Wisconsin School Resources: Recreational Use of School Property

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Presenters

- Jen Gilchrist Walker, *Wisconsin Clearinghouse for Prevention Resources at the University of Wisconsin, Madison*
- Natasha Frost, *Public Health Law Center at William Mitchell College of Law in St. Paul, Minnesota*
- Nancy Dorman, *Wisconsin Association of School Boards*
- Josie Lathrop, *Health First Wisconsin*
Active Community grantees

[Map of Wisconsin with counties colored in various shades of orange and red, indicating Active Communities Transformation areas.]
Using Recreational Agreements in Wisconsin Schools

Recreational agreements are becoming a popular strategy that community and school partners can use to increase access to opportunities for physical activity. Wisconsin’s state laws help to remove the barrier of liability from schools, making it easier to open up school spaces for community use. At the same time, public health advocates would like to partner with schools to help expand the use of school spaces so that surrounding community members can become more physically active.

Because many stakeholders can benefit from a robust use of school spaces for physical activity, these organizations have partnered to help school districts better understand the purpose and structure of “recreational agreements” that school districts can use in connection with authorizing community use of school grounds for recreational activities. The Wisconsin Association of School Boards, Public Health Law Center and Transform Wisconsin collaboratively developed two sample recreational agreement/facility use forms, a reference checklist, and a fact sheet that provides a general explanation of the liability protection provided by recreational agreements. Using these materials will allow schools to consider taking advantage of the liability protection offered by state law, and provide ways for community members to work with schools in order to truly increase shared use of schools spaces. Recreational agreements have great potential to become a triple win for schools, community organizations, and community members.
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Wisconsin’s New Liability Law
Protecting schools that provide community recreational use of school grounds

Communities around the country are pursuing active living and healthy eating strategies in a variety of settings. In Wisconsin, public health advocates are working to increase physical activity by promoting recreational use of school property during non-school hours. However, these efforts sometimes encounter barriers with administrators and governmental officials based on fears of liability. In 2012, a new law passed to provide liability protection for schools when allowing community use of school property during non-school hours. This law provides a unique opportunity for advocates to work with schools to promote physical activity in schools with the help of recreational use agreements.

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,
Agreement must include:

- Description of activity
- Time and place
- Eligibility requirements
- Supervision of minors
- Statement of participant’s assumption of risk
Limitations
Samples: An Overview
Sample Recreational Agreement #1

Recreational Agreement / Facility Use Permit

The ______________________ School District [hereinafter the "District"] and ______________________ [individual/organization requesting facilities] hereby enter into this Recreational Agreement and Facility Use Agreement/Permit [hereinafter "Agreement/Permit"].

Important: This document is not intended to be used to schedule facilities for District-sponsored events or activities (i.e., events that are held under the direction, supervision and control of the District).

Initial Application

The following application section must be completed by the group/organization/individual who is applying to use school facilities.

Date of request: ______________________

(Requests must be submitted no less than _____ days in advance of event.)

User (i.e., Applicant) Information

Name of group/organization/individual: ________________________________

Address: ____________________________________________________________

City ______________________ State __________ Zip __________

Phone ______________________ Email address ______________________
Requested Facilities, Date(s) and Time(s)

See fee chart below for facilities available.

<table>
<thead>
<tr>
<th>Facility*</th>
<th>Date(s)</th>
<th>Time (Begin/End)</th>
<th>District Approved* (date/signature)</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

* Only lines where the box labeled “District Approved” has been marked by the District are included in the final Agreement/Permit.

Type of Use

Provide a description of each activity to be conducted under this Agreement/Permit (be specific when describing any recreational activity):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Participant eligibility requirements for each activity (explain fully and differentiate by activity/date if necessary; examples of eligibility requirements include age ranges, residency, prior experience, registration forms/fees, etc.):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
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See fee chart below for facilities available.

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<tr>
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<th>Time (Begin/End)</th>
<th>District Use Only District Approved* (date/signature)</th>
</tr>
</thead>
<tbody>
<tr>
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Participant eligibility requirements for each activity (explain fully and differentiate by activity/date if necessary; examples of eligibility requirements include age ranges, residency, prior experience, registration forms/fees, etc.):
Request for Access to Ancillary Facilities

As part of this Agreement/Permit, the User/Applicant is requesting access to and use of the following:

☐ Bathrooms      ☐ Locker Rooms      ☐ Parking      ☐ Other: ____________________________

Is the User/Applicant requesting exclusive use of any of the above-identified ancillary facilities during their event activity? (Note: Unless exclusive use is requested and approved, any approval for use of ancillary facilities is understood to be non-exclusive.)

