

Finding Space to Play:

Legal and Policy Issues Impacting Community
Recreational Use of School Property

A Policy Options Brief
April 2012



Finding Space to Play:

Legal and Policy Issues Impacting Community
Recreational Use of School Property

A Policy Options Brief
April 2012



AT WILLIAM MITCHELL COLLEGE OF LAW

Suggested citation: Mary Winston Marrow & Natasha Frost, Public Health Law Center
Finding Space to Play: Legal and Policy Issues Impacting Community Recreational Use of School Property (2012).



Public Health Law Center
875 Summit Avenue
St. Paul, Minnesota 55105-3076
651.290.7506 · Fax: 651.290.7515
www.publichealthlawcenter.org

April 2012

This publication was prepared by the Public Health Law Center at William Mitchell College of Law, St. Paul, Minnesota, with financial support provided by the American Cancer Society – Cancer Action Network.

This issue brief is provided for educational purposes only and is not to be construed as legal advice or as a substitute for obtaining legal advice from an attorney. Laws and rules cited are current as of the issue brief's publication date. The Public Health Law Center provides legal information and education about public health, but does not provide legal representation. Readers with questions about the application of the law to specific facts are encouraged to consult legal counsel familiar with the laws of their jurisdictions.

Acknowledgements

The authors thank John O. Spengler, PhD, JD, Associate Professor with the University of Florida and Jeff Vincent, PhD, Center for Cities & Schools, University of California, Berkeley for their critical review and feedback.

Table of Contents

Overview	1
Part I: Community Recreational Use of School Property	2
Key Concepts Relating to Recreational Use of School Property	2
<i>Defining recreational use of school property</i>	2
<i>Common terms relating to community use of school property</i>	2
<i>Community members and groups using school property</i>	4
<i>“Joint development” of school property</i>	4
<i>“Joint use agreements” vs. “shared use agreements”</i>	4
<i>Impact of community use of school property on obesity rates</i>	5
<i>Benefits associated with community recreational use of school property</i>	6
<i>National efforts to promote recreational use of school property</i>	6
<i>Liability as a barrier to community recreational use of school property</i>	7
<i>Impact of sovereign immunity on recreational use of school property by communities</i>	9
<i>State laws that protect schools from liability</i>	9
<i>Liability as a perceived barrier</i>	10
<i>Current research needs</i>	11
<i>Tools schools can use to minimize liability risks from recreational activities</i>	12
Part II: Policy Initiatives Promoting Recreational Use of School Property to Increase Physical Activity and Reduce Obesity	13
Policy Efforts at the Local and State Levels and by Public Health Organizations	13
<i>Local policy efforts currently being pursued</i>	13
<i>State policy efforts currently being pursued</i>	14
<i>Public health organizations working on this issue</i>	15
<i>Gaps in the current policy discussions</i>	16
Summary	16
Annotated List of Key Recreational Use Resources	17
<i>Active Living Research, Robert Wood Johnson Foundation</i>	17
<i>American Heart Association</i>	17
<i>Bridging the Gap</i>	18
<i>California Pan-Ethnic Health Network</i>	18
<i>Center for Cities and Schools, University of California Berkeley in collaboration with the 21st Century School Fund</i>	18
<i>Public Health Law Center</i>	18
<i>Public Health Law & Policy</i>	19
<i>Prevention Institute</i>	19
Endnotes	20

Overview

Being physically active is important for both individual and public health.¹ The obesity epidemic is driven, in part, by sedentary lifestyles and the lack of physical activity. For people to be physically active, they must have access to safe, affordable, and convenient recreational facilities. As many communities do not have these recreational facilities available to them, public health advocates are focusing attention on ways to increase community access to safe, affordable, and convenient places to be physically active.² Communities with limited access to public recreational space are exploring opportunities to develop partnerships with schools for the use of school property to promote physical activity in the community. School property can provide a valuable resource for community recreational space and facilitate physical activity through recreation and sport activities before, during, and after school hours.³ At the same time, schools and communities need to find ways to minimize the potential liability risks created when schools open their grounds for community recreational use. The public health interest in promoting the recreational use of school property by communities is largely driven by efforts to reverse the rising rates of obesity and create healthier communities through increased physical activity.



This report provides information regarding current efforts in the public health community to promote community recreational use of school property to provide safe, affordable and convenient recreational facilities to communities, increase physical activity, and reduce obesity.

Part I of this report provides an overview of key concepts relating to recreational use of school property, current research evaluating the impact of recreational use of school property by communities on obesity rates, and legal and policy issues affecting recreational use of school property by communities.

Part II identifies current policy initiatives being pursued at the state and local levels and by national public health organizations in an effort to promote community recreational use of school properties.

Part I: Community Recreational Use of School Property

Key Concepts Relating to Recreational Use of School Property

A variety of state, local, and national players are involved in current conversations about expanding the recreational use of school property during non-school hours by communities. Some of these include public health advocates, city officials, parks and recreation professionals, youth recreation non-profits, state legislatures, trial attorneys, school attorneys, school boards, and school administrators. Each group approaches the issue from a different perspective. For public health advocates to understand the opportunities to promote community physical activity through recreational use of school property, it is important to understand the terms associated with this topic. The discussion below identifies the key terms currently being used regarding the recreational use of school property by communities during non-school hours. These terms may have different meanings in other contexts, such as off-school property or during the school day. The terms below are discussed primarily through a public health policy and educational lens.

Defining recreational use of school property

Public health advocates most commonly use the term “recreational use” of school property in conjunction with “physical activity.” But in other contexts, recreational use can include a wide range of activities, such as passive recreational or leisure activities like sightseeing or bird watching. Recreational use of school property promoting physical activity may include:

- Unsupervised or informal physical activities on the outdoor school property, such as children playing on a playground or an informal game of basketball;
- Organized or formal physical activities on the outdoor school property, such as YMCA softball or youth soccer leagues;
- Unsupervised or informal physical activities on the indoor school property, such as open gym or walking the hallways in bad weather; and
- Organized or formal physical activities on the indoor school property, such as YWCA swim classes or youth basketball.⁴

Public health advocates are also beginning to link school gardens and food preparation in school kitchens open to the public into the arena of recreational use.

For schools, recreational use of school property by community members for physical activity is generally associated with community access to the school’s outdoor playgrounds, tracks, and fields, although it can be for indoor gyms, pools, or other indoor recreational equipment. Often this includes organized and formal or unstructured and informal sports.

