

"I HAVE A SUBPOENA FOR YOUR CURRICULUM"

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2011 NESHTA Conference

Intro



Fade in...

- A lawsuit is underway
- Training is an issue
- You designed or delivered some or all of the training
- And then....

Objectives: BTEOMPYWBAT

(Given the context of EHS training)

- Define key selected legal terms
- Assess curricula for vulnerabilities
- Recognize legal attack strategies
- List strategies for curriculum management
- Apply principles to present & future curricula

Follow the Process

Training
Records
Incident
Lawsuit
Discovery
Deposition
Settlement or Trial

Records Retention Requirements

- OSHA
- Academic
- Corporate
- Consensus
- Personal

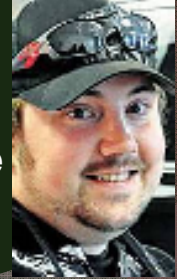


Key Records Indicators

- Publication/copyright date
- Edition number
- Version
- Part/model number
- Revisions/errata history
- Calibration/alignment
- Review date
- "Videotape" vs DVD

Hackemer

- **Family of war veteran files lawsuit for fatal roller coaster ride**



Hackemer

- Updated: July 30, 2011, 9:28 AM
- Decorated Iraq War veteran died after flying out of a roller coaster at the Darien Lake amusement park.
- James T. Hackemer, 29, was allowed to board the Ride of Steel coaster on July 8 despite having no legs. Hackemer lost both legs and a hip in 2008 after a roadside bombing in Iraq, where he served as a sergeant in the Army.

Hackemer

- Was ejected from the 208-foot-high roller coaster during a family outing at Darien Lake.
- Family suing 2 companies associated with the park.
- Family attorney Denis J. Bastible: park employees violated Darien Lake's own safety rules when they allowed the double amputee to ride the coaster.

Hackemer

- "They didn't train their employees to follow the rules and the result was tragic," Bastible told The Buffalo News. "[Hackemer] leaves two very young children behind, and his family is doing terribly."
- 2 weeks after the accident, state Labor Department investigators cited "operator error" as a factor in the death. 2 violations issued, saying ride operators were improperly trained on safety requirements for the ride.

DISCUSS

Operator Error



Improperly Trained

Training

- Ignorant
- Untrained
- Inadequately trained
- Insufficiently trained
- Improperly trained
- Incorrectly trained
- Minimally trained
- Trained

Why People Don't Perform

- Don't know what's expected
- Don't have tools to perform as desired
- Aren't given authority
- Not told how well they're doing
- Punished for performing as desired
- Rewarded for not performing as desired
- *Mager: Making Instruction Work 2/e, p. 8.*

Where's the Breakdown?

- Needs analysis
- Content
- Delivery
- Testing
- Supervision
- Novel situation

Follow the Process

- ☑ Training
- ☑ Records
 - ☑ Incident
 - ☑ Lawsuit
 - Discovery
 - Deposition
 - Settlement or Trial

Discovery



Discovery

- Notes, memos, highlights
- Policies, procedures, instructions
- Tests, scores
- Forms
- Manuals
- Items
- Photos, videos, recordings
- Statements

Curriculum

- All materials used to deliver specific education/training content.
 - From needs assessment to objectives to outcome analysis and improvement
 - Includes instructional technology

Curriculum: Lawyer Stuff

- Attack the content
- Discredit the person
- Compare and contrast
- Innuendo
- Much ado about nothing

Curriculum Development

- Identify need
- Analyze need
- Select solutions
- Non-training solutions
- Instruction Objectives/Outcomes
- Design/Develop Instruction
- Implement
- Monitor/Improve
- *Mager: Making Instruction Work 2/e, p. 14*

EFFECTIVE Training

- Does it do what it is supposed to do?
- How do you know?
- Assessment tied to Objectives



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Deposition Notice

TO ALL PARTIES AND THEIR COUNSEL:

NOTICE IS HEREBY GIVEN, pursuant to Rule ## of the {state} Rules of Civil Procedure, that counsel for the {Defendant/Plaintiff} will take the deposition upon oral examination of Franklin A. Darius Jr.

