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Summer is on the Way: Is Your Institution Ready for Recreation Liability Challenges?

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At Issue: Differing challenges and exposures arise from recreational activities and programs sponsored or held at educational institutions. The warm weather brings walkers, joggers, bicyclists, swimmers, and weekend athletes (along with their fans) into playgrounds, ball fields, and fitness courses. In addition, many schools sponsor summer recreation programs or summer camps. Unfortunately, many people who engage in these activities may not be prepared for physical activity. Jogging, cycling, swimming, and ball playing require athletic abilities, skills and a certain level of physical fitness. Not surprisingly, the more educational facilities or properties are used for recreational purposes, the greater the likelihood of accidents, injuries and unfortunately litigation. This presents recreation risk to the institution.



In this edition of *At Issue*, we will address several examples of the liability exposures that arise from summer camp and recreation programs that are either sponsored by the institution, or are being held on school grounds.

Legal Liability

Institutions can be held liable for damages sustained by facility users and others who are injured or sustain damages as a result of the institution's negligence. However, a majority of states have

passed some form of recreational use liability protection laws that shields landowners (both private and public) from damages sustained by people who use their property. These laws contain specific conditions for immunity to apply. For example:

- A fee can not be collected;
- The laws apply to designated activities, such as hiking, hunting, fishing, cycling and canoeing; and

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- The laws apply to ordinary negligence only (not gross negligence or willful and wanton negligence).

In some states, public sector entities (including public or community school districts) have limited tort immunity as a matter of law – such as limiting the amounts of damages that can be recovered in litigation. This may not protect private institutions, however.

Cases arising from recreation risk almost always allege a negligent act on the part of the institution. In order to establish negligence, the following elements must be proven:

1. A duty owed to the plaintiff (e.g., the institution must provide a safe playground for use by its students);
2. A breach of that duty (e.g., surface under the equipment was inadequate);
3. The breach was the actual and proximate cause of the plaintiff's injuries (e.g., injuries were the result of a fall from the swing onto a hard surface);
4. Actual damages sustained by the plaintiff (e.g., the injured party suffered a fractured arm).



Insurance company adjusters and defense counsel have several defenses available in the event of litigation:

1. Assumption of risk (when a claimant voluntarily subjects themselves to an activity with a known and appreciated danger);
2. Comparative negligence (the plaintiff's recovery is reduced by their degree of responsibility);
3. Notice of claim (many public sector entities can not be sued unless a notice of claim is first filed within a specific period of time);
4. Statute of limitations (the period of time between the accident and when a law suit can be filed – typically two to three years).

Waivers and Releases

A waiver is a voluntary surrender of the participant's right to sue for injury or damage. A release is a voluntary release of the institution from liability for injuries that may occur. The effectiveness of waivers and releases varies by state. Make sure to speak to your legal counsel before drafting or using these documents.

Often, a waiver and release form will include assumption of risk language – language outlining the risks particular to the activity or program. This is the proper procedure for letting participants know the risks of physical injury that exist when participating in an event (e.g., if a road race, posting the length of the course in advance). These forms often contain a statement regarding medical conditions, in effect, an affirmation wherein the participant acknowledges that he or she is physically able to participate in the event or activity.

Although the effectiveness of waiver and release forms are questioned, they should still be obtained from participants. Waiver and release forms have the greatest likelihood of passing legal muster if they are specific and related to the events and activities at hand. ■



Youth Camps

The management of risk at youth and sports camps is a complex task and every state has its own regulations, certifications and requirements. In addition, wage and salary requirements for employees vary state by state. This article will highlight several risk management and safety issues that can lead to accidents, injuries to campers and staff, and litigation against the camp or sponsoring institution. We also address camp regulations that apply to camps, with participants under the age of 18 years, including camps being held on the institution's facilities, sponsored by outside groups that manage and supervise the program.

Regulation

Each state has different requirements for camp operators and sponsors. The regulations are designed in part to ensure a safe camp experience for all involved. The regulations typically address the following issues:

- Licensing
- Written Plan (to demonstrate compliance with code requirements)
- Staff Selection
- Staff Credentials
- Background Checks
- Staff Training
- General Safety
- Water Supply
- Sewer Treatment
- Food Protection
- Fire Prevention
- Medical and Health Services

- Medication Supervision
- Activity Safety
- Required Reporting
- Inspections

The American Camp Association lists camp requirements by state at their web site at: <http://www.acacamps.org/publicpolicy/regulations/>.

Staff Credentials

Most states have minimum age and educational qualifications for camp staff, usually with different standards depending on whether or not they are directing a day or overnight camp. Camp counselors must have experience in camping and supervision of children and/or have completed an acceptable training course.

