



# Demystifying Missouri Liability & Insurance

Missouri law permits school boards to allow members of the general public to use the school facilities, as long as the public use of the building does not interfere with the primary purpose of the school.<sup>1</sup> Yet many school administrators are concerned about being sued if a member of the public is injured while using school property. Missouri law provides schools some protections from liability and insurance coverage and risk management tools can go a long way at minimizing financial risk of the schools. This resource was developed as a broad overview to outline these general concepts as it relates to Missouri schools, but should not take the place of discussions with the individual school district's attorney and insurance provider.

## What is Liability in Missouri?

For purposes of this publication, liability can be defined as legal responsibility for another person's injury or damages. In Missouri, courts have defined when a person or entity may be liable for the injuries of another person. "In any action for negligence, the plaintiff must establish that (1) the defendant had a



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"The school board having charge of the schoolhouses, buildings and grounds appurtenant thereto may allow the free use of the houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for any other civic, social and educational purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted."<sup>2</sup>

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duty to the plaintiff; (2) the defendant failed to perform that duty (breach); and (3) the defendant's breach was the proximate cause of the plaintiff's injury."<sup>3</sup> 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 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.

Notwithstanding that it can often be more difficult for an injured party with a tort claim to win a negligence suit against 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.

### What is the duty of the schools in Missouri?

Missouri law requires school boards to maintain school buildings in good repair.<sup>4</sup> Therefore, Missouri

schools are under an existing duty to keep the school grounds safe for both students and the public.

### 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. Public entities usually have sovereign immunity. This means that while an injury might have occurred on property owned by a public entity, the entity will not be held liable for the injury. In *Spearman v. Univ. City Pub. Sch. Dist.* the court found that the school was not liable when a student was injured by a trampoline while participating in a physical education class because of the doctrine of sovereign immunity protects public entities from liability.<sup>5</sup>



There are exceptions to sovereign immunity in two instances. "(1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment; (2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury,

that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.”<sup>6</sup>

The first exception would not apply to this issue because community use of schools does not involve operating motorized vehicles. The second exception could apply if there is a dangerous condition for which the school has not adequately warned the public or if the school has not abated a known dangerous condition. Missouri courts have applied this statute to determine that public entities can be liable for negligence in some instances. In *Phelps v. City of Kansas*, the court found that a city was liable when a child drowned on city property.<sup>7</sup> Therefore there is no absolute sovereign immunity in Missouri. But, school districts are already under a duty to keep the premises safe and free of dangerous conditions or warn of dangerous conditions.

### **Are there any other protections for school district employees?**

A related issue is whether school staff, such as teacher and other faculty, are liable for injuries that occur on school property. Official immunity means that public officials are protected “from tort liability for damages arising from discretionary acts or functions in the performance of their official duties.”<sup>8</sup> This means that if a public official is acting within his or her official capacity, he or she is not liable for damages. Courts in Missouri have found that school officials can be immune from liability for their official acts. For example, in *Webb v. Reisel*, 858 S.W.2d 767(Mo. Ct. App. 1993), the Director

of Transportation for the school was given official immunity after a student was injured in a school bus accident.<sup>9</sup> The Court found that the Director was responsible for more than 14,500 students, and the job required consideration of many factors, requiring the exercise of his professional judgment, rather than the performance of routine tasks.<sup>10</sup> Immunity does not protect ministerial acts, clerical duties the



public official is required to perform upon given state of facts, in prescribed manner, in obedience to mandate of legal authority, without regard to his or her own judgment or opinion concerning the propriety of act to be performed.<sup>11</sup> This decision is very fact-based, and the courts look to factors such as the nature of official's duties, the extent to which acts involve policymaking or exercising professional expertise or judgment, and the likely consequences of withholding immunity.<sup>12</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.

- 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.

