
Why Governance Is Now a Required Doctrine

Institutional Duty of Care in School Environments Involving Wireless Exposure

Prepared by Wireless Radiation Specialists LLC — Independent Governance & Duty-of-Care Advisory

Executive Summary

Public school systems operate under a heightened duty of care to protect students from foreseeable risk. This duty exists regardless of whether harm has been conclusively proven and applies most strongly where exposure is prolonged, unavoidable, and involves children.

In 2021, a federal appellate court ruled that the **Federal Communications Commission** failed to adequately explain how its wireless radiation exposure guidelines protect children, address long-term exposure, or account for vulnerable populations. The court concluded that the agency did not meaningfully respond to substantial scientific evidence in the public record.

This ruling did not prohibit wireless technologies in schools. However, it eliminated the assumption that regulatory compliance alone constitutes proven safety for child-centered environments.

As a result, school districts now operate in a condition of **judicially recognized uncertainty**. Under long-standing principles of institutional duty of care, uncertainty does not justify inaction — it requires governance.

The 2021 Ruling and Its Governance Implications

In 2021, the **U.S. Court of Appeals for the D.C. Circuit** determined that the FCC's decision to maintain its existing RF exposure limits was *arbitrary and capricious* because the agency failed to adequately explain how those limits account for:

- Children and developing bodies
- Long-term, chronic exposure
- Non-cancer biological effects
- Vulnerable populations

Importantly, the court did **not** conclude that wireless radiation is categorically unsafe. What it concluded was more consequential for institutions:

The federal safety framework no longer provides a fully reasoned explanation of protection for children and long-term exposure scenarios.

From a governance standpoint, this means that schools can no longer rely on the presumption that compliance alone resolves their duty of care obligations **without additional documented consideration**.

Duty of Care in School Environments

Duty of care is not triggered by proof of harm.
It is triggered by **foreseeability** and **reasonable knowledge**.

Schools occupy a unique legal position because:

- Attendance is compulsory
- Students are minors
- Exposure is prolonged and involuntary
- Schools control the physical environment

Once credible uncertainty enters the public record — particularly through a federal court ruling — institutions are expected to demonstrate that they exercised reasonable care in light of that uncertainty.

This expectation does not require elimination of technology.
It requires **deliberate, documented governance**.

Why Inaction Is Not Neutral

A common misconception is that choosing to “do nothing” is a neutral or low-risk position.

From a legal and governance perspective, it is not.

After 2021, failing to acknowledge uncertainty may be interpreted — in litigation or regulatory scrutiny — as:

- Failure to assess foreseeable risk
- Failure to document decision-making
- Failure to apply reasonable care

- Failure to consider vulnerable populations

Inaction becomes a **decision**, and decisions without documentation are the most difficult to defend.

How Negligence Claims Can Arise Without Proven Harm

A frequent misunderstanding is that liability requires proof of physical injury. In institutional negligence claims — particularly those involving children — this is often not the case.

Courts increasingly examine **process failure**, not outcome certainty.

How These Claims Are Typically Structured

1. Duty Is Presumed

Schools owe a heightened duty of care due to the presence of minors, compulsory attendance, and prolonged exposure within school-controlled environments.

2. Foreseeability Is Established Through Public Record

The 2021 federal appellate ruling placed credible uncertainty regarding children and long-term exposure into the public domain. This constitutes notice.

3. Breach Is Defined as Administrative Inaction

Plaintiffs do not need to argue that harm occurred.

They argue that the district:

- conducted no formal review,
- documented no evaluation,
- implemented no governance framework, and
- took no administrative action after uncertainty was acknowledged.

In this context, **inaction itself becomes the alleged breach of duty**.

4. Causation Is Framed as Loss of Protective Opportunity

Rather than proving injury, claims may assert that reasonable governance measures could have:

- reduced exposure,
- improved oversight, or
- demonstrated institutional care.

This reframes causation as a **lost opportunity to act responsibly**, not a medical determination.

5. Damages Extend Beyond Physical Injury

Claims may seek:

- injunctive relief (policy or procedural changes),
- monitoring or remediation costs,
- emotional distress claims,
- special education or accommodation costs,
- attorneys' fees, and
- reputational damages.

Many of these claims do not require scientific proof of harm.

This description reflects common pleading and litigation theories and does not presume liability or legal violation by any specific district.

Why Documentation Matters More Than Outcomes

In litigation, the most damaging evidence is often not what an institution did — but what it cannot show it ever considered.

After 2021, districts that cannot demonstrate documented review, deliberation, and governance may be portrayed — in litigation or regulatory scrutiny — as having failed their duty of care, regardless of intent or outcome.

Governance does not eliminate uncertainty.
It demonstrates responsibility.

What Governance Requires (and What It Does Not)

Governance Does Not Require:

- Banning wireless technology
- Making medical claims
- Declaring emergencies
- Disrupting instruction

Governance Does Require:

- Acknowledging uncertainty
- Evaluating exposure conditions
- Documenting administrative reasoning
- Aligning policy with duty of care principles
- Preserving defensible decision records

Governance is a structural response, not a technological judgment.

The Role of Governance Frameworks

Governance frameworks exist to help school districts:

- Translate uncertainty into structured action
- Protect administrators and governing boards
- Demonstrate reasonable care
- Preserve institutional credibility
- Reduce legal and reputational exposure

They create defensible records regardless of how scientific understanding evolves in the future.

Conclusion

The question facing school leadership is no longer whether wireless technology is permitted.

The question is whether a district can demonstrate that it exercised reasonable care **after uncertainty was judicially acknowledged**.

Governance is how that responsibility is fulfilled.

Legal Clarification and Scope Disclaimer

This document is provided for governance and risk-management awareness purposes only. It does not assert that wireless technologies are unsafe, that any school district has violated the law, or that liability exists or is inevitable. Rather, it describes generally recognized duty-of-care principles and commonly observed litigation theories to explain why documented governance is an important component of institutional risk management in environments involving acknowledged uncertainty.

General Counsel Perspective (Common Advisory Considerations)

What District Counsel Typically Advise

District general counsel and outside risk counsel commonly advise that when credible uncertainty enters the public record — particularly through judicial, regulatory, or legislative action — institutions should:

- **Acknowledge the issue internally** rather than ignore it
- **Document review and deliberation**, even if no changes are made
- **Demonstrate rational decision-making**, not perfect outcomes
- **Avoid reliance on assumptions alone**, especially when those assumptions have been questioned
- **Create defensible records** that show foresight, proportionality, and care

Counsel typically emphasize that:

Institutions are rarely judged on whether they eliminated all risk, but they are frequently judged on whether they recognized, evaluated, and responsibly governed known uncertainty.

Governance frameworks exist to operationalize this advice in a consistent, repeatable, and defensible manner.

How Our School Governance Manuals Fit

Our School Governance Manuals provide governance-grade frameworks that help districts:

- Document risk awareness
- Structure decision-making
- Align policy with duty of care
- Preserve administrative defensibility

They are not advocacy tools.

They are **institutional protection instruments**.

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