Common terms relating to community use of school property

Common terms used to discuss the use of school property by community members include, “shared use,” “dedicated use,” “joint use,” and “recreational use.” These terms are discussed, below.⁵

School space used by non-school entities may be either “shared” or “dedicated.” “Shared use” generally means that the use of a certain space is shared between the school and non-school entity (e.g., the use of the school gym for physical education classes by a school during school hours, with the same gym used by a non-school entity for an inter mural volleyball league). In contrast, “dedicated use” generally means that the school space is exclusively available to the non-school entity, both during and after school hours (e.g., the dedication of an office or storage space for exclusive use by the non-school actor). “Shared use” of school property is a form of “joint use.”⁶

“Shared Use” and “joint use” are often used interchangeably. Recently, many advocates are moving to use the term “shared use” because of an inadvertent link by policy-makers to the debate around legalizing marijuana with the term “joint use.”*

Shared use or joint use is often used synonymously for “recreational use.” But it is important to understand the distinctions between these terms. “Recreational use” indicates how the property is used—for recreational activities. In contrast, “shared” or “joint” use reflects the relationship that the property user has to the property being used for activities. In general, shared use of school property is when school property is used by both the school for school purposes and by the public for non-school events. The shared use of school property is not limited to recreational activities, and could also include other activities such as voting, public events, religious meetings, and other group meetings. Some other examples of shared use include school libraries being opened for use by the general public, or adult and early childhood education classes being held at a school. In some states, shared use or joint use is considered synonymous with “community schools” where the school property is intended for more than public education. With community school strategies, public schools can serve as community “hubs” by bringing together different community partners and interests to offer a range of support services and opportunities to children, youth, families, and communities. These can include medical, social, and other community services.⁷

In addition to using public schools for public education, communities also use public school property for numerous other purposes, including:

- *Civic Use:* Use of school buildings and grounds by individuals, groups, or organizations, including use of schools for voting, community meetings, special events, and as emergency shelters. This can also include the use of school property by the public for recreational use.
- *Real Estate Joint Use:* Use of school property by a non-school entity where the user seeks no relationship with the school or families beyond the specific use of school space.
- *Drop-In Use:* Use of school space for informal, drop-in activities. In this case, the user does not reserve the space in advance. School space is usually made available for drop-in use during specified hours.
- *One-Time Use:* Use of school space by a non-school entity during the school day and/or after school for one specific period of time on a single day. The user often reserves use of the school space in advance.

*The Public Health Law Center uses the term “shared use,” and therefore this will be the preferred term for this document. The terms “shared use” and “joint use” are used interchangeably.

- *Repeated Use, Short-Term:* Use of school space by a non-school entity during the school day and/or after school for a specified number of hours over multiple days, weeks or months.
- *Long Term Lease Use:* Use of school property by a non-school entity during the school day and/or after school over a period of months or years.⁸

Community members and groups using school property

There are many types of entities that use school property outside of the school day. These entities can be divided into five general types, including:

- *Individuals:* Persons, generally residents of a community, who have access to school spaces, such as play equipment, athletic fields or courts, and open space for personal use.
- *Civic Groups:* Individuals, groups, or organizations, who seek occasional use of school buildings and grounds for activities or events, such as polling stations, community meetings, and special events.
- *Other Public Agencies:* A public agency that is not part of the school district that may offer programs, need to lease space, and/or may seek joint development with ongoing programming.
- *Private Non-Profit Organizations:* The use of school buildings and/or grounds by a non-profit organization, such as after-school programs, health clinics, or adult education classes.
- *Private For-Profit Corporations:* The use of school buildings and/or grounds by a private for-profit corporation, either for education-related work like private testing services or unrelated work like private offices.⁹

“Joint development” of school property

“Joint development” of new or existing public school facilities generally involves different community stakeholders in the creation of school facilities to promote broad community goals and facilitate joint use of the school’s building and land. Successful joint development of school property requires the public education, civic, school, community, and real estate users to work together to develop a vision and a design plan while also reaching consensus on scheduling issues and the payment and maintenance of building and site costs.¹⁰

“Joint use agreements” vs. “shared use agreements”*

While the term “joint use agreements” is more commonly used than “shared use agreements,” these terms can be used interchangeably. “Shared use agreement” is generally defined as “a legal agreement that defines the rights and responsibilities of the school district and another organization or government agency for use of the school facilities for recreation or other purpose of importance to the community.”¹¹ In general, shared use agreements

* Some states have these agreements defined in statutes. Communities should look to specific state and local laws and policies to determine how or if this concept is defined.



“should describe specific activities, times, and eligible participants and address supervision of minors; injury liability protections, funding sources, cost-sharing of utilities; and respective responsibilities for maintenance, cleanup, and security.”¹²

These agreements are written contracts or legal agreements that define the rights and responsibilities of a school district and another entity (non-profit, private, governmental, etc.) for use of the school facilities. Some communities and advocates define the shared or joint use agreement as between two separate government entities, rather than including private and governmental agencies.¹³ Shared or joint use agreements can help defray costs, share maintenance responsibilities, outline a security plan, and explain liability exposure. Currently, some public health advocates are promoting the use of these contracts to facilitate community recreational activities, but these agreements can be used for any use of school property.

Impact of community use of school property on obesity rates

Several studies sought to measure the association between obesity rates with increased levels of physical activity. The following discussion examines some of the most relevant research in this area. The key studies examining this issue are discussed, below.

Schools located in communities with a high risk for obesity can provide safe, affordable, and accessible places for residents to be physically active.¹⁴ Studies show that people report being more physically active when they have access to recreational facilities.¹⁵ One study found that people who live or work near parks or recreational facilities exercise 38 percent more than those who do not have easy access to these facilities.¹⁶

Children in low-income and predominately racial/ethnic minority communities are less active, in part, because of limited access to safe, free or low cost, and convenient recreational facilities.¹⁷ Individuals in disadvantaged communities often live in urban areas with less green space, fewer recreational facilities, and higher pollution levels.¹⁸ Research indicates that schools in higher-income communities are more likely to be available for community use during non-school hours than those in lower-income communities.¹⁹ For example, a California study found income-related disparities with community access to school facilities outside of school hours. In this study, 68 percent of respondents from higher-income districts or county offices of education indicated

that some or all of their schools were open for public recreational use outside of regular school hours, compared with only 44 percent of respondents from lower-income districts.²⁰ Evidence also suggests that in underserved communities, access to school recreational facilities improves the likelihood that community members will be physically active.²¹ Furthermore, renovated recreational facilities at schools can increase the number of children who are physically active and increase the children's level of physical activity.²² Increased physical activity has also been shown to improve academic success of school children.²³

The positive impact of creating safe playgrounds in inner cities can be seen by the effect of opening a school yard in New Orleans for recreational use after school hours:

When a school yard in New Orleans remained open and supervised after school and on weekends, the number of children who were outside and active in the intervention neighborhood and schoolyard was 84 percent higher than in a comparison neighborhood with an older playground that did not have ongoing adult supervision. Children in the intervention neighborhood also reported reduced time spent watching television or playing video games relative to children in the comparison community.²⁴

Benefits associated with community recreational use of school property

While not yet thoroughly studied, the recreational use of school property by community members after school hours can increase community safety and have other positive community effects. First, community members may be more likely to engage in physical activity at schools because schools are generally perceived to be safe environments.²⁵ Moreover, increased access to outdoor school facilities with green features may increase social networks and enhance community connections, and possibly deter criminal behavior.²⁶ The social benefits from community access to open green space in urban settings are generally attributed to residents spending time outdoors and interacting with neighbors.²⁷ Specifically related to children, after-hours programming has been shown to reduce delinquency and improve academic performance separate from the physical activity benefits.²⁸

Recreational use of school facilities can also promote good will between the schools, other local government agencies, and the larger community.²⁹ Furthermore, allowing community access can assist in securing community support for tax increases and school bond referendums, even for those residents without school-aged children.³⁰ Alternatively, a lack of coordination between local governments and school districts in land use and facilities planning can result in schools that are less connected to community members.³¹ The research in this area is not well-developed at this time.