### What is the role of insurance as a risk management strategy?

The basic purpose of insurance is to prepare and protect individuals or entities from exposures and catastrophic losses. The most common insurance provider for schools in Missouri is provided by Missouri United School Insurance Council (MUSIC). MUSIC is coverage plan that includes “buildings, contents, boiler & machinery, inland marine, automobile, crime, general liability,

#### Recommended Procedures

The MUSIC website, [musicprogram.org](http://musicprogram.org), provides information relating to the recommended procedure for outside organizations or groups using school facilities. First, MUSIC encourages the use and completion of a facility use form. In addition, MUSIC encourages that districts require either 1) a Certificate of Insurance; 2) Special Events Insurance; or 3) a Hold Harmless Agreement.<sup>17</sup> A Certificate of Insurance is useful when organizations have insurance already and have the option to name the school district as an additional insured.<sup>18</sup> However, this is not always possible or feasible. When an organization does not have insurance, MUSIC recommends the organization obtain Special Events Insurance.<sup>19</sup> Finally, if neither of these are options, MUSIC suggests obtaining a Hold Harmless Agreement, an agreement signed by all participants, that will hold the district harmless in most situations.<sup>20</sup>

miscellaneous medical malpractice, school board liability, employment practices liability, special education due process, workers' compensation, treasurer's bonds, special events and notary bonds."<sup>13</sup> MUSIC provides insurance for 473 members, including school districts, community colleges, and education associations, which is approximately three-quarters of all school districts.<sup>14</sup> MUSIC provides some coverage for events held on school property, although coverage varies by policy. For example, for Athletic Booster Clubs or school sponsored events, MUSIC only covers those activities of the "parent organizations if the money flows through the school and the organization is controlled by the school board and administration."<sup>15</sup> In further explanation, this is only the case if the following both two criteria are met: "The event, whether held on member premises or not, is controlled, managed and supervised by the member; and the revenue, generated or expended by the event or activity, is controlled and managed by the member and the money flows through

the member's account... The Board of Education approves and directs how the money is spent or allocated."<sup>16</sup> School districts who do not use MUSIC may be self-insured or may obtain insurance from another provider.

## Conclusion

When school facilities are open for use by members of the community, schools might have concerns that they are liable if a community member is injured. While Missouri law allows plaintiffs to sue a defendant for negligence, schools usually are immune because of Missouri's statute granting public entities sovereign immunity. The statute has an exception for situations in which there was a dangerous condition that the public entity did not correct. To better understand the complete picture of the potential liability associated with the community's recreational use of school facilities 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.

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## Endnotes

- <sup>1</sup> Mo. Rev. Stat. §177.031 (2015).
- <sup>2</sup> *Id.*
- <sup>3</sup> *Martin v. Washington*, 848 S.W.2d 487, 493 (Mo. 1993).
- <sup>4</sup> Mo. Rev. Stat. §177.031 (2015).
- <sup>5</sup> *Spearman v. Univ. City Pub. Sch. Dist.*, 617 S.W.2d 68, 69 (Mo. 1981).

- <sup>6</sup> Mo. Rev. Stat. § 537.600 (2015).
- <sup>7</sup> *Phelps v. City of Kansas*, 371 S.W.3d 909, 913 (Mo. Ct. App. 2012).
- <sup>8</sup> *Jackson v. Wilson*, 581 S.W.2d 39, 42 (Mo. Ct. App. 1979).
- <sup>9</sup> *Webb v. Reisel*, 858 S.W.2d 767, 769 (Mo. Ct. App. 1993).
- <sup>10</sup> *Webb v. Reisel*, 858 S.W.2d 767, 769 (Mo. Ct. App. 1993); *Jackson*, 581 S.W.2d 39 at 44 (duty to keep park grounds safe involves the consideration of a great many circumstances and thus, necessarily involves the exercise of judgment or discretion rather than the mere performance of a prescribed task).
- <sup>11</sup> *Webb v. Reisel*, 858 S.W.2d 767, 769 (Mo. Ct. App. 1993).
- <sup>12</sup> *Webb v. Reisel*, 858 S.W.2d 767, 769 (Mo. Ct. App. 1993).
- <sup>13</sup> Missouri United School Insurance Council, [www.musicprogram.org](http://www.musicprogram.org) (last visited 9/20/15).
- <sup>14</sup> *Id.*; 2008 Legis. Bill Hist. MO H.B. 1722.
- <sup>15</sup> Missouri United School Insurance Council, [www.musicprogram.org](http://www.musicprogram.org) (last visited 9/20/15).
- <sup>16</sup> *Id.*
- <sup>17</sup> *Id.*
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*