Age requirements and counselor-to-camp ratios vary for day and overnight camps. For example:

TITLE	RATIO OF STAFF TO CAMPERS	ACTIVITY
Trip Leader	1 to accompany each trip	Camp Trips
Counselors to Accompany Trip Leader	1:8 (For campers 6-years old and older) 1:6 (For campers less than 6-years old)	Camp Trips
Staff	1:12 (May also be driver)	Motor Vehicle Transportation
Counselors	1:8 (For campers 6-years old and older) 1:6 (For campers less than 6-years old)	Onsite Supervision – Rest or Sleep Hours
Camp Health Director (Physician, nurse practitioner, physician assistant, registered nurse or other person acceptable to the permit-issuing agency)	1 Required	Administration

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Life guards, progressive swim instructors, camp aquatics directors, athletic trainers, nurses and other employees who are required to have a license or certification must provide original documents for verification.

Out-of-Camp Trips

Each out-of-camp trip should have a set itinerary. For trips that are weather-dependent consider alternative activities in the event of cancellation. The activities should be appropriate for the age and skill of the campers. Use of personal protective equipment (life jackets, helmets) must always be enforced.

Plans should include supervision and camper (and staff) accounting when out of camp, and provisions for medical emergencies. For trips that are off-road or in wilderness, first aid supplies and a method for communicating with the camp are required.

“Extreme Sports”

Rappelling, rock climbing, cave exploring, rope and challenge courses all require special attention, which makes staff and camper training essential. The equipment or facilities must be in compliance with safety recommendations or activity standards. Supervision and activity management is more important with activities that present a greater



risk of injury. Age, height, training and physical ability for prospective participants have to be evaluated prior to the trip or activity.

In some instances, trip leaders for trips involving higher risk activities (hiking, rock climbing, camping) must have CPR and First Aid certifications.

Emergency Management Planning (EMP)

Every administrator, leader and camp counsel needs to know what to do in the event of an emergency. Campers need to know what their responsibilities are in the event of an emergency as well. Many states require a written emergency management plan that addresses fire safety

and prevention, emergency evacuation, exit maintenance, drills, weather emergencies, intruders, medical care, contact numbers, supplies and emergency communications. The EMP should also address offsite emergencies, including methods to contact emergency services and the camp in the event of an accident during a trip.

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Contract Issues

If the camp program is run by an outside company, a contract is required. It should include an indemnification agreement in

favor of the school, as well as an insurance procurement agreement, requiring the camp operator to provide specific liability and property coverages, for example:

INSURANCE	WHAT IT COVERS	RECOMMENDED LIMITS
Commercial General Liability	Public liability – accidents from sports and recreation activities; trips and falls; improper supervision/hiring claims arising from acts of employees (including sexual misconduct); product liability claims alleging improper food handling	\$1,000,000 each occurrence and \$3,000,000 in the aggregate with coverage for participant liability
Commercial Automobile	Bodily injury and property damage claims arising from the use or operation of motor vehicles (including buses and vans)	\$1,000,000 combined single limit
Excess Liability	Additional limits of coverage	\$3,000,000 each occurrence and in the aggregate
Workers' Compensation and Employers' Liability	Work-related injuries to employees	WC - Statutory Limits EL - \$500,000 Each Occurrence Bodily Injury, \$500,000 Each Occurrence for Employee Disease with a \$500,000 Employee Disease Aggregate
Camper Accident/ Medical Insurance	Medical expenses with payments for disabilities, sickness or death arising from injuries sustained during camp	Varies



Safety and Preparedness Tips for Summer Recreational Facilities

Soccer and Baseball Fields

The number of children and teenagers playing organized soccer is growing at a rapid pace, rivaling the popularity of “America’s Pastime.” Soccer and baseball are two activities that require heavy and continuous use of playing fields. Vigilant maintenance and frequent inspections are needed to ensure the safety of each participant and spectator.

Although every player on a ball field bears some risk of injury, the casual environment often associated with recreational sports must not decrease an institution’s commitment to safety. Continuous inspection and maintenance of playing fields and surrounding areas is essential.

The most common types of player accidents include poor ground conditions, player vs. player collisions or collisions between players and fixed objects, such as fences and goal posts. Running, sliding, or players coming into contact with bats and/or balls are also major causes of player injuries.

Grounds

- Inspect fields before the start of the season and on a routine basis thereafter to ensure player safety.
- Address tripping hazards, problems with trees, fencing, etc.
- Encourage umpires, team captains and league officials to inspect fields before each game.