National efforts to promote recreational use of school property

Based on existing evidence, governmental agencies, non-profit organizations, and other public health advocates have been promoting the recreational use of school property during non-school hours. A few of the key groups promoting recreational use of school property are discussed here.



- *Healthy People 2020* recommends that school recreational facilities be opened to the community before, during, and after school hours as well as on weekends, holidays, and during the summer.³²
- The American Academy of Pediatrics has argued for increased access to school grounds after school hours.³³
- The Institute of Medicine recommends the adoption of legislative policies, where necessary, to address liability issues that might block community access to school recreational facilities after-hours.³⁴
- The National Physical Activity Plan recommends promoting programs and facilities to provide communities easy access to safe and low cost opportunities for physical activity.³⁵
- The American Heart Association supports state efforts to encourage, support and/or authorize school districts to allow community recreational use of school property.³⁶

Liability as a barrier to community recreational use of school property*

Common barriers to increasing community access to school property for recreational use include issues regarding maintenance, operations, liability, ownership, and scheduling.³⁷ Recent research shows that it is widely accepted that the fear of liability is a common barrier to schools allowing communities to use school property for recreational use.³⁸ Data from the School Health Policies and Programs Study from 2006 revealed that 33 percent of school districts reported being sued because of an injury occurring on school property or at an off-campus, school-sponsored event, while 11.8 percent of individual schools reported lawsuits.³⁹

*There are a variety of barriers, but this guide focuses on the impact liability concerns have on community recreational use of school property.

WHAT IS LIABILITY?

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, to be held liable for someone else's injuries, the injured person must prove that:

1. The person causing the harm had a legal responsibility to protect the injured person from harm (otherwise known as a "duty of care").
2. The person causing the harm failed to protect the injured person from the harm.
3. The person harmed was injured in a way that was foreseeable.⁴⁰

The obligation someone has to protect someone else from harm depends on the situation. The general expectation is that people act "reasonably" toward others given the circumstances. Someone failing to act with as much care as an ordinary, reasonable person in a given situation that causes harm or injury is then considered to be "negligent." However, there are situations where the law holds a person or entity to a higher or lower legal responsibility to protect another from harm.⁴¹ The failure to protect a person from harm as required by law that results in an injury and can lead to a civil lawsuit is called a "tort."

WHAT IS IMMUNITY?

Immunity is a legal doctrine that exempts a certain individual or entity from duties that the law generally requires other citizens or entities to meet. The duty an individual or entity has to meet is defined by law.⁴² If an individual or entity has immunity from a certain legal requirement, this immunity can be used as a defense against a lawsuit and provide a basis to have the lawsuit dismissed by a court.

DO GOVERNMENTS HAVE IMMUNITY?

Governmental entities often have immunity provided under the doctrine of "sovereign immunity." Sovereign immunity* is a legal doctrine providing governments with immunity from being sued unless otherwise specified by statute. Sovereign immunity is "[a] government's immunity from being sued in its own courts without its consent."⁴³ This doctrine bars holding the government, its political subdivisions, or the actions of its employees operating in their official capacities liable for torts unless such immunity is expressly waived by statute or by necessary inference from legislative enactment.

The extent of the immunity granted and the specific governmental entities covered by immunity are determined by each state. Sovereign immunity is not necessarily limited to state governmental actors and can also apply to municipalities. Many states recognize public school districts as governmental entities which have sovereign or governmental immunity.⁴⁴

* "Governmental immunity" is sometimes used interchangeably with "sovereign immunity."

Impact of sovereign immunity on recreational use of school property by communities

Depending on the language of a state's immunity law,* immunity can eliminate or reduce the liability risk a school has for harm or injuries occurring to an individual as a result of the recreational use of the school's property by a community member.

State laws that protect schools from liability

All states have some form of recreational user statute. The goal of these laws has generally been to limit liability when landowners allow the public access to their property for recreational purposes.⁴⁵ Generally speaking, recreational user statutes were not created to promote public health goals or to create community cohesion. Rather, these statutes were developed to promote outdoor activity through the use of private land for hunting and fishing in light of the scarcity of public resources for these activities. In addition to recreational user statutes, various states have statutes that often apply to numerous types of recreational activities, with some specifically providing protection to particular activities. For example, Florida has a statute that provides immunity protection for landowners that open their land for skateboarding or skating.⁴⁶ In addition, Nevada has a statute that specifically provides immunity protections for landowners allowing skiing or snowboarding on their property.⁴⁷

CASE STUDY

Jane, an adult, injured herself when she participated in an ACME (a local non-profit) wellness event at a school. ACME sponsored an obstacle course that involved swinging on a rope from a log over an imaginary pit of bare dirt to another log on the other side. The rope hung a foot and a half above the center of the imaginary pit. Jane swung over the pit, and fell to the ground after losing her grip. She injured her ankle and sued ACME and the school. She claimed ACME and the school were negligent and claimed the following elements of liability.

Duty: ACME and the school owed Jane a duty to use shock-absorbing material and a duty to provide more supervision of the rope swing.

Failure of the Duty: ACME and the school failed to use shock-absorbing material and to provide supervision.

The Failure Caused the Injury in a Way that was Foreseeable: Because ACME and the school failed to use shock-absorbing material and to provide the appropriate supervision, Jane was injured in a way that ACME and the school should have been able to foresee.

*The law can be in the form of legislation, statute, court case/case law, or other form of legal doctrine of the state.

Liability as a perceived barrier

Two different conclusions have been reached regarding whether or not liability is a barrier to community recreational use of school property during non-school hours. A series of studies have found that liability is an obstacle to schools allowing recreational use of school property, while another study completed during the same timeframe determined that liability should not be an obstacle. These positions are summarized below.

