



**NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY**



Facilitating Joint Use: Legal Liability for After Hours Use of School Facilities

Karla Hampton, JD

*NSBA Webcast: Policymakers Addressing Childhood Obesity
Through Collaboration and Policy Change*

December 1, 2009

Remember!

This is a general presentation and is no substitute for advice from a lawyer about your particular situation!



What is a tort?



Proving Liability (legal responsibility)



Duty



Breach



Causation



Damages

Proving Liability (legal responsibility)



Duty



Breach



Causation



Damages



Defenses

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Liability Risks for After-Hours Use of Public School Property: A 50-State Survey

School districts and local governments can help prevent childhood obesity by increasing opportunities for children to be physically active in their communities. One way to provide recreation opportunities is to open school buildings and facilities—such as gymnasiums, playgrounds, fields, courts, and tracks—to public use after school hours. School officials may be reluctant to do so, however, because of concerns about liability in the event of injuries.

To assist school and government attorneys in assessing liability risks, NPLAN commissioned a 50-state survey of the laws governing liability for after-hours recreational use of school facilities. Written by Professor Tom Baker, Professor of Law at the University of Pennsylvania Law School and one of the nation's preeminent scholars of tort and insurance law, the survey results consist of two parts that are designed to be read together.

The good news for local governments:

- All 50 states have some governmental immunity;
- Some states have recreational users statutes;
- In no state are rules for recreation use more onerous than rules that apply during school hours;
- In many states the rules are more lenient.

The first part is an [overview memo](#), which sets the analytical framework for assessing a school's liability risks.

- Basic elements of tort liability;
- Special legal rules that may limit public schools' legal obligations;
- Statutory limits on the damages that may be awarded; and
- Potential tools for shifting liability risks (liability waivers and providing access through third parties).

The second part consists of individual state memos that summarize each state's legal framework for recreational use of school property. **A state memo should always be read after the [overview memo](#).**

- The elements of tort liability;
- Limits on a school's legal obligations, including sovereign and governmental immunity.

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Legal Research Findings

- Governed by state law
- All 50 states have some defenses
 - All 50 have some level of governmental immunity
 - Some states have recreational users defenses



Legal Research Findings



- Liability rules for after-school use of school property
 - In no state are rules for recreation use more onerous than rules that apply during school day
 - In many states the rules are more lenient

Other Forms of Protection from Liability – Insurance



- Schools carry insurance
- All groups using schools must be insured

Other Forms of Protection from Liability – Indemnity



Indemnification clause:
a contract provision in which **one party** agrees to be responsible for any **liability** that the other party might incur.

Joint Use Agreements

- Risk management
- Be aware of **MOLOS** and deal with it in the agreement
 - Maintenance
 - Operation
 - Liability
 - Ownership
 - Scheduling





Checklist for Developing a Joint Use Agreement (JUA)

Many communities lack safe, adequate places for children and their families to exercise and play. Schools might have a variety of recreational facilities – gymnasiums, playgrounds, fields, courts, tracks – but many districts close their property to the public after school hours because of concerns about costs, vandalism, security, maintenance, and liability in the event of injury.

Most states currently have laws that encourage or even require schools to open their facilities to the community for recreation or other civic uses. Nonetheless, school officials may be reluctant to do so, cautious about the expense in times of increasingly tight budgets. The good news is that city, county, and town governments can partner with school districts through what are known as joint use agreements to address these concerns.

A joint use agreement (JUA) is a formal agreement between two separate government entities – often a school and a city or county – setting forth the terms and conditions for shared use of public property or facilities. JUAs can range in scope from relatively simple (e.g., opening school playgrounds to the public outside of school hours) to complex (allowing community individuals and groups to access all school recreation facilities, and allowing schools to access all city or county recreation facilities).¹

Just as there is no one model JUA, there is no single method to develop an agreement. Successful JUAs require a lot of thought, effort, and cooperation to reach agreement on a range of issues.

This checklist is designed to identify issues for the parties to consider when developing a JUA to share existing facilities. Not all of the issues presented will be applicable in all situations, and there may be issues unique to a community that are not included here.

NPLAN has developed four model JUAs as templates for communities to use to develop their own agreements. See all NPLAN joint use products online at www.nplanonline.org.

<input type="checkbox"/>	Identify and Reach Agreement on Issues Involving Use	The parties need to agree on operational and management issues.	
		Priority of Uses	<ul style="list-style-type: none"> - Rank the priority of types of users to allocate facility use accordingly
		Scheduling	<ul style="list-style-type: none"> - Determine which entity will be responsible for scheduling use - Determine how to accommodate schedule changes/ cancellations
		Access and Security	<ul style="list-style-type: none"> - Determine security needs - Identify employees who will need access to properties and

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		Access and Security	<ul style="list-style-type: none"> - Determine security needs - Identify employees who will need access to properties and facilities - Develop security protocol

		Maintenance	<ul style="list-style-type: none"> - Allocate responsibility for regular property maintenance - Determine whether additional maintenance is needed, and which party will provide service
		Inspection and Notification of Damage	<ul style="list-style-type: none"> - Determine the manner/frequency of property inspection - Determine protocol for notifying identified employees of damage, including whom to contact, by what means, and deadlines for contacting and responding
		Restitution and Repair	<ul style="list-style-type: none"> - Determine the method and responsibility for property repair - Determine the methods of calculating and allocating repair costs



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JOINT USE AGREEMENT 1:

Opening Outdoor School Facilities for Use During Non-School Hours



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JOINT USE AGREEMENT 3:

Opening School Facilities for Use During Non-School Hours and Authorizing Third Parties to Operate Programs



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JOINT USE AGREEMENT 2:

Opening Indoor and Outdoor School Facilities for Use During Non-School Hours

Developed by the National Policy & Legal Analysis Network to
Prevent Childhood Obesity (NPLAN)



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JOINT USE AGREEMENT 4:

Joint Use of District and City Recreation Facilities

Developed by the National Policy & Legal Analysis Network to
Prevent Childhood Obesity (NPLAN)



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The National Policy & Legal Analysis Network to Prevent

NPLAN Updates

- [NPLAN Releases Legal Tools to Create Joint Use Agreements](#)
Many communities lack safe



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Karla Hampton, JD

Staff Attorney

National Policy & Legal Analysis Network to Prevent Childhood Obesity,
a project of Public Health Law & Policy

510.302.3375 | khampton@phlpnet.org | www.nplanonline.org