



Using Waivers and Releases for Activities on School Property

Each day presents new opportunities to practice healthy behaviors. Because of their role in the community, schools are in a unique position to promote active living for students and community members alike. Through well-designed policies, tailored to the community and implemented by knowledgeable and supportive staff, school can advance student nutrition, increase physical activity, and help develop healthier lifestyles.¹

Concerns about injuries, lawsuits, and “liability” are sometimes a hurdle to opening school facilities up for recreational uses. While there is no magic formula to avoid being sued, schools and community organizations can reduce their exposure through a variety of risk management strategies.² Requiring parents, students, or other participants to sign a waiver prior to participating in recreational activities is one possibility.

What is liability?

For purposes of this publication, liability can be defined as legal responsibility for another person’s injury or damages. There are numerous provisions within both state and federal law that serve as sources of potential liability for school districts. However, when a school district is considering allowing community use of its facilities for recreational activities, the possibility that someone who is using a school facility might suffer an injury and bring a claim against the district (or its



officers, employees, or agents) is arguably the district's most significant liability concern.

The standards for holding someone liable differ depending on who or what caused the injury. Typically, for a person to be held liable for someone else's injuries, an injured person must first prove that the accused had a legal responsibility to protect him or her from harm (otherwise known as "duty of care"). Then, the injured person has to show that the accused party failed to protect him or her (or "breached" the duty of care) and as a result, was injured in an expected (or "foreseeable") manner.³

The general expectation is that one will act reasonably toward others.⁴ What is considered reasonable, however, depends on the circumstances. Failure to act with as much care as an ordinary, reasonable person in a given situation would be considered negligence.⁵ However, there are situations where a person or entity is held to a higher or lower standard.

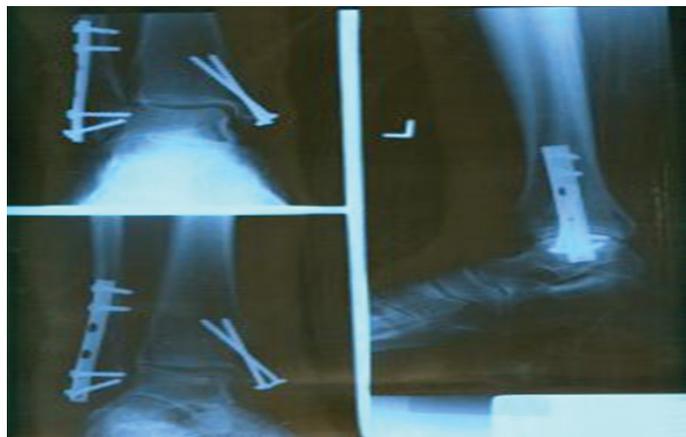
What is a waiver?

In the most basic sense, a waiver is a signed, written agreement not to sue if something goes wrong. The waiver can provide a defense if someone injured during the activity seeks damages. Other names for waivers are permission slips, releases, exculpatory clauses, and hold harmless agreements.

A waiver is one way to reduce liability and manage risk for injuries that occur during recreational activities on school property.

Will a waiver protect me from being sued?

No, though many people will not sue because they signed a waiver.



Are waivers enforceable?

Yes. But, Minnesota courts will only enforce waivers that meet very specific criteria.⁶ Waivers are not favored because they shift the risk of negligent conduct away from a negligent party to those who were harmed.⁷ A waiver will not be upheld if it is ambiguous, if it attempts to protect a person from liability for intentional acts, or if it violates public policy.⁸

A waiver is more likely to be enforced when:

- Written in large print and placed prominently on the page.
- Clear, understandable language is used.
- Specifically applied only to negligent actions.
- Signed voluntarily, with knowledge and effect of the waiver.
- The person was given sufficient time to review the waiver.
- The activity is not an essential service that cannot be obtained elsewhere.

Who should sign the waiver?

When waivers are used, it is important to take appropriate steps to ensure they are signed and collected from every participant before they are allowed to join in. This is particularly important when groups or teams are involved. If the participant is a minor, then the child as well as his/her parent or guardian should both sign.⁹

When is a waiver ambiguous?

A waiver is ambiguous if reasonable people can interpret it in more than one way.¹⁰ Waivers should always be written simply, clearly, and concisely. If any doubt exists, that issue will likely be resolved in favor of the injured party.

