current and future policies and activities are conducted in strict compliance with the most current regulatory standards, with consideration given to the issues noted below.

- **The Family Educational Rights and Privacy Act (FERPA)** prohibits disclosure of confidential student information, including photographs and video recordings for generalized use, without express, written permission from the Student’s parent or legal guardian. While drone use does not necessarily pose a greater risk of disclosure than other forms of photography, aerial videography by an outside vendor (assuming no “recreational” license is available) raises a host of uncomfortable legal and risk management issues in terms of control of the work product and disclosure of private information.
- **Trespass, nuisance, and general privacy principles** may also be violated. California law provides that it is an invasion of privacy to photograph or otherwise record a person in a location where that person has a reasonable expectation of privacy; which might include the videotaping of students or non-students in locations adjacent to school grounds and other areas where privacy considerations might be implicated. The flight operations, if conducted on a regular basis, might also constitute a legal trespass or nuisance, creating legal liability for neighbors or others who might find such aircraft distracting (even if only flown over the Member’s property).
- **Drone crashes** at events are common, and have caused significant injuries reported in the news media.<sup>2</sup> Safety considerations arising from malfunction, exhaustion of battery charge, travel of the drone outside of the control signal area, etc., are also key risks. These are heavy objects, subject to gravity, that can fall on unsuspecting individuals or causing significant harm or injury to property. When that occurs, this type of risk tends to provoke an angry response because drones are seen as “toys” causing harm or injury to “innocent” bystanders who often can take no action to protect themselves from items falling from the sky. This can make resolution of such claims more difficult and costly to resolve.
- **Coverage issues** can also be implicated. If it is shown that a Member’s drone use was conducted with knowledge that the operations were not in compliance with currently understood laws and regulations, or there was otherwise a conscious disregard for determining current regulations, there may be no liability coverage available under the North Bay program. North Bay’s coverage agreement excludes coverage for claims arising from “a knowing or intentional violation of any law or regulation adopted for the purpose of protecting the safety, health, or welfare of students, employees, or members of the public.” Illegal drone use may fall within this exclusion if the Member has not actively sought to ensure its legal compliance.

### III. CONCLUSION

Legal and safety risks associated with drone ownership and/or use require careful management, **including detailed internal written instructions to staff** regarding permissible use (whether on or off-campus, and whether owned by the Member or simply permitted for use at an event). At a minimum, the drone must (a) comply with all recreational use standards, (b) not be operated in a manner violating privacy standards, and that does not (c) constitute a nuisance to neighbors or others. Moreover, use for “security” or non-recreational purposes, which does not appear to be legally authorized, should be curtailed in the absence of direct authorization or further guidance.

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<sup>1</sup> Members have asked whether they can “contract” with a vendor to provide drone-based video or audio support for activities, with the vendor then ensuring its compliance with the Civil/Commercial standards. While that may avoid certain regulatory concerns, it would not address and resolve other privacy and/or safety concerns.

<sup>2</sup> As a result, many state athletic leagues (i.e., the Ohio State Athletic Association) and states (including California, where it was only Governor Brown’s last minute veto that prevent new criminal laws from going into effect relating to drone use) are implementing or considering new safety and criminal laws regulating drones.