FEAR OF LIABILITY IS A BARRIER TO COMMUNITY RECREATIONAL USE OF SCHOOL PROPERTY

There are at least three studies that have identified liability as a key barrier to community recreational use of school property. The first, from 2004, provided a case study of four communities, and found that safety, insurance, and liability concerns are barriers that needed to be addressed with schools before indoor and outdoor facilities can be made available to the public.¹ In 2007, another study found that recreational user statutes failed to adequately provide liability protection for school districts opening property for community recreational use. These researchers found that “[r]ecreational user statutes should be revised for greater applicability to the public school setting when school facilities are used outside of the regular school hours for purpose of recreation and physical activity.”²

Finally, in a study released in October 2011, researchers completed a national survey of school administrators in underserved communities and assessed liability perceptions in the context of community access. The study found that 83 percent of the respondents had concerns about their school’s liability risk should someone be injured on school property during non-school hours while engaged in a recreational activity. Among those administrators that did not allow for community access, 91 percent reported liability concerns and 86 percent believed stronger legislation was needed to protect schools from liability for recreational activities during non-school hours. The researchers concluded that “[l]iability concerns are prevalent among this group of school administrators, particularly if they had been involved in prior litigation, and even if they indicated they were aware of laws that provide liability protection where use occurs after hours. Reducing these concerns will be important if schools are to become locations for recreational programs that promote physical activity outside of regular school hours.”³

¹ Kelly R. Evenson & Aileen P. McGinn, *Availability of School Physical Activity Facilities to the Public in Four U.S. Communities*, 18 AM. J. OF HEALTH PROMOTION 243 (2004).

² John O. Spengler et al., *Policies to Promote the Community Use of Schools: A Review of State Recreational User Statutes*, 39 AM. J. PREV. MED. 81, 86 (2010).

³ John O. Spengler et al., *Liability Concerns and Shared Use of School Recreational Facilities in Underserved Communities*, 41 AM. J. PREV. MED. 415 (2011), available at [http://www.ajpmonline.org/article/S0749-3797\(11\)00448-X/abstract](http://www.ajpmonline.org/article/S0749-3797(11)00448-X/abstract) (last visited March 21, 2012).

FEAR OF LIABILITY SHOULD NOT BE A BARRIER TO COMMUNITY RECREATIONAL USE OF SCHOOL PROPERTY

Other groups believe that the actual risk of liability from schools opening their property for community recreational use is smaller than believed and that liability should not deter schools from opening their property to the community. For example, the National Policy & Legal Analysis Network to Prevent Childhood Obesity (“NPLAN”), a program of Public Health Law and Policy (“PHLP”), commissioned a 50-state review of the topic of liability with community use of school property. As a result of this review, NPLAN determined that “the legal rules that would apply to tort claims arising out of the after-hours recreational use of school facilities are generally no more onerous than those that apply during the school day” and that “tort liability risk is much less severe than commonly believed.”¹ These researchers then determined that the risk of liability to schools should not be a deterrent to recreational use activities by community members. While NPLAN agrees that some real liability risks to schools from the recreational use by communities of school property exist, this 50-state survey led to the conclusion that these risks are unlikely to be substantial enough to justify denying recreational access to children who are at risk of obesity.² Additionally, NPLAN concluded that increasing liability protections for schools could put injured children and their families at greater risk for physical injuries and financial harm, especially for children whose families have inadequate or no insurance.³

¹ Tom Baker et al., *Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: a Fifty-State Survey*, NAT’L POL’Y & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY 2, 3, 13 (2008), available at http://www.phpnet.org/system/files/Overview_JointUse_Final_20100713.pdf.

² Tom Baker & H. Massud, *Liability risks for after-hours use of school property to reduce obesity: A 50-state survey*, 80 J. SCH. HEALTH 508 (2010), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1746-1561.2010.00535.x/pdf>.

³ Sara Zimmerman & Manel Kappagoda, *Immunity Hazards: The Risk of New Liability Laws to Schools and Students*, NPLAN.ORG, (Mar. 2012), <http://www.nplanonline.org/nplan/immunity-hazards>.

Current research needs

Several research gaps exist related to the current understanding of issues from community recreational use of school property during non-school hours. First, as noted above, more research is needed to support the other goals of community use of school property, such as community support of school bond measures, community safety, and community cohesion. Next, given the different positions regarding the role the fear of liability plays in schools opening their facilities for community recreational use, more analysis is needed as to the role that real or perceived liability fears play in community access to school property. Furthermore, research is needed to determine whether clarifying liability concerns for school administrators will result in more community access, or whether it simply reduces one barrier among many obstacles, including concerns over maintenance, costs, and security.

Tools schools can use to minimize liability risks from recreational activities

In addition to legal protections provided by recreational user statutes, there are a number of other statutory and/or risk management strategies that can limit or shift liability exposure of schools for injuries occurring from the recreational use of school property. Some of these strategies include:

- *Caps on Damages:* Some state laws limit the liability of a governmental entity for damages by capping the amount of damages an individual can receive from a governmental entity, which may include school districts. However, in some situations the statutory cap on damages can be waived if the governmental entity has liability insurance with a higher cap.
- *Indemnity Clauses:* Indemnity clauses shift liability for injuries from one entity to another.⁴⁸ These clauses are often included in shared or joint use agreements to shift liability for injuries sustained on school property from a school district to another entity (non-profit, private, governmental, etc.) using the school facilities for recreational activities. However, in some situations, these indemnity clauses are prohibited by state law.
- *Waivers and Releases:* Waivers and releases are common risk management tools. A waiver or release is a written agreement not to sue if something goes wrong.⁴⁹ Waivers and releases can be important risk management tools as they can reduce the possibility of being sued if someone is hurt during a recreational activity. At the same time, a waiver or release will not necessarily provide complete liability protection if an injured person does bring a lawsuit. The extent to which a waiver or release provides protection against liability in court is determined by state law, including state statute and/or court cases.

Part II: Policy Initiatives Promoting Recreational Use of School Property to Increase Physical Activity and Reduce Obesity

Communities around the country are exploring different policy initiatives to promote physical activity and reduce obesity by increasing access to school property for recreational use by community members. The most promising initiatives being pursued and the key players involved in these efforts are discussed, below.



Policy Efforts at the Local and State Levels and by Public Health Organizations

Local policy efforts currently being pursued

Local communities are pursuing a variety of efforts to promote recreational use of school property during non-school hours. These local initiatives include efforts through the U.S. Centers for Disease Control and Prevention’s (“CDC”) Communities Putting Prevention to Work (“CPPW”) Program;⁵⁰ the development of shared use agreements between schools and community organizations; and local policies to promote recreational use of school facilities.

Several communities around the country received funding through CPPW grants to support the development of recreational access to school property during non-school hours for physical activity. These communities are using a variety of efforts, including surveys, education, outreach, toolkit development, and policy change. For example, several communities are promoting the use of shared use agreements. Communities that received CPPW funding to support this work include the Los Angeles County Department of Public Health, as well as communities in Wisconsin, Washington, and Mississippi. New federal funding through the CDC’s Community Transformation Grants (“CTG”) Program will continue to fund many of the CPPW communities working on these efforts, in addition to providing funding for new grant recipients to begin this work.

A number of communities, especially in California, are also considering local policies to encourage or require the shared use of school property to promote physical activities. For example, some school districts are including shared use of school property in school wellness policies. In addition, some local governments include shared use of school property as part of city planning and design strategies.

