



WAIVERS AND RELEASES: MANAGING LIABILITY RISK FOR YOUTH RECREATIONAL ACTIVITIES IN MINNESOTA

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STUDIES HAVE shown that regular physical activity can increase self-confidence and overall health in young people.¹ Schools and community groups across the country are looking for ways to make exercise part of a regular routine through a variety of recreational activities, including Safe Routes to School initiatives.² However, concerns about liability often prevent schools and community organizations from adopting such programs. There is no magic formula to avoid being sued, but schools and community organizations can reduce their exposure to liability by utilizing risk management strategies.³ Requiring parents and/or students to sign a waiver prior to participating in a recreational activity is only one way to limit liability risk.

Q What is liability?

A Put simply, liability is a legal responsibility. Typically, for you to be held liable, someone must prove that:

- » You owed them a duty of care;
- » You failed to perform that duty or did so negligently; and
- » Your negligence caused someone harm that could have reasonably been expected to occur.⁴

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Q What is a person’s “duty of care?”

A The duty you owe someone depends on the circumstances. Generally, everyone has the duty to act with reasonable care toward others. What is considered reasonable also depends on the circumstances.⁵

Q What is “negligence?”

A Negligence is the failure to act as carefully as an ordinary, reasonable person would in the same situation.⁶

Q What is “cause of harm?”

A “Cause of harm” means that your action was an important factor in causing the harm and that you could have reasonably expected the injury to occur.⁷

Q What is a waiver?

A In the most basic sense, a waiver is a written agreement not to sue if something goes wrong. Waivers are one way to reduce the possibility of being sued if someone is hurt during a sponsored activity.

Q Will a waiver protect me from being sued?

A No. Many people do not sue, thinking they cannot because they signed a waiver. But, if the case gets to court, waivers do not provide complete liability protection. Minnesota judges have ruled that waivers go against the general rule that a person can sue for negligence. Therefore, a waiver should not be the only form of protection against liability.

Q Are waivers ever valid in court?

A Yes. But, Minnesota courts will only enforce waivers that meet very specific criteria. 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

Q When is a waiver ambiguous?

A A waiver is ambiguous if reasonable people can interpret it in more than one way.⁹ In order to be effective, waivers should be written simply, clearly, and concisely.

Q When does a waiver violate public policy?

A 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.¹⁰ A waiver may violate public policy if the service involved is a "public" or "essential" service. These include services that are publically regulated or necessary, such as lodging, employment, public utility or health care.¹¹ Minnesota courts have ruled that certain recreational activities, such as horseback riding¹², scuba diving¹³, or skydiving¹⁴, do not involve the public interest and are not considered essential.

Q Are there any circumstances in which a waiver can provide protection?

A Even when valid and enforceable, waivers can only provide protection from liability for negligence. A waiver will not provide protection from liability for intentional acts of harm.¹⁵

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

A Common sense precautions go a long way toward avoiding liability risk when an injury results from a recreational activity. Most importantly, an organization, like an individual, should *act like an ordinary, reasonable person*. Additional steps vary depending on the activity. School districts and other governmental entities may have immunity from liability in some situations. In addition, some common risk management strategies include:

- » Creating safety rules and handing them out to all students and parents. These safety rules should comply with any local school rules, any local, state or federal laws, and any national standards.
- » Eliminating dangers, where possible.
- » Documenting all precautions taken to avoid harm or risk.
- » Obtaining liability insurance that covers lawsuits arising from injuries
- » Utilizing joint use agreements to clarify responsibility between schools and community organizations.



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1 Physical Activity and Children, AM. HEART ASS'N. http://www.heart.org/HEARTORG/GettingHealthy/Physical-Activity-and-Children_UCM_304053_Article.jsp (last visited June 3, 2011).

2 What are the health benefits for children who walk or bicycle to school? NAT'L CTR. FOR SAFE ROUTES TO SCHOOL, <http://www.saferoutesinfo.org/program-tools/what-are-health-benefits-children-who-walk-or-bicycle-school> (last visited June 3, 2011).

3 Minnesota law also provides other liability protections, including various forms of immunity and limits on recovery. For more information, please refer to our other fact sheets found at www.publichealthlawcenter.org.

4 *Lubbers v. Anderson*, 539 N.W.2d 398 (1995).

5 *See Flom v. Flom*, 291 N.W.2d 914, 916 (Minn. 1980); 4 Minn. Dist. Judges Ass'n Minnesota Practice- Jury Instruction Guides- Civil, CIVJIG 25.10 (5th ed. 2010).

6 *See Baker v. Amtrak Nat. R.R. Passenger Corp.*, 588 N.W.2d 749, 753 (Minn. Ct. App. 1999).

7 *Lubbers v. Anderson*, 539 N.W.2d 398 (Minn. 1995).

8 *Schlobohm v. Spa Petite*, 326 N.W.2d 920 (Minn. 1982).

9 *Walton v. Fujita Tourist Enterprises Co., Ltd.* 380 N.W. 2d 198, 201 (Minn. Ct. App. 1986).

10 *See Bunia v. Knight Ridder*, 544 N.W. 2d 60 (Minn. Ct. App. 1996).

11 *Schlobohm v. Spa Petite*, 326 N.W.2d 920, 923-925 (Minn. 1982); *Yang v. Voyageaire Houseboats, Inc.*, 701 N.W. 2d 783, 790 (Minn. 2005); *see also Walton v. Fujita Tourist Enterprises Co., Ltd.*, 380 N.W.2d 198, 201 (Minn.Ct. App. 1986).

12 *Beehner v. Cragun Corp.*, 636 N.W. 2d 821 (Minn. Ct. App. 2001).

13 *Dailey v. Sports World South, Inc.*, 683 N.W. 2d 302 (Minn. 2004).

14 *Malecha v. St. Croix Valley Skydiving Club, Inc.*, 392 N.W. 2d 727 (Minn. Ct. App. 1986).

15 *Schlobohm v. Spa Petite*, 326 N.W.2d 920, 923-925 (Minn. 1982).