- Locate all components of the irrigation system below ground, and keep all protective covers in place. If possible, sprinkler heads should be located away from primary playing surfaces.
- Consider fencing in hazards, such as areas located near streets or parking lots.
- All fields should be properly marked. Avoid using unslaked lime, which can cause burns.

Collisions

- Knuckle all fences to reduce the chance of puncture injuries.
- Bendable corner posts should be anchored below the playing surfaces.
- Cover all posts or projections, from the ground to a height of 8 ft, with tear-resistant protective padding.

- Cover goal posts, foul poles, lights and scoreboard supports in the proximity of the fields.
- Provide regulation-sized warning tracks to allow players sufficient time to react before reaching a barrier.
- Outfield fencing should be flexible and absorb impact to reduce likelihood of serious injury.

Running & Sliding

- Use breakaway bases to minimize limb injuries.
- Construct dugouts and other areas at grade level, to remove trip/fall exposures.
- Maintain all fields to improve drainage and provide a level playing surface.
- Install home plate flush with the ground around the batter’s box.

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Miscellaneous

- Portable soccer goals should be anchored to prevent tip-over.
- Use bat racks in dugouts to reduce tripping hazards.
- Player benches should be located at least 30 feet from home plate. Protective fencing will reduce injuries from foul balls.
- Provide regulation-sized batting cages to reduce the chance of injuries during batting practice.
- Protective netting may be added to protect cars, homes and spectators from foul balls.

Basketball

Basketball was originally conceived as a no-contact sport, but has recently lost this image. Today, the game generates a good deal of physical contact with players wearing little to no personal protective equipment. Estimates indicate that over 500,000 people in North America seek medical attention each year because of injuries sustained during organized and informal basketball games.

Collisions between players, poor physical conditioning, slippery floors and inadequate playing areas are major causes of basketball-related injuries.

- Provide sufficient space between courts, and evaluate the need for fences.
- A 10-foot wide safety zone around each court is ideal for preventing collisions with walls, fences and other obstructions. Benches are often installed incorrectly in this area.
- Set back posts supporting basketball backboards four feet back from the baseline and provide adequate protective padding around each post.
- Use breakaway rims for all baskets.
- Install benches on the perimeter of the court, rather than alongside the courts, to prevent tripping hazards and garbage accumulation.
- Check that court dimensions are appropriate for the age group and type of program.

Playgrounds

Falls to the surface from playground equipment are the leading cause of all playground injuries. There are an estimated 200,000 playground related injuries that require medical treatment each year. Most of these injuries are a result of falls from the equipment onto the surface below. Proper and resilient surfacing is the best defense to reduce playground injuries, and a proper uniform depth should be maintained. Refer to a copy of the U.S. Consumer



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Products Safety Commission (USCPSC) Guidelines for more information. Copies are available at the USCPSC web site: <http://www.cpsc.gov/>.

Maintenance and Inspections

Develop a comprehensive program for all playgrounds that includes equipment selection, inspections, repairs, upgrades, student instructions and monitor training.

As the playground is a heavily used area, inspections must be done frequently. Routine inspections identify worn and broken equipment, condition of surfacing material, and the condition of wear items such as metal chains and s-hooks. Check the area around the playground as well. Promptly follow-up with necessary repairs. A checklist for playground inspection is on the US CPSC web site at: <http://www.cpsc.gov/cpsc/pub/pubs/playpubs.html>.



Signage

Adequate signage is important and fall into two categories. “General” playground signs are installed at the entrance to the facility. These signs are for the general rules of the playground – according to what the institution wants to announce – hours of operation, age limitations, weather restrictions, etc. “Specific” playground signs explain the rules/instructions for an individual piece of equipment. They are usually provided by the playground manufacturer. They state age restrictions for the equipment

(“for use by children over age five”), instructions for proper use/play (“no climbing up the slide”), and any other specific rules.

Surfacing Materials

Adequate playground surfaces will decrease the severity of injuries, since it forms a resilient surface that provides a better cushion. Acceptable surfacing materials include, but are not limited to: sand, pea gravel, engineered wood chips, shredded tire, poured rubber or padded tiles.

Loose fill (such as sand and pea gravel) will naturally move away from impact points under swings and at the exit point of slides.