State policy efforts currently being pursued

State policy initiatives can be extremely effective in promoting recreational use of school property during non-school hours. Some of the key state policy efforts, discussed here, include state funded reports examining recreational use of school facilities and making specific recommendations; state-mandated collaborations between schools and local governments; legislative initiatives to clarify or change state liability laws; and development of state specific resources.

State reports on recreational use of school facilities: Several states have examined the issue of recreational use of school facilities through working groups and/or written reports examining the issue. The efforts of Vermont and Washington are good examples of this approach.

- Vermont: In November 2010, a working group issued the “Report of the Land Use Working Group to Attorney General William H. Sorrell” (hereinafter, the “Report”) as part of the Vermont Healthy Weight Initiative.⁵¹ This report was developed as an effort to further a 2006 goal that “[b]y 2010, all Vermont schools will work with external partners to increase opportunities for nutrition and physical activity.”⁵² The Report identified liability concerns as a barrier to reaching this goal. As a result, the working group recommended “statutory protection from liability, to encourage schools to open their facilities to the public under appropriate conditions.”⁵³ Advocates in Vermont are assessing next steps for legislative initiatives.
- Washington: In 2009, Washington passed a bill to convene a work group to provide a detailed discussion and overview of joint use of school property. The report was commissioned to respond to questions about the implementation of joint use, including how joint use works within the school construction assistance program; offer options to accommodate joint use within existing rules relating to the school construction assistance program; and offer other ways to accommodate joint use of public school facilities. The report also provides recommendations for the School Construction Assistance Program and Community Schools, and outlines case studies of Vancouver Public Schools.⁵⁴

State-mandated collaborations: Some states have mandated collaborations between schools and local governments to support recreational use of school property. For example, Florida has a state-mandated collaboration between schools and local government. A study investigated the effectiveness of this approach in Florida by looking at the planning processes under mandated coordination between the school board and the county, and analyzing the impact of such coordination on the integration of land-use planning and school facility planning. The findings of this report outline the “promise and pitfalls” of the top-down legislation and offer insights to other state and local governments looking for ways to improve local planning and to increase physical activity among children.⁵⁵

Clarifying or changing state liability laws: States around the country are introducing legislation to either clarify or change existing liability for school districts when an injury results during community recreational use of school property.* This has been a controversial policy change

*The Public Health Law Center has been providing legal technical assistance to states working with the American Heart Association to introduce legislation to change liability standards for schools.

option with trial attorneys and some public health advocates opposed to these efforts. As discussed, above, some public health advocates disagree this is an appropriate policy option because the actual risk of liability is exaggerated, the evidence does not support this policy option, and/or the public health benefits do not outweigh the potential risk of limiting claims for injuries for those who might be under- or un-insured.⁵⁶ Those supporting this policy approach point to research showing that school administrators identify liability as a key perceived barrier to community recreational use of school property during non-school hours. These advocates argue that this perception, whether real or misplaced, can prevent school administrators from opening school property for recreational use by the community. Furthermore, these advocates reference the lack of evidence that limiting claims to a “gross negligence” standard will limit claims to the under-or un-insured.

Several states have already passed legislation, including Tennessee,⁵⁷ Minnesota,⁵⁸ and North Dakota.⁵⁹ In 2012, several states had legislation pending, including Wisconsin,⁶⁰ Florida,⁶¹ and Mississippi.⁶² Mississippi’s pending legislation includes a requirement that the Mississippi Department of Education develop a toolkit related to shared use agreements for school districts.⁶³ Advocates in half of the states around the country are considering whether this is the appropriate policy option.

State-specific resources: Some states are developing state-specific resources, such as training toolkits or model shared use agreements, for use by individual school districts to promote recreational use of school property. The experiences of Arkansas and Minnesota are discussed, below.

- Arkansas: In Arkansas, a statewide coalition is drafting resources that are state-specific and will provide support to schools opening their doors for community recreational use.
- Minnesota: In Minnesota, the Public Health Law Center, in collaboration with the University of Florida, received a research grant from Active Living Research,⁶⁴ a program of the Robert Wood Johnson Foundation, to complete a study of the recently passed Minnesota law that clarified school liability for community recreational use of school property. A key part of this research grant is to develop a toolkit specific to the new Minnesota law.

Public health organizations working on this issue

Several public health organizations have taken a lead in developing expertise and resources in expanding recreational use of school property to increase physical activity and reduce obesity. Some of the key organizational players in this effort include:

- Active Living Research
<http://www.activelivingresearch.org/taxonomy/term/234>
- American Heart Association (AHA)
http://www.heart.org/HEARTORG/Advocate/StateIssues/StateandLocalPolicyPriorities/Communities-Putting-Prevention-to-Work_UCM_428438_Article.jsp

- Center for Cities and Schools at the University of California Berkeley and the 21st Century School Fund
<http://citiesandschools.berkeley.edu/joint-use.html>
- National Association of State Boards of Education (NASBE)
<http://nasbe.org/>
- National School Boards Association (NSBA)
<http://www.nsba.org/>
- National Recreation and Parks Association (NRPA)
<http://www.nrpa.org/joint-use-agreements-regional-policy-roundtable/>
- Public Health Law Center
www.publichealthlawcenter.org
- Public Health Law & Policy (PHLP)/National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN)
<http://www.nplanonline.org>
- Prevention Institute
www.jointuse.org

Gaps in the current policy discussions

Several gaps exist in current policy initiatives promoting the recreational use of school property. Key gaps that have been identified include concerns regarding:

- Accessibility issues associated with access to school property by people with disabilities and the impact opening school facilities for recreational activity could have on improving opportunities for people with disabilities to be more active;
- Recreational use of school facilities by local communities to promote healthy eating and access to healthy foods, such as through gardens and the use of school kitchens by community members; and
- Potential of improving recreational opportunities for children in child care by promoting recreational use of schools by child care providers.

Summary

Allowing community recreational use of school property during non-school hours is an important public health strategy. Many community members lack safe, affordable, and convenient places to be physically active. Schools are an important resource to facilitate physical activity in communities. At the same time, there are important considerations that must be navigated. While the fear of liability may be a barrier there are policy and legal options available to minimize this risk.

Annotated List of Key Recreational Use Resources

This section includes a brief discussion of the key resources which are currently available regarding recreational and joint use of school property.

Active Living Research, Robert Wood Johnson Foundation

Active Living Research, a program of the Robert Wood Johnson Foundation, has several resources and research examining the impact access to recreational facilities has on children's health and obesity rates, particularly in racial and ethnic minority and lower-income communities. This research also identifies gaps in the existing research in this area. Key research provided through Active Living Research includes:

- *The Potential of Safe, Secure and Accessible Playground to Increase Children's Physical Activity* (2011).
- *Do All Children Have Places to be Active? Disparities in Access to Physical Activity Environments in Racial and Ethnic Minority and Lower-Income Communities* (2011).
- *Schools as a Community Resource for Physical Activity: Legal Considerations for Decision Makers* (2007).
- Evenson, K. R. and A. P. McGinn, *Availability of school physical activity facilities to the public in four U.S. communities*, 18 Am. J. Health Promotion 243–50 (2004).
- *Promoting Physical Activity through the Shared Use of School and Community Recreational Resources* (2012).