☐ Yes      ☐ No

If “yes,” identify the facilities for which exclusive use is requested and the specific date(s)/times during which exclusive use is requested.

________________________________________

District Use Only: Subject to the conditions specified below, or elsewhere in this Agreement/Permit, the above request for access to ancillary facilities during the User’s event/activity has been

☐ approved

☐ rejected

☐ approved/rejected in part as follows: ________________________________________________

   by [Name, Title] __________________________ on [date] __________________________

[Insert any special local limitations on the use of these additional facilities (e.g., extent to which request for exclusive use is approved), or identify any additional fees.]
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   by [Name, Title] __________________________ on [date] ______________________

[Insert any special local limitations on the use of these additional facilities (e.g., extent to which request for exclusive use is approved), or identify any additional fees.]
Is the User/Applicant Requesting a Waiver of Fees?

☐ Yes  ☐ No
Sample Fee Chart for Facilities Use

[Insert fee chart(s) in the agreement (e.g., by school building; for commonly requested rooms or equipment, etc.) or, if preferred, refer to a policy/procedure/exhibit where such fees are listed.]

<table>
<thead>
<tr>
<th>High School</th>
<th>District-Based, Non-Commercial, Not-for-Profit Users</th>
<th>Non-Commercial, Not-For-Profit Users</th>
<th>All Commercial / For Profit Users and Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gymnasium</td>
<td>[indicate the base fee/rate or &quot;no charge,&quot; as appropriate]</td>
<td>[indicate the base fee/rate or &quot;no charge,&quot; as appropriate]</td>
<td>[indicate the base fee/rate or &quot;no charge,&quot; as appropriate]</td>
</tr>
<tr>
<td>Classroom</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Community Room</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Hallways</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Outdoor track</td>
<td></td>
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<td></td>
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<tr>
<td>Outdoor field</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Library</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weight Room*</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Cafeteria*</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Kitchen Facilities*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auditorium/Arts Center*</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Pool*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Indicates facilities to which special charges or other special terms/conditions will generally apply.
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<tr>
<td>Pool*</td>
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<tr>
<td>Other:</td>
<td></td>
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</tbody>
</table>

* Indicates facilities to which special charges or other special terms/conditions will generally apply.
School officials should **consult** with their legal **counsel** to ensure that they have a complete understanding of all of the legal and policy issues.
Sample Recreational Agreement #2

Use of School Facilities or Grounds

[NOTE: This sample recreational agreement covers the minimum essential elements of a "recreational agreement" as defined under section 895.523 of the Wisconsin Statutes and also includes several additional terms and conditions. Some school districts may choose to additionally require users of district property to undertake further obligations and agreements in connection with such use. For example, some school districts require proof of insurance, require the user to obtain participant waivers and releases, and/or require the user to fully indemnify and hold the school district harmless from various costs, fees, damages, and other liabilities. However, it is important that any such additional obligations and agreements do not, for example, (1) conflict with the terms and conditions of the applicable recreational agreement; (2) contain an "entire agreement" clause that serves to nullify the applicable recreational agreement; and/or (3) impose any terms or conditions that are inconsistent with the state laws applicable to recreational agreements (such as imposing costs or fees beyond those permitted in connection with a recreational agreement). Legal advice should be obtained as necessary or prudent to address these and other issues.

Provided that the two documents are not inconsistent, one possible use of this sample "recreational agreement" would be to attach it as an addendum to the District's standard facilities use agreement/permit. Alternatively, a District could attempt to combine the two documents (the standard permit/use agreement and the "recreational agreement") into a single document, along the lines of Sample #1.]
C. Conditions of Use

1. Location/Facility, Date(s), and Time(s). The User shall have access to the following District facilities on the date(s) and at the time(s) identified below for the recreational activity or activities described in this Agreement. [Note: The table below is partially filled in solely to show possible examples. The District could pre-fill columns 1 and 2 of the table with its most commonly requested facilities if it chose to do so. Accordingly, this section may need to be customized based on the number of schools and specific facilities that the district is willing to permit for recreational use.]

