



LIABILITY FOR MINNESOTA SCHOOL DISTRICTS IMPLEMENTING POLICIES TO PROMOTE ACTIVE LIVING AND HEALTHY EATING

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EACH SCHOOL day presents an opportunity for students of all ages to practice healthy behavior. Schools districts can improve student health in schools through well designed policies tailored to a community's individual needs and resources. Across the state of Minnesota school districts have updated their policies to include school wellness, farm to school, Safe Routes to School, school gardens, and community recreational use of school property. An appropriate policy lead by knowledgeable and supportive staff can advance student nutrition, increase physical activity and help develop healthy lifestyles.

Concerns about liability can keep schools from implementing policies that might be beneficial to students or community members. In Minnesota, the law provides school districts with protection from liability for policies that demonstrate a careful consideration of budget, safety, education, nutrition, or other important concerns.

Q What is liability?

A Liability is a legal responsibility for injury, death or damages. The standards for holding someone liable differ depending on what and who caused the injury. Typically, for you to be held liable for someone else's injuries, that person must prove that you had a legal responsibility to protect him or her from harm (otherwise known as "duty of care."). Then, that person has to show that you failed to protect him or her, and that as a result that person was injured in a way that was foreseeable.¹ The obligation you owe a person

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depends on the situation. The general expectation is that you act reasonably toward others given the circumstances.² Failure to act with as much care as an ordinary, reasonable person in a given situation is called negligence.³ However, there are situations where the law holds a person or entity to a higher or lower legal responsibility to protect another from harm.

Q How does Minnesota law protect school districts from liability?

A Two forms of protection are available to school districts looking to develop policies that promote healthy, active lifestyles.

First, Minnesota law protects school districts from liability that might arise from discretionary conduct.⁴ Discretionary conduct involves school district decisions that consider factors such as budget, education, resources and safety.⁵ For example, a school

district may create 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.⁶

Discretionary conduct is distinguished from operational conduct, which is not protected. Operational conduct includes prescribed or day-to-day decisions that do not involve an exercise of discretion but instead follow an established plan.⁷

Second, school districts are generally protected from liability when injuries result from community recreational use of school property. Schools districts that fail to warn recreational users of known hazards that are not obviously dangerous may still be liable for injuries.⁸

Q Does this protection apply to teachers, coaches and other school personnel?

A Minnesota law generally protects school personnel as well as school

districts. However, school personnel are not protected for conduct that is willful or malicious.⁹ This kind of conduct means 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 is in charge of supervising children during recess may be liable if a child is injured after the teacher allows students to engage in dangerous play.¹⁰

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

A There are a number of steps that a school district can take to reduce the risk of liability. Among these are:

- » Provide training so that staff members understand their roles in implementing policies.
- » Ask parents or guardians of students to sign waivers before allowing students to participate in recreational activities.¹¹
- » In order to set specific conditions regarding community use of school property, look into forming a joint use agreement with your city or county, or with a community organization.¹²

- » Create clear policies based on a balancing of factors. Keep a record of what factors were considered in the making of these policies.



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1 Lubbers v. Anderson, 539 N.W.2d 398 (Minn. 1995).
 2 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).
 3 See Baker v. Amtrak Nat. R.R. Passenger Corp., 588 N.W.2d 749, 753 (Minn. Ct. App. 1999).
 4 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. 6 with discussion of common law and vicarious common law official immunity. Individual situations should be reviewed by an attorney.
 5 J.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).
 6 Pletan v. Gaines, 494 N.W.2d 38, 43 (Minn. 1992).
 7 Holmquist v. State, 425 N.W.2d 230, 232 (Minn.1988).
 8 Lishinski v. City of Duluth, 634 N.W.2d 456 (Minn. Ct. App. 2001).
 9 Gleason v. Metro. Council Transit Operations, 582 N.W.2d 216, 220 (Minn. 1998)
 10 Fear v. Indep. Sch. Dist. 911, 634 N.W.2d 204 (Minn. Ct. App. 2001).
 11 While waivers are not a guarantee against liability, they may reduce the likelihood of being sued. For more information, please visit the Public Health Law Center's fact sheet on Waivers & Releases at www.publichealthlawcenter.org
 12 For more information on joint user agreements, please visit http://www.nplanonline.org/sites/phlpnet.org/files/JointUse_FactSht_FINAL_Updated_100618.pdf