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,

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or agents) is arguably the district’s most significant liability concern.

The obligation someone has to protect someone else from harm, and thereby also avoid potential liability, depends on the situation. The general expectation is that people act “reasonably” toward others, given the circumstances. If someone fails to act with as much care as an ordinary, reasonable person in a given situation, and that failure results in harm or injury, then that individual is usually considered to be “negligent.” An allegation of negligence (which the law classifies as a type of “tort”) is often, but not always, a sufficient basis for an injured party to file a claim or civil suit for damages. The injured party’s burden to demonstrate liability in a given case may be higher (e.g., proof of “willful” or “intentional” conduct) or lower (e.g., “strict liability”) than the standard that applies to a typical negligence claim. For example, under Wisconsin law, if an individual’s bodily injury was caused by the negligent conduct of a school district employee who was exercising discretion in the performance of his/her job duties, the injured party may have to further prove that the employee failed to address a “known danger” before the employee or district could be held liable for damages.

Notwithstanding that it can often be more difficult for an injured party with a tort claim to prove liability and recover damages from a public entity...
than from a private individual or private entity, concerns about liability and the costs associated with defending claims (regardless of the outcome) are still important considerations for any school district that allows community use of school facilities for recreational activities.

Are there any legal defenses to liability?

A powerful defense to liability is immunity. Immunity is a legal doctrine that exempts a certain individual or entity from being held legally responsible for another person’s or entity’s injury or other damages. If an individual or entity has immunity from a certain liability, this immunity can be used as a defense against a lawsuit and provide a basis to have the lawsuit dismissed by a court. Under Wisconsin law, for example, school districts and other units of local government can often assert “governmental immunity” as a defense to a tort claim.1

Are there any forms of immunity that provide specific protection to Wisconsin schools for community recreational use of school property?

Yes. In April 2012, Wisconsin passed a new law providing immunity from liability to school boards that provide public access to school grounds for certain recreational activities.2 More specifically, this law provides school districts with broad, but not unlimited, immunity from liability for injuries caused by or to a person engaged in recreational activities on school grounds pursuant to a recreational agreement.3 The term “recreational activity” includes many indoor and outdoor physical activities, but does not include organized team sports or activities “organized and held” by the school. A recreational agreement is written authorization between the school and another entity that grants access to school grounds for recreational purposes. The agreement has to include a description of the recreational activity, the time and place of the activity, any eligibility requirements of the activity, supervision provided to minors engaged in the activity, and a clear statement describing a participant’s assumption of risk.

Are there any limitations on the immunity provided by this new law?

Yes. The law does not apply in situations where there is no recreational agreement or the recreational agreement does not contain all the required pieces of information. The immunity does not apply to recreational activities involving a weight room, swimming pool or gymnastics equipment. The immunity does not extend to spectators who are injured while present on school grounds. In addition, the law does not cover any situations where a school official acted maliciously or maliciously failed to warn against a known unsafe condition. As a state law, the immunity granted by the statute also would not apply to any federal law claims that might be framed around a particular injury or incident.

The new law appears to require that the use of school grounds or school facilities under a recreational agreement must be consistent with the limitations established under Wisconsin law regarding “temporary use of school property”, including a limitation on the extent to which the school district
may charge fees to the user(s). This limitation requires that fees do not exceed actual costs, which means “reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning.”

Finally, school districts should keep in mind that the specific immunity granted by the new law is in addition to other existing state statutes that could separately provide immunity (or at least limit liability and recoverable damages) in particular situations that also involve community use of school facilities. These other statutes could be particularly important in any situation in which the new law does not apply or where the school district fails to secure a proper recreational agreement. To better understand the complete picture of the potential liability associated with the community’s recreational use of school facilities, how the new immunity law affects that liability, and the extent to which these issues might be further clarified in the future through judicial or regulatory decisions, a school district should maintain an ongoing dialogue with its legal counsel and insurers.

Endnotes

1 See, e.g., W.S.A. 893.80. To the extent immunity is viewed as an exception to liability, it should be noted that various “exceptions to the exception” can arise in particular circumstances.
2 W.S.A. 895.523. The new statute, created by 2011 Wisconsin Act 162, also grants the limited immunity to the governing body of a charter school. There are other components of Act 162 that are not discussed in this fact sheet.
4 W.S.A. 120.13(17).
5 Id.
6 See, e.g., W.S.A. 893.80; W.S.A. 895.52; and W.S.A. 895.525.