<table>
<thead>
<tr>
<th>School/Property</th>
<th>Facility/Room**</th>
<th>On (mm/dd/yy)</th>
<th>From (start time)*</th>
<th>To (end time)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>High School</td>
<td>gymnasium</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle School</td>
<td>hallways</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elementary School</td>
<td>cafeteria</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Athletic Complex on Highway C</td>
<td>varsity baseball field</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5. Fees.

The District may charge fees addressing reasonable costs for maintenance, security, cleaning, and, if applicable, any District supervision of participants who are minors. Unless addressed/invoiced in a separate document, the fees charged to the User are shown below and are due in advance of the first activity held under this Agreement, unless the District establishes a specific due date in writing. The District may void this Agreement, deny future applications, and revoke User’s permission to use District facilities for any failure to make full and timely payment.

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Fee</th>
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<tbody>
<tr>
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</tbody>
</table>

Total Fees $
School officials should **consult** with their **legal counsel** to ensure that they have a complete **understanding** of all of the legal and policy issues.
Wisconsin School District Recreational Use Checklist

Why develop recreational use agreements at schools?

Communities with limited access to public recreational space are exploring opportunities to develop partnerships with schools for the use of school property to promote physical activity in the community. Access to safe, affordable and convenient recreational facilities is critical in order to promote active lifestyles and prevent a range of health problems, including obesity. The benefits can also extend beyond health. By becoming a community gathering space, schools can garner more support and involvement from residents. Residents themselves can benefit from the interaction, cohesion and sense of community that shared spaces provide. In short, facility use policies and recreational agreements hold great potential as a strategy for creating vibrant, healthy communities that benefit many local stakeholders in a variety of important ways.

How to use this checklist:

This checklist is meant to identify ways to improve existing school board policies, rules and regulations relating to recreational use of school property, as well as to update facility use forms, contracts and agreements to incorporate new liability protections and best practices. The key concepts include:

- Statements of Purpose;
- Policy consistency;
- Authority;
- Scheduling;
- Security;
- Staffing;
- Supervision;
- Facilities/Equipment to be Used;
- Communication;
- Costs;
- Roles and responsibilities;
- Activity participants; and
- Liability

These concepts are also included in sample resources developed by the Public Health Law Center and the Wisconsin Association of School Boards.
- Statements of Purpose;
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- Supervision;
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- Liability
## RECREATIONAL USE CHECKLIST

<table>
<thead>
<tr>
<th>Specific Issue</th>
<th>Details</th>
<th>Policy/Rule/Regulation</th>
<th>Recreational Agreement</th>
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</thead>
<tbody>
<tr>
<td><strong>LIABILITY</strong></td>
<td></td>
<td>Include here</td>
<td>Include here</td>
</tr>
<tr>
<td>Risk management strategies</td>
<td>Outline risk management strategies that the school district requires to limit damages and injuries. Consult with district legal counsel and district insurers.</td>
<td>Check if present</td>
<td>Check if present</td>
</tr>
<tr>
<td>Statement describing a participant’s assumption of risk *</td>
<td>A clear statement describing a participant’s assumption of risk. This information is required by law to be included in a section 895.523 “recreational agreement.”</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Insurance requirements</td>
<td>Outline the requirements for users to hold and provide proof of liability and/or property insurance, including dollar amount of insurance and situations where insurance requirements can be waived. Ensure that any insurance waiver criteria are lawful and non-discriminatory and consistent with the district’s risk management goals.</td>
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<td>------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>COMMUNICATION</td>
<td></td>
<td>Include here</td>
<td>Check if present</td>
</tr>
<tr>
<td>Post community use applications and agreements on website</td>
<td>Process for posting the most recent versions of relevant documents on the district website, and where it will be posted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Website section about community use</td>
<td>Requirement for school district and individuals schools to have a portion of websites to be dedicated to information about community use</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community engagement plan</td>
<td>Plan for community engagement to involve community members in underserved populations and organizations serving those community members to facilitate recreational use of school property during non-school hours</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
“Supporting, Promoting and Advancing Public Education”

- **Legal Services**
- **Advocacy & Government Relations**
- **Policy Services**
- **Governance & Leadership Development**
- **Coaching Program**
- **Superintendent Search Services**
- **Organizational Consulting**
- **Communication Services**
WORKING WITH SCHOOLS

ADVOCATING LOCAL POLICY CHANGE

When approaching schools or school districts to advocate local policy change, you should be prepared to deal with:

- the organizational structures in place,
- individual personalities and relationships within the school system and between the schools and outside agencies, and
- the realities of school operations and making changes that affect such operations.