When does a waiver violate public policy?

A waiver might violate public policy if one person or entity has more bargaining power than the other. This could be true if one person has authority over the other, such as an employer's relationship to an employee.¹¹ A waiver may also violate public policy if a "public" or "essential" service is involved. These include services that are publically regulated or necessary, such as lodging, employment, public utility or health care.¹² Minnesota courts have ruled that certain recreational activities (such as horseback riding¹³, scuba diving¹⁴, or skydiving¹⁵) do not involve the public interest and are not considered essential.

Can waivers provide any other benefits?

They can. Even when a waiver is not enforced, it may be a basis for other defenses. It can demonstrate that the school district was not negligent because it exercised reasonable care when providing the event or activity. A properly drafted and executed waiver can show that the school district or community partner satisfied its responsibility to warn participants about the dangers of the activity. A waiver can show that the participant

was aware of the risks associated with the activity and willing to assume those risks. Finally, individuals who believe they are assuming all risks will, hopefully, act responsibly when participating.

How else can a school or community organization limit its liability?

Common sense precautions go a long way toward avoiding liability for injuries resulting from recreational activities. Organizations, like individuals, should always act reasonably. Additional precautions will vary depending on the activity. Some common risk management strategies include:

- Creating safety rules and handing them out to all students and parents. Rules should comply with any local rules, any local, state or federal laws, and any national standards.
- Eliminating known dangers where possible.
- Documenting all precautions taken to avoid harm or risk.
- Obtaining liability insurance that covers lawsuits arising from injuries.
- Forming joint powers or facility use agreements with other public entities or community organizations that specifically outline acceptable uses of school property and facilities.

Finally, school districts and other governmental entities have immunity from liability in certain situations.¹⁶

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Endnotes

- ¹ Resources for school districts interested in pursuing health conscious initiatives and policies are available at <http://www.publichealthlawcenter.org/>.
- ² Minnesota law also provides other liability protections, including various forms of immunity and limits on recovery. See *Liability for Minnesota School Districts Implementing Policies to Promote Active Living and Healthy Eating*, Public Health Law Center (June 2011), available at <http://publichealthlawcenter.org/sites/default/files/resources/ship-fs2-schoolistrictliability-2011.pdf>.
- ³ *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).
- ⁴ See *Flom v. Flom*, 291 N.W.2d 914, 916 (Minn. 1980); 4 Minn. Prac., Jury Instr. Guides--Civil CIVJIG 25.10 (5th ed. 2010).
- ⁵ See *Baker v. Amtrak Nat. R.R. Passenger Corp.*, 588 N.W.2d 749, 753 (Minn. Ct. App. 1999).
- ⁶ *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 789 (Minn. 2005).
- ⁷ *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 923 (Minn. 1982).
- ⁸ *Id.*
- ⁹ It is important to note that Minnesota courts have not definitively addressed whether a parent can release liability for negligence on behalf of a minor. In addition, minors generally have the power to enter into contracts and disavow those agreements within a reasonable time after becoming an adult. See *Scoles v. Franzen*, C5-91-426, 1991 WL 180037 (Minn. Ct. App. Sept. 17, 1991) (unpublished opinion).
- ¹⁰ *Illinois Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 799 (Minn. 2004).
- ¹¹ See *Bunia v. Knight Ridder*, 544 N.W.2d 60, 63 (Minn. Ct. App. 1996).
- ¹² *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 923-26 (Minn. 1982). See also *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 789-90 (Minn. 2005); *Walton v. Fujita Tourist Enterprises Co., Ltd.*, 380 N.W.2d 198, 201 (Minn. Ct. App. 1986).
- ¹³ *Beehner v. Cragun Corp.*, 636 N.W.2d 821, 827-28 (Minn. Ct. App. 2001).
- ¹⁴ *Dailey ex rel. Tabriz v. Sports World S., Inc.*, A03-127, 2003 WL 22234699 (Minn. Ct. App. Sept. 30, 2003) (unpublished opinion), *aff'd sub nom.* *Dailey v. Sports World S., Inc.*, 683 N.W.2d 302 (Minn. 2004).
- ¹⁵ *Malecha v. St. Croix Valley Skydiving Club, Inc.*, 392 N.W.2d 727, 730 (Minn. Ct. App. 1986).
- ¹⁶ See Public Health Law Center, *supra* note 2.