These articles and other resources are available at: <http://www.activelivingresearch.org/resourcesearch/summaries>.

American Heart Association

The American Heart Association has developed resources summarizing key scientific evidence to support community recreational use of school property during non-school hours and highlighting policy options to promote shared use. The American Heart Association is working in over half of the states nationwide to assess the need to either clarify or change state liability laws to promote the recreational use of school facilities to increase physical activity. The American Heart Association also recognizes that this topic needs further scientific review and is convening a work group to study this issue further. American Heart Association resources on this issue include:

- *Joint Use Agreements: Sharing School Recreational Facilities with the Community*, the American Heart Association Fact Sheet (2011).

This resource is available at: http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_312809.pdf.

As discussed in further detail, below, the AHA developed policy guidance related to recreational use of school facilities in conjunction with Public Health Law Center.

Bridging the Gap

Bridging the Gap is a nationally recognized research program with the goal to improve understanding of how policies and environmental factors affect diet, physical activity, and obesity among youth. A recently released brief examines the characteristics of joint use agreements that were in effect during the 2009 to 2010 school year among a national sample of 157 public school districts.

This resource is available at: http://www.bridgingthegapresearch.org/asset/g19776/btg_joint_use_agreements-2-10-12.pdf.

California Pan-Ethnic Health Network

The California Pan-Ethnic Health Network, in collaboration with Public Health Law & Policy, convened four sessions in Fresno, Oakland, San Diego, and Los Angeles to determine how to advance the use of joint use agreements in California. The group outlined the results of these events into a brief. The document outlines four types of recreational use of school property by communities and discusses how to overcome the typical challenges in recreational use of school property by communities—maintenance, operations, liability, ownership and scheduling (MOLOS).

This resource is available at: <http://www.cpehn.org/pdfs/Joint%20Use%20Brief.pdf>.

Center for Cities and Schools, University of California Berkeley in collaboration with the 21st Century School Fund

The 21st Century School Fund and the Center for Cities and Schools at the University of California Berkeley have developed several resources to promote the joint use of pre-kindergarten through twelfth grade public schools. These resources examine both the benefits associated with the recreational use of school facilities by communities and the challenges experienced by school and community leaders in allowing for the recreational use of school property by community members. Resources include:

- Multiple reports regarding joint use of school property;
- A catalog and analysis of state policies and model school district and state level policies to support joint use and development (<http://www.BestSchoolFacilities.org>);
- A “joint use calculator” tool for computing the real costs associated with the recreational use of school facilities; and
- A database template for including community use data and information in a facility information management system.

These resources are available at: <http://citiesandschools.berkeley.edu/joint-use.html>.

Public Health Law Center

The Public Health Law Center, in conjunction with the American Heart Association, developed two key resources to address barriers to community recreational use of school property. These resources include a model school recreational use statute developed to address barriers to

community recreational use of school property and a webinar discussing the importance of community use of school property, the concerns behind community use of school facilities and providing the legal basics on liability. The Public Health Law Center has conducted a review of the legal landscape impacting recreational use of school facilities in almost half of the states in which the American Heart Association is assessing the need to either clarify or change state liability laws. In addition, the Public Health Law Center is currently developing a webpage to provide additional resources on recreational use of school facilities. Available resources include:

- Minnesota-specific resources regarding the recreational use of school facilities;
- *Eliminating Barriers for Community Recreational Use of School Property: Policy Guidance on Liability and Shared Use* (2012); and
- Webinar developed in conjunction with the University of Florida and the American Heart Association.

These resources are available at: <http://publichealthlawcenter.org/>.

Public Health Law & Policy

The Public Health Law & Policy and its program, the National Policy & Legal Analysis Network to Prevent Childhood Obesity (“NPLAN”), have developed several resources promoting the use of joint use agreements to increase the recreational use of school facilities by communities. Many of these resources are national in scope; others focus on California but provide useful guidance to a national audience. These resources include:

- Fact sheets for parents, students and community members;
- Tool kit for developing joint use agreements;
- Summaries of laws impacting the use of joint use agreements;
- A 50-state survey of liability risks for after-hours use of public school property; and
- Model joint use agreements.

These resources are available on the PHLP/NPLAN website at: <http://www.nplanonline.org/>.

Prevention Institute

Prevention Institute has several resources, primarily for California schools, to use in developing joint use of school property. These resources include a fact sheet outlining the key concepts of joint use of California school property.

For more information, visit www.jointuse.org.