Although the specific internal processes by which policies are changed may vary from district to district, there are two common tasks for pursuing any policy change: (1) lay the groundwork, and (2) build awareness and support for the policy change.

1. LAY THE GROUNDWORK

In most school districts, anyone can usually start the process of creating or revising school policies — school board members, administrators, school staff members, students, parents or anyone else in the community. It is always important to remember, however, that the school board is responsible for adopting official school district policy and that school administrators are responsible for seeing that the policies are implemented once they are adopted.

There are several steps that can be taken in laying the groundwork for policy change:

a. Recognize the Problem and Make a Commitment to Take Action — You must clarify the need for the policy change and be willing not only to commit to pursue the cause, but also to work in cooperation with school district officials in making it happen. Why is it important for the policy to be changed? What purpose does it serve?

School board and administrative support is especially important in creating an environment for making changes happen.

b. Assess the School Community’s Situation — Before making decisions about what actions to take, it is important to evaluate the current school environment to see what is going on now, what is going well and what needs improvement. Specifically, you should:

1. Compile and review local data that may affect decision making. For example, find out how the public schools and school grounds are currently being used outside the school day for school-sponsored and community activities and to what extent.
Working with schools: Laying the Groundwork
Working with schools: Laying the Groundwork

5 things to keep in mind:

- Recognize the Problem and Make a Commitment to Take Action
Working with schools: Laying the Groundwork

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- Recognize the Problem and Make a Commitment to Take Action
- Assess Local School Community’s Situation
Working with schools: Laying the Groundwork

5 things to keep in mind:

- Recognize the Problem and Make a Commitment to Take Action
- Assess Local School Community’s Situation
- Become Familiar with the Political Dynamics Within Your School Community.
Working with schools: Laying the Groundwork

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- Recognize the Problem and Make a Commitment to Take Action
- Assess Local School Community’s Situation
- Become Familiar with the Political Dynamics Within Your School Community.
- Develop a Strategy to Get the Policy Adopted or Revised
Working with schools: Laying the Groundwork

5 things to keep in mind:

- Recognize the Problem and Make a Commitment to Take Action
- Assess Local School Community’s Situation
- Become Familiar with the Political Dynamics Within Your School Community.
- Develop a Strategy to Get the Policy Adopted or Revised
- Respect the Hierarchy in the Organizational Structure.
Working with schools

Build awareness and support for the policy change
Wisconsin School District Resources: Recreational Use of School Property

Using Recreational Agreements in Wisconsin Schools

Recreational agreements are becoming a popular strategy that community and school partners can use to increase access to opportunities for physical activity. Wisconsin's state laws help to remove the barrier of liability from schools, making it easier to open up school spaces for community use. At the same time, public health advocates would like to partner with schools to help expand the use of school spaces so that surrounding community members can become more physically active.

Because many stakeholders can benefit from a robust use of school spaces for physical activity, three organizations have partnered to help school districts better understand the purpose and structure of "recreational agreements" that school districts can use in connection with authorizing community use of school grounds for recreational activities. The Wisconsin Association of School Boards, Public Health Law Center and Transform Wisconsin collaboratively developed two sample recreational agreement/facility use forms, a reference checklist, and a fact sheet that provides a general explanation of the liability protection provided by recreational agreements. Using these materials will allow schools to consider taking advantage of the liability protection offered by state law, and provide ways for community members to work with schools in order to truly increase shared use of school spaces. Recreational agreements have great potential to become a triple win for schools, community organizations, and community members themselves.

Wisconsin School Resources Webinar: Recreational Use of School Property

The Wisconsin Association of School Boards, the Public Health Law Center and Transform Wisconsin roll out new resources for Wisconsin schools to promote community recreational use of school property.

Using Recreational Agreements in Wisconsin Schools

The Wisconsin Association of School Boards, the Public Health Law Center and Transform Wisconsin developed this overview of resources to assist stakeholders working to increase community recreational use of school property during non-school hours.

Wisconsin’s New Liability Law

The Wisconsin Association of School Boards, the Public Health Law Center and Transform Wisconsin have worked to update Wisconsin's liability laws to make it easier for schools to work with communities to use their spaces.
Questions?

- Jen Gilchrist Walker, jgwalker@uhs.wisc.edu
- Natasha Frost, natasha.frost@wmitchell.edu
- Nancy Dorman, ndorman@wasb.org
- Josie Lathrop, jlathrop@healthfirstwi.org