

The Lawyers Committee on Wireless Radiation and Children's Health

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Dear School Administrators and Counsel,

We write to you regarding the rapid proliferation of wireless technologies in schools which has precipitated a revolution in education and a widespread use of technology-based curricula. At the same time, scientists and medical professionals are documenting serious risks to human health from exposure to radiofrequency radiation (RFR)¹ emitted from all wireless devices, even at levels previously thought safe, with a particular concern for impacts on children. This dichotomy informs our efforts to take precautions to protect the most vulnerable among us, and to examine the legal responsibilities of school administrators and others in positions of authority.

The goals of this legal memorandum are: a) to inform you of the emerging science documenting the serious risks of chronic exposure to RFR; b) to explore the most relevant government regulations and tort cases as they relate to schools and their corresponding responsibilities for protective action; c) to focus on the potential legal consequences of exposing children to RFR from wireless devices (cell phones, routers, tablets, etc.) within the classroom and from cell towers located on or near school property, where exposure for children, teachers, and staff may be penetrating, intimate, and cumulative; and d) to chart a clear path of collaboration among all parties in creating a "21st Century Resilient Classroom" employing mitigation techniques and state-of-the-art wired technology where feasible.²

Section I. The Scientific Basis for Heightened Vigilance with Children

A substantial body of peer-reviewed scientific studies and clinical medical evidence continues to build a *prima facie* legal case for heightened vigilance and fiduciary responsibility for school administrators, school boards, parents, and government officials toward children in schools.

- **Biological effects of RFR on children.** A number of serious illnesses and a range of chronic symptoms are closely associated with RFR exposure for a small but

¹ There are actually three domains of radiation risks, well-documented in the extensive scientific and medical literature. These include RFR, Extremely Low Frequencies (ELF), and Magnetic Fields. In this memo we focus on RFR, although the cumulative consequences for the health of children of each of these domains, individually and especially in aggregate, raises even more significant legal issues.

² For more information, please visit www.TechSafeSchools.org/legal.

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growing percentage of people, and children are particularly vulnerable. In many cases, when the sources of RFR are mitigated or removed, these adverse symptoms are relieved, and in some instances, completely disappear. The available scientific literature and clinical medical record are more than sufficient to establish a **basic duty of care** toward children regarding harms that are clearly **foreseeable and preventable**.

- **Why are children more vulnerable to RFR than adults?** The increased vulnerability of children to environmental exposures is due primarily to their immature and rapidly developing physiology. Children possess a high density of stem cells that are sensitive to RFR, rendering them especially susceptible to constant exposure. They have high levels of extracellular water throughout their bodies that is more easily penetrated by RFR, and radiation penetrates deeper and more intensely into children's brains due to their thinner skulls and unique physiology, and developing brains are more sensitive to synaptic interference from RFR.
- **How is exposure to RFR manifested in children?** The most common illness reported from exposure to RFR is Electromagnetic Sensitivity (EMS). EMS is recognized as a serious illness by the World Health Organization, the United States Access Board, the Department of Labor and others. The most common symptoms of EMS including headaches, fatigue, concentration difficulties, dizziness, nausea, heart palpitations, and digestive disturbances. Other reported impacts include neuropsychiatric (behavioral) effects including anxiety, depression, brain fog and cognitive impairment.

Section II. School Administrator's Fiduciary Duty of Care

The fiduciary duty of school administrators to parents and children arises from national and state policies and obligations to deliver safe and supportive learning environments, as well as the general law of fiduciaries. School superintendents and heads serve as *locus parentis* and are required by law to safeguard the interests of children entrusted to their care.

What is a School Administrator's Fiduciary Duty to Deliver Safe Learning Environments?

The fiduciary duty of school administrators can be analyzed into distinct and separate duties, with corresponding legally recognized rights of parents, children, and teachers.

- **Duty of heightened vigilance and precaution.** School administrators have a duty of heightened vigilance, especially when they are well informed of the **foreseeable risks and preventable harms**.

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- **Duty to be informed.** From this basic responsibility derives the further duty of inquiry to investigate and to become better informed.
- **Duty to inform and warn parents.** Administrators have a legal obligation as fiduciaries to warn parents and caretakers of all feasible risks.
- **Duty to secure informed consent.** Administrators have a fiduciary obligation to secure **informed consent** from parents to permit their children to be irradiated while in school.
- **Duty to secure certification of safety from telecoms and full disclosure.** Administrators have a fiduciary obligation to require purveyors of wireless technologies and devices to certify that their products are safe, especially for children and teachers in school environments.
- **Duty to demand indemnification and insurance or reinsurance.** Administrators have a responsibility to require wireless providers to present **proof of insurance** to support contractual indemnification and compensation for RFR-related harms. The liability of RFR exposure must not fall upon their own schools, and parents should not bear personal medical and other costs.
- **Duty to protect disabled and special needs children.** Administrators have a fiduciary and statutory duty to protect especially vulnerable children, including those who are disabled, have special educational needs, are suffering from EMS, belong to minority communities, or are economically disadvantaged..
- **Duty to monitor and measure exposure levels.** Administrators have an obligation to monitor the environments they are pledged to protect by regularly measuring RFR levels in their schools.
- **Liability for retaliation against parents.** Administrators must inform themselves of the legal liabilities they face for any attempts to retaliate against parents who express concerns over the exposure of their children to RFR contamination.

