



# Liability Exposure for Schools

Each school day presents new opportunities for students of all ages to practice healthy behaviors. Schools and school districts are improving student and community health through programs tailored to a community's individual needs and resources. Across Minnesota, school districts are updating their policies to include school wellness, Farm to School, Safe Routes to School programs, school gardens, and are entering into facilities use agreements to expand the recreational use of school property. Well-designed policies, led by knowledgeable and supportive staff, can advance student nutrition, increase physical activity, and help develop healthy lifestyles?

While school districts are generally subject to liability for their wrongful acts as well the acts of their employees, fortunately, Minnesota law provides some significant protections.

## 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").

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Concerns about "liability" can keep schools from implementing policies that would benefit students and community members alike.

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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.<sup>1</sup>

The general expectation is that one will act reasonably toward others.<sup>2</sup> 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.<sup>3</sup> However, there are situations where a person or entity is held to a higher or lower standard.

### How are school districts protected from liability?

Through governmental immunities. Immunities, provided both in state statutes<sup>4</sup> and court decisions<sup>5</sup>, protect school districts from liability for a variety of claims. Two immunities are particularly relevant when developing policies that promote healthy, active lifestyles.

First, school districts are shielded from liability that might arise from *discretionary conduct*.<sup>6</sup> Statutory discretionary immunity protects policy-making decisions that require considering factors such as budget, education, resources and safety.<sup>7</sup> For example, a school district may adopt a policy stating that, due to limited resources and a desire to cultivate independence, students are responsible for getting on the correct bus at the end of the day.<sup>8</sup> Statutory discretionary immunity protects school districts from having their decisions “second-guessed” by the courts. Discretionary conduct is distinguished from operational-level or “ministerial” conduct. Operational activities that do not involve exercising of discretion, such as following an established plan, are not protected.<sup>9</sup>

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Second, school districts are generally protected from liability when injuries result from the recreational use of school property.

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Local governments are generally immune from claims based on the construction, operation, or maintenance of any property owned or leased for park or recreational purposes.<sup>10</sup> School districts are also protected against claims arising from the use of school property or school facilities that are made available for public recreational activities.<sup>11</sup> Schools that fail to warn recreational users of known, hidden hazards may still be liable for injuries.<sup>12</sup>

### Are teachers, coaches and other school personnel protected as well?

Yes, school personnel are generally protected as well. “Official immunity” protects individuals from personal liability for discretionary actions taken in the course of their official duties.<sup>13</sup> This is intended to alleviate concerns that the fear of personal liability might deter independent action.<sup>14</sup> School districts are also generally required to defend and indemnify their employees if they are sued for something arising out of their employment.<sup>15</sup> However, school personnel are not protected for willful or malicious conduct,<sup>16</sup> intentionally behaving in a way that is likely to cause harm to another person. Additionally, teachers may not be protected for failing to responsibly perform their regular duties. For example, a teacher who allows students to engage in dangerous play during recess may be liable if a child gets injured.<sup>17</sup>

## What steps can a school district take to reduce the risk of liability?

There are a number of common sense precautions school districts can take to reduce their risk of liability. Some common risk management strategies include:

- Creating clear policies that are based on a balancing of social, economic, financial and political factors.
- Preserving a record of the decision-making process.
- Training staff in regard to their roles in implementing policies.
- Periodically reviewing policies and procedures, revising when necessary.
- Eliminating known dangers where possible.
- Documenting all precautions taken to avoid harm or risk.
- Developing 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.
- Requiring parents or guardians of students to sign waivers before students participate in recreational activities.<sup>18</sup>
- Forming joint powers or facility use agreements with other public entities or community organizations that specifically outline acceptable uses of school property and facilities.
- Obtaining liability insurance that covers lawsuits arising from injuries.

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AT WILLIAM MITCHELL COLLEGE OF LAW

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## Endnotes

- <sup>1</sup> Lubbers v. Anderson, 539 N.W.2d 398, 401 (Minn. 1995).
- <sup>2</sup> 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).
- <sup>3</sup> See Baker v. Amtrak Nat. R.R. Passenger Corp., 588 N.W.2d 749, 753 (Minn. Ct. App. 1999).
- <sup>4</sup> minn. stat. § 466.03 (2012) (local governments); minn. stat. § 3.736 (2012) (state entities).
- <sup>5</sup> “Common law” is developed through court decisions.
- <sup>6</sup> There are many protections available to schools and the distinctions between them can be difficult to understand. In an effort to simplify the topic of school liability, we have combined discussion of statutory discretionary immunity for municipalities as per minn. stat. § 466.03, subd. 3 (2012), with discussion of common law and vicarious common law official immunity. Individual situations should be reviewed by an attorney.
- <sup>7</sup> See J.W. ex rel. B.R.W. v. 287 Intermediate Dist., 761 N.W.2d 896, 902 (Minn. Ct. App. 2009) (including consideration of safety issues, financial burdens, and possible legal consequences in decision-making).
- <sup>8</sup> Pletan v. Gaines, 494 N.W.2d 38, 43-44 (Minn. 1992).
- <sup>9</sup> Holmquist v. State, 425 N.W.2d 230, 232 (Minn. 1988).
- <sup>10</sup> minn. stat. § 466.03, subd. 6e (2012).
- <sup>11</sup> minn. stat. § 466.03, subd. 23 (2012).
- <sup>12</sup> Lishinski v. City of Duluth, 634 N.W.2d 456, 459-61 (Minn. Ct. App. 2001).
- <sup>13</sup> Anderson v. Anoka Hennepin Indep. Sch. Dist. 11, 678 N.W.2d 651, 660 (Minn. 2004).
- <sup>14</sup> Elwood v. Rice Cnty., 423 N.W.2d 671, 678 (Minn. 1988).
- <sup>15</sup> minn. stat. § 466.07, subd. 1 (2012).
- <sup>16</sup> Gleason v. Metro. Council Transit Operations, 582 N.W.2d 216, 220 (Minn. 1998).
- <sup>17</sup> Fear v. Indep. Sch. Dist. 911, 634 N.W.2d 204, 215-16 (Minn. Ct. App. 2001).
- <sup>18</sup> While waivers are not a guarantee against liability, they may reduce the likelihood of being sued. For more information, please refer to the Public Health Law Center factsheet on Waivers and Releases, available at <http://www.publihealthlawcenter.org/resources/minnesota-recreational-use>