Surfacing material/depth needs to comply with the US CPSC. The following is taken from the US CPSC *Handbook for Playground safety*:

MINIMUM COMPRESSED LOOSE-FILL SURFACING DEPTHS

INCHES	OF	(LOOSE-FILL MATERIAL)	PROTECTS TO	FALL HEIGHT (FEET)
9		Shredded/recycled rubber		10
9		Sand		4
9		Pea Gravel		5
9		Wood mulch (non-CCA)		7
9		Wood chips		10

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Fitness or Exercise Trails

The renewed interest in personal fitness has led to the development of outdoor fitness trails. They feature exercises and activities for improving cardiovascular fitness, agility, flexibility, strength, and endurance. Most fitness trails consists of exercise stations located along a trail used for walking or jogging. A typical trail is 1.5 miles with 13 stations.

Accidents frequently occur from slips and falls, misuse and poor maintenance of equipment, and insufficient warm-up before exercising.

- Inspect all trails and walkways for holes, broken curbs, obstructions, overgrown vegetation and other hazards, such as splinters, wasp or bee nests and rusty parts.

- Ensure exercise signs are legible and proper warnings are provided.
- Trim tree branches as needed around stations.
- Six feet of clearance around equipment is recommended.
- Maintain and repair stations as needed. Close damaged or vandalized stations until repairs are completed.

Bleachers

Bleachers accommodate a large number of spectators. Although they generally require minimal maintenance, the hardware, supporting framework and handrails deteriorate over time. Protect sports fans and other spectators by ensuring that bleachers, concession stands and press boxes are safe for public use.

Depending on the type of bleachers in use, educational institutions may wish to retain a bleacher expert or structural engineer to conduct the inspection.

- Inspect seats and boards to ensure proper condition. They should be free of cracks, splintering or deterioration.
- Ensure all bleacher/grandstand frameworks are stable and in good repair.
- Remove all sharp edges, protruding bolts and nails.
- Provide handrails on bleachers that are over five feet in height to prevent falls from the back or sides.
- Inspect press boxes and concession stands for hazards.
- Protect spectators in bleachers by placing fencing along first and third baselines.
- Keep spectators off the fields by separating them with a fence or roped off area.



Pools

Pools are a popular recreational facility. Unfortunately, approximately 300 children drown in residential and public pools and spas each year. This popular part of your facility presents a number of physical hazards that need to be addressed to ensure safe usage by the public.

- Indicate swimming areas, depths and shallow areas. All depth marking must be visible.
- Post “No Diving” signs where appropriate and replace as needed.
- Schedule regular patrols conducted by local police department.
- Quickly comply with any recommendations made by local health departments.
- Verify lifeguard certification and make sure the required number of lifeguards are on duty. (Generally, the number of life guards depends on the pool size and layout.)
- Make sure pools are in compliance with the Virginia Graeme Baker Pool and Spa Safety Act. Information concerning this law can be found at <http://www.poolsafety.gov/>.



- Check for loose, damaged or missing drain covers.
- Damaged pool fencing increases the likelihood of unauthorized after-hours use.
- Cloudy water must be addressed; routinely check chlorine/pH levels.
- Faulty GFIs around pool increase the likelihood of electrocutions.
- Check for missing/ broken rescue equipment and safety signs.
- Wet/slippery surfaces are a leading cause of slips and falls around pools.
- A pool safety plan needs to be in place.

Signage

Signs are used in recreation areas for various reasons: to control traffic flow, communicate prohibited activities, provide directions or instruction and to warn of inherent dangers. The value of a sign is determined by how well it is understood and if it influences the reader's behavior. If properly used, signs can help reduce the frequency and severity of accidents, and assist in the defense of lawsuits that can occur.

Signs should be strategically placed at the entrance to parks, fields, pools or courts, near playgrounds, on beaches and next to fitness trail equipment. Standardized signage – using universal pictorial symbols, lettering and design – is helpful. In some communities, more than one language may be needed.

Missing or illegible signs can be a problem. For this reason, schools are encouraged to keep an inventory of signs and replace missing or deteriorated signs as needed. ■



Tips for Playground Monitors

- **Enforce the rules to ensure students are using the equipment safely and correctly.**
- **Move around. See and be seen.**
- **Have positive interactions with students – speak to potential troublemakers early – don't give all your attention to correcting negative behavior.**
- **Stay calm – Never lose your patience.**
- **Use effective words – Avoid lengthy explanations.**
- **Keep your voice low, since yelling only encourages yelling. Model the behavior you want. Repeat directions calmly. Do not escalate arguments.**
- **Learn student's names.**
- **Try to involve clingy students in a game or group activity.**
- **Use proximity praise – compliment students who are following the rules to correct those who are not.**
- **Position yourself in trouble spots or near playground equipment.**
- **Close off part of the playground if hazards such as broken glass or broken playground equipment is found.**
- **When correcting bad behavior, tell the student their actions were inappropriate and ask them not to do it again.**



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