Section III. Strong Federal and State Laws Exist to Safeguard Learning Environments

The Americans with Disabilities Act (ADA) requires **reasonable accommodation** when an actual injury, or when an immediate threat of injury has occurred to a disabled person. RFR-related illnesses and conditions, whether based on special sensitivities (EMS) or pre-existing conditions aggravated by RFR exposure, can qualify as recognized disabilities under the statute. Endangerment of people with disabilities is recognized as a civil rights violation, comparable to similar discriminations based on race, age, and sex.

Federal law and an increasing number of state laws have recently been enacted to ensure data privacy and cybersecurity. Wireless technology is now recognized to be so

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inherently insecure and vulnerable to hacking and other intrusions that the problem has been elevated to a national security concern, and several task forces have provided detailed recommendations on the high vulnerability to the nation of cyber-insecurity. Protection of the privacy and security of databases concerning children and their parents must be a high priority of school administrators.

Section IV. Potential Criminal and Civil Liability of Wireless Purveyors

The controversies over the health risks of RFR contamination must be viewed in the context of the long history of litigation over other public health injuries, where courts and juries have recognized huge damage awards to victims. A discussion of these diverse fields, including: lead in drinking water and lead paint, asbestos, Roundup, mold, special allergies, tobacco, cell phones, and cancer can be found at this program's website, www.TechSafeSchools.org/legal.

As the issues are often common in cases around the world, precedents are being established in other countries that courts in the United States are likely to note and apply. These precedents are transforming the administrative landscape and establishing civil and even criminal liability for knowing and willful exposure of children to RFR risks.

Reaching a Legal Tipping Point

As science moves inexorably toward a better understanding of the role of RFR and magnetic field exposure on children's biological systems, and the blanket of regulatory protection around the wireless industry begins to fray, the liability of school administrators and school boards will increase.

- **Absence of a science-based RFR standard.** The FCC's thermal-only standard was established in the 1990s based on very limited studies of monkeys and rats in the 1980s. The standard ignores biological harm from both peak and cumulative exposures and is unsupported by the scientific and medical evidence.
- **A Citizens Petition** has recently been filed against the Food and Drug Administration (FDA) for its failure to obey federal law requiring the agency to perform certain activities designed to reduce or minimize the public's exposure to unnecessary radiation. The Petition notes that no pre-market testing or evaluation of radiation in school environments has been carried out, and there is no basis for any claim of safety.
- **Environmental Health Trust/Children's Health Defense v. FCC.** In a recent successful lawsuit brought by two non-profit organizations, the FCC has been ordered by the DC Circuit Court of Appeals to re-evaluate its thermal-based standards in light of new evidence suggesting that RFR is having a detrimental impact on children and the environment, even at levels currently deemed "safe."

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- **The regulatory compliance defense.** Given the patent deficiencies of the present FCC standard, the legal question is whether purveyors of wireless technologies – or school administrators – can rely on their compliance as a defense to tort actions, claiming damages? In fact, the *Restatement of Torts* and other authorities indicate they cannot.³ This would seem especially so in the present case where there is no standard at all for children. A *carte blanche* is not a standard.
- **Federal preemption.** The scope of FCC federal preemption over the powers of states to protect the health and safety of their citizens is highly controversial and currently being tested in various lawsuits. Although one 2020 federal district court in *Cohen v. Apple* has ruled that the Telecommunications Acts of 1934 and 1996 preempt state tort law in a case concerning false claims by cell phone manufacturers, this decision is not controlling on other federal courts; nor does it preempt other federal statutes.

The Winning Case

We believe that as the scientific evidence of harm from RFR continues to mount, the courts will eventually rule to protect children and faculty in schools from dangerous RFR exposure. The defendants will be school administrators who have brushed aside the warnings of experts, and allowed increasing amounts of wireless technology to be employed in the classroom with full knowledge of the special vulnerabilities of children to RFR exposure.

A jury will reasonably conclude that the potential harms were foreseeable and preventable, that adequate notice had been served as required under the Americans with Disabilities Act and that a school administrator’s decision to ignore a request for reasonable accommodation was made with full knowledge, recklessly and willfully, indifferent to the safety of children within his or her care. A case for punitive damages, along with attorney’s fees and costs under the statute, is strong.

Section V. Tragic Choices vs. False Choices: Reconciling Sound Business with Conscience

This Memorandum and the TechSafe School project rely on the premise that school administrators, teachers, staff, parents and students are natural allies. Together they share an opportunity to collaborate creatively in innovating the *21st Century Resilient Classroom*. Indeed, to take the same logic to the next step, it is not inconceivable that the more imaginative and socially conscious telecom companies will themselves decide to innovate safer solutions that will contribute significantly to this fundamental goal.

³ <https://news.bloomberglaw.com/product-liability-and-toxics-law/a-new-and-old-twist-on-preemption-the-regulatory-compliance-defense>

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The *21st Century Resilient Classroom* does not demand a tragic choice between children's and teachers' safety and security versus wireless access to the Internet. It is a false choice based on narrow thinking. The plain economic benefits to schools of implementing safe learning environments (happy children, attracting better teachers, reducing sick leave, etc.) and avoiding significant, uninsurable liability, far exceed the subsidies now being dangled by State Departments of Education, and other financial enticements by the wireless purveyors. Simply by hard-nosed business calculation, the protective course makes practical sense.

But this is not, must not, be a cold business decision. It is also a matter of conscience. If school administrators will look deeply into their hearts, and take wise counsel, the immediate opportunity to provide safe learning environments for all our children will become clear.

Sincerely,

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