Deposition will be taken before a Certified Shorthand Reporter from {Name of service} in the {particular room} at the office of {Law firm}, {address}, on {day and date} beginning at {time} and lasting approximately {#} hours, at which time and place you are notified to appear and take part in the oral examination as you deem fit.

Testimony

- At deposition or at trial
- Often videotaped
- Listen CAREFULLY to the whole question
- Statements are not questions
- Answer verbally for the reporter
- Answer only what is asked then STOP.
- Yes, No, I don't know.
- Don't guess or assume or infer



Percipient Witness

- Has direct sensory knowledge of an event.
- Role: testify only to the facts of direct knowledge (5 senses).

Expert Witness

- Recognized by the court as an expert by possession of specialized knowledge, skills, or experience. Has limited or no direct sensory knowledge in the original matter.
- Role: Offers professional opinions in the matter. Assists the judge/jury to better understand the matter.

Curriculum: Attack Strategies

(Mager: Making Instruction Work 2/e, p. 260-265)

- Provide the performance objectives properly stated in writing.
- Show that performance objectives are tied to real world
- Show that pre-course and post-course training are properly tied together.

Curriculum: Attack Strategies

- Prove that all content is relevant.
- Prove that all relevant content was covered.
- Prove that all time claimed was actually spent.
- How do you know that materials were understandable to students?
- What were the course procedures? (overt/covert)

Curriculum: Attack Strategies

- Do you think that course procedures facilitated or impeded learning?
- Prove that all students had proper access to course materials
- Distractions in environment
- Prove that each learner practiced the skill properly
- Show that at least half the time was devoted to practice

Attack the Instructor

- Training in classroom presentation?
- Training in instructional development?
- Models desired performance for students?
- Behaves positively, supportively toward students?
- Available to individual students during session?

Performance Checks

- Did they demonstrate when they felt ready, or were they rushed?
- Did every test item measure a course skill?
- Were all skills represented in test items?
- Feedback on test?
- What about performance NYC?
- Required to demonstrate competence before being deemed competent?

Follow the Process

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 - ☑ Records
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Scrutiny: Case Study

- Who
- What
- When
- Where
- Why
- How





Curriculum: Defenses

- Follow the protocol
- Sound analysis, development, delivery, assessment, improvement
- Learning or checking the box?
- Document, validate
- Transparency
- Competence & confidence
- **“Hope is not a plan”**

Blaming the Learners

- Don't want to be taught
- Don't/won't practice
- 1 method of learning, cope!
- They'll figure it out
- Beating them with what they're already competent in
- Reward is you get to keep your job

Curriculum: Management Strategies

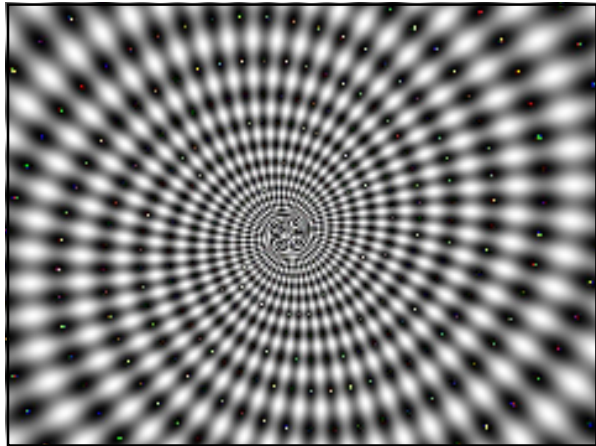
- Meta-analysis
- 3rd party review
- Meaningful feedback
- Revision history
- Update, refresh, keep current
- Tag team presentation
- Stump the trainer

Course Improvement

- Measure meaningfully
- Evaluate appropriately
- Prioritize opportunities
- Implement improvement
- Measure again

Performance Management

- **Failure** to perform (ignorance, negligence, motivation, resources)
- **Refusal** to perform (rebellion)
- Performance **conformance** (pressure)
- *Resources from Aubrey Daniels*



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Comments? Questions?