Endnotes

- ¹ Lawrence H. Kushi et al., *American Cancer Society Guidelines on Nutrition and Physical Activity for Cancer Prevention: Reducing the Risk of Cancer With Healthy Food Choices and Physical Activity*, 62 *CANCER J. CLINICIANS* 30 (2012), available at <http://onlinelibrary.wiley.com/doi/10.3322/caac.20140/full>; William L. Haskell et al., *Physical Activity and Public Health: Updated Recommendation for Adults from the American College of Sports Medicine and the American Heart Association*, *J. OF THE AM. HEART ASS'N.*, 1081 (Aug. 1, 2007), <http://circ.ahajournals.org/content/116/9/1081.full.pdf>.
- ² Kushi et al., *supra* note 1, at 32; *Solving the Problem of Childhood Obesity within a Generation: White House Task Force on Childhood Obesity Report to the President*, *LET'S MOVE.GOV*, 82–84, 97 (May 2010), http://www.letsmove.gov/sites/letsmove.gov/files/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf.
- ³ James F. Sallis et al., *Environmental Interventions for Eating and Physical Activity: A Randomized Controlled Trial in Middle Schools*, 24 *AM. J. PREVENTATIVE MED.* 209, 209–10, 215–16 (2003), available at <http://download.journals.elsevierhealth.com/pdfs/journals/0749-3797/PIIS0749379702006463.pdf>.
- ⁴ See generally Mary Filardo et al., *Joint Use of Public Schools: A Framework for a New Social Contract*, *CENTER FOR CITIES & SCHOOLS*, 2 (2010), <http://128.48.120.222/uc/item/44m449tp>.
- ⁵ *Id.* Many of the concepts discussed in this guide were developed and/or packaged in *Joint Use of Public Schools: A Framework for a New Social Contract*.
- ⁶ *Id.* at 12.
- ⁷ *Id.* at 8; Jeffrey M. Vincent, *Partnerships for Joint Use: Expanding the Use of Public School Infrastructure to Benefit Students and Communities*, *CENTER FOR CITIES & SCHOOLS*, 15 (2010), http://citiesandschools.berkeley.edu/reports/Partnerships_JU_Aug2010.pdf.
- ⁸ Filardo et al., *supra* note 4, at 12.
- ⁹ *Id.* at 2.
- ¹⁰ *Id.* at 3.
- ¹¹ *Eliminating Barriers for Community Recreational Use of School Property: Policy Guidance on Liability and Shared Use*, *PUBLIC HEALTH LAW CENTER.ORG*, 6 (Jan. 23, 2012), available at <http://publichealthlawcenter.org/sites/default/files/resources/phlc-fs-shareduse-samplestatute-language-2012.pdf> [hereinafter *Eliminating Barriers*].
- ¹² *Id.*
- ¹³ *What is a Joint Agreement? A Fact Sheet for Parents, Students, and Community Members*, *NPLANOnline.org*, 1–2 (March 2009), http://www.nplanonline.org/sites/phlpnet.org/files/JointUse_FactSht_FINAL_Updated_100618.pdf.
- ¹⁴ John O. Spengler et al., *Schools as a Community Resource for Physical Activity: Legal Considerations for Decision Makers*, 21 *AM. J. HEALTH PROMOTION* 390, 390–91 (2006); *Joint Use Agreements: Sharing School Recreational Facilities with the Community*, *AM. HEART ASSOC.*, 1–2 (2011), http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_312809.pdf.
- ¹⁵ See Nefertiti Durant et al., *Relation of School Environment and Policy to Adolescent Physical Activity*, 79 *J. SCH. HEALTH* 153, 156 (2009); Lois A. Brink et al., *Influence of Schoolyard Renovations on Children's Physical Activity: The Learning Landscapes Program*, 100 *AM. J. PUB. HEALTH* 1672, 1672–78 (2010), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2009.178939> (last visited March 22, 2012); Thomas A. Farley et al., *Safe Place Spaces to Promote Physical Activity in Inner-City Children: Results from a Pilot Study of an Environmental Intervention*, 97 *AM. J. PUB. HEALTH* 1625–31 (2007); Jay E. Maddock et al., *Increasing Safe Places for Physical Activity through a Joint Use Agreement: A Case Study in Urban Honolulu*, *NAT'L CENTER FOR BIOTECH. INFORMATION* (May 2008), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2483555/pdf/PCD53A91.pdf>.
- ¹⁶ *Designing for Active Living among Adults*, *ActiveLivingResearch.org*, 1, 6–7 (Spring 2008), http://www.activelivingresearch.org/files/Active_Adults.pdf.

- ¹⁷ See generally Lisa M. Powell et al., *The Relationship Between Community Physical Activity Settings and Race, Ethnicity and Socioeconomic Status*, 1 EVIDENCE-BASED PREVENTATIVE MED. 135 (2004) available at http://impactteen.econ.uic.edu/journal_pub/pub_PDFs/EBPM-1-2-Powell%20et%20a1.pdf (studying the relationship between physical inactivity and racial/ethnic status); see also Lisa M. Powell et al., *The Availability of Local–Area Commercial Physical Activity–Related Facilities and Physical Activity Among Adolescents*, 33 AM. J. PREVENTATIVE MED. S292, S299 (2007) (“The results from the present study showed a statistically significant but small association between local-area per capita availability of commercial physical activity-related facilities and frequent vigorous exercise among U.S. adolescents.”); James Sallis et al. *Environmental Interventions for Eating and Physical Activity: A Randomized Controlled Trial in Middle Schools*, 24 AM. J. PREVENTATIVE MED. 209 (2003) (policy interventions were effective in increasing physical activity at school among boys); John O. Spengler et al., *Schools as a Community Resource for Physical Activity: Legal Considerations for Decision Makers*, 21 AM. J. HEALTH PROMOTION 390, 395 (2006) (“The benefits of opening schools to members of the community for the purpose of recreation and physical activity are clear and well supported.”); Lisa M. Powell et al., *Availability of Physical Activity–Related Facilities and Neighborhood Demographic and Social Economic Characteristics: A National Study*, 96 AM. J. PUBLIC HEALTH 1676, 1676 (2006), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1551946/pdf/0961676.pdf> (“Lack of availability of facilities that enable and promote physical activity may, in part, underpin the lower levels of activity observed among populations of low socioeconomic status and minority backgrounds.”).
- ¹⁸ Daniel J. Hutch et al., *Potential Strategies to Eliminate Built Environment Disparities for Disadvantaged and Vulnerable Communities*, 101 AM. J. PUBLIC HEALTH 587 (2011).
- ¹⁹ See Lindsey Cox et al., *Engaging School Governance Leaders to Influence Physical Activity Policies*, [CaliforniaProjectLean.org](http://www.californiaprojectlean.org), 4 (2011), http://www.californiaprojectlean.org/docuserfiles/JPAH_2010.pdf (finding that low-resource districts had stronger concerns about resources even though they have a greater need for more student physical activity options).
- ²⁰ *Id.*
- ²¹ See generally Nefertiti Durant et al., *Relation of School Environment and Policy to Adolescent Physical Activity*, 79 J. SCH. HEALTH 153 (2009) (finding that physical education is a promising way to address adolescent physical activity within the school setting); Brink et al., *supra* note 15, at 1672 (finding that renovated schoolyards increase the number of children who are physically active).
- ²² Brink et al., *supra* note 15, at 1672–78 .
- ²³ *Exercise: Miracle–Gro for the Brain*, ON THE BRAIN: THE HARVARD MAHONEY NEUROSCIENCE LETTER, 7 (Winter 2005), http://www.hms.harvard.edu/hmni/On_The_Brain/Volume11/OTB_Vol11No1_Winter2005.pdf; *Physical Education is Critical to a Complete Education*, NAT’L ASSOC. SPORT AND PHYSICAL ED., 1 (July 2001), <http://www.aahperd.org/naspe/standards/upload/Physical-Education-is-Critical-to-a-Complete-Education-2001.pdf>; James B. Grissom, *Physical Fitness and Academic Achievement*, 8 J. EXERCISE PHYSIOLOGY ONLINE 11, 11–25 (Feb. 2005), available at <http://www.asep.org/files/Grissom.pdf>; *The Association Between School–Based Physical Activity, Including Physical Education, and Academic Performance*, DEP’T. OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION, 6, 28–29 (July 2010), http://www.cdc.gov/healthyyouth/health_and_academics/pdf/pa-pe_paper.pdf.
- ²⁴ Farley et al., *supra* note 15, at 1625–31.
- ²⁵ *Healthy Schools, Healthy Communities and Youth Obesity*, LeadershipForHealthCommunities.org, 9 (Apr. 2007), www.leadershipforhealthycommunities.org/images/stories/lessonslearned_naco.pdf.
- ²⁶ William C. Sullivan et al., *The Fruit of Urban Nature: Vital Neighborhood Space*, 36 ENV’T & BEHAVIOR 678, 695–98 (2004), available at <http://www.outdoorfoundation.org/pdf/FruitOfUrbanNature.pdf>; Frances E. Kuo and William C. Sullivan, *Environment and Crime in the Inner City: Does Vegetation Reduce Crime?* 33 ENV’T & BEHAV. 343, 346–350 (2001), available at <http://www.outdoorfoundation.org/pdf/EnvironmentAndCrime.pdf>.
- ²⁷ Frances E. Kuo & William C. Sullivan, *Environment and Crime in the Inner City: Does Vegetation Reduce Crime?* 33 ENV’T & BEHAV. 343, 346–50 (2001), available at <http://www.outdoorfoundation.org/pdf/EnvironmentAndCrime.pdf>.
- ²⁸ NAT’L CRIME PREVENTION COUNCIL, 150 TESTED STRATEGIES TO PREVENT CRIME FROM SMALL CITIES, COUNTIES, AND RURAL COMMUNITIES: A RESOURCE FOR MUNICIPAL AGENCIES AND COMMUNITY GROUPS 186–87 (2000).
- ²⁹ Emily Lees et al., *Collaborative School Planning and Active Schools: A Case Study of Lee County, Florida*, 33 J. HEALTH POL., POL’Y & L. 595, 607. (2008), available at <http://jhppl.dukejournals.org/content/33/3/595.full.pdf+html>.
- ³⁰ Filardo et al., *supra* note 4, at 5.
- ³¹ See *IQ Report: Local Governments and Schools: A Community–Oriented Approach*, [ICMA.org](http://icma.org/en/icma/knowledge_network/documents/kn/Document/5753/Local_Governments_and_Schools_A_CommunityOriented_Approach), 1 (2008) http://icma.org/en/icma/knowledge_network/documents/kn/Document/5753/Local_Governments_and_Schools_A_CommunityOriented_Approach (stating that lack of coordination between local government and school districts contributes to larger, more distant schools).

- ³² *Healthy People 2020 Summary of Objectives*, [HealthyPeople.gov, http://www.healthypeople.gov/2020/topicsobjectives2020/pdfs/PhysicalActivity.pdf](http://www.healthypeople.gov/2020/topicsobjectives2020/pdfs/PhysicalActivity.pdf) (last visited Mar. 22, 2011).
- ³³ See American Academy of Pediatrics, *Active healthy living: Prevention of Childhood Obesity Through Increased Physical Activity*, 117 PEDIATRICS 1834, 1834–42 (2006), available at <http://pediatrics.aappublications.org/content/117/5/1834.full.pdf+html> (outlining the ways that health care providers and officials can encourage increased physical activity for children and teenagers).
- ³⁴ See *Local Government Actions to Prevent Childhood Obesity*, INST. OF MED., 2–7 (Sep. 2009), http://www.aap.org/obesity/community_advocacy/IOM.pdf#Routine%20Physical%20Activity.
- ³⁵ *Education: Strategy 6*, (2010), NATIONAL PHYSICAL ACTIVITY PLAN, <http://www.physicalactivityplan.org/education/st6.php>.
- ³⁶ *Facts: Shared Use Agreements: Sharing Recreational Facilities with the Community*, AM. HEART ASS'N, http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_312809.pdf
- ³⁷ *Unlocking the Playground: Achieving Equity in Physical Activity Spaces*, CALIFORNIA PAN-ETHNIC HEALTH NETWORK, 5 (Spring 2009), <http://www.cpehn.org/pdfs/Joint%20Use%20Brief.pdf>; Filardo et al., *supra* note 4, at 10.
- ³⁸ See Spengler et al., *supra* note 14, at 390–96; Kelly R. Evenson et al., *National Study of Changes in Prevalence and Community Access to School Physical Activity Facilities: The School Health Policies and Programs Study*, 7 J. PHYSICAL ACTIVITY HEALTH S20 (2010), available at http://paprn.wustl.edu/pastprojects/Documents/Evenson_Jointuse.pdf; Kelly R. Evenson & Anne P. McGinn, *Availability of School Physical Activity Facilities to the Public in Four U.S. Communities*, 18 AM. J. HEALTH PROMOTION 243, 243–50 (2004); John O. Spengler et al., *Liability Concerns and Shared Use of School Recreational Facilities in Underserved Communities*, 41 AM. J. PREVENTATIVE MED. 415, 415–20 (2011).
- ³⁹ Sherry E. Jones et al., *Healthy and Safe School Environment, Part I: Results From the School Health Policies and Programs Study 2006*, 77 J. SCH. HEALTH. 522, 536 (2007), available at http://www.ashaweb.org/files/public/JOSH_1007/josh77_8_jones_p522.pdf.
- ⁴⁰ RESTATEMENT (THIRD) OF TORTS: LIAB. PHYS. & EMOTIONAL HARM §§ 1–7 (2010).
- ⁴¹ *Eliminating Barriers*, *supra* note 11, at 5.
- ⁴² See BLACK'S LAW DICTIONARY 427 (8th ed. 2005) (defining “duty” as “[a] legal obligation that is owed to another and that needs to be satisfied”); RESTATEMENT (THIRD) OF TORTS: LIAB. PHYS. & EMOTIONAL HARM § 7(a)–(b) (2010) (“An actor ordinarily has a duty to exercise reasonable care when the actor’s conduct creates a risk of physical harm. . . . In exceptional cases . . . a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification.”).
- ⁴³ BLACK'S LAW DICTIONARY 621 (8th ed. 2005).
- ⁴⁴ Tom Baker et al., *Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: a Fifty-State Survey*, 80 J. SCH. HEALTH 508, 511 (2009), available at www.nplanonline.org/files/Overview_JointUse_Final_SP_20090528_0.pdf.
- ⁴⁵ John O. Spengler, *Policies to Promote the Community Use of Schools: A Review of State Recreational Users*, 39 AM. J. PREVENTATIVE MED. 81, 81–88 (2010).
- ⁴⁶ FLA. STAT. § 316.0085 (2012).
- ⁴⁷ NEV. REV. STAT. §41.510 (2012). The statute defines “recreational activity” as including participation in any winter sports. *Id.*
- ⁴⁸ See BLACK'S LAW DICTIONARY 637 (8th ed. 2005) (“A contractual provision in which one party agrees to answer for any specified or unspecified liability or harm that the other party might incur.”).
- ⁴⁹ *Id.* at 1314 (defining waiver as “[t]he voluntary relinquishment or abandonment—express or implied—of a legal right or advantage”).
- ⁵⁰ *Communities Putting Prevention to Work*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/communitiesputtingpreventiontowork/> (last visited Mar. 30, 2012). Communities Putting Prevention to Work (CPPW) is a locally driven initiative funded through the CDC supporting 50 communities nationally to tackle obesity and tobacco use—two leading preventable causes of death and disability in the United States.
- ⁵¹ See *Attorney General’s Vermont Healthy Weight Initiative: Report of the Land Use Working Group to Attorney General William H. Sorrell*, THE ST. OF VT.: OFF. OF THE ATT’Y GEN. (Nov. 2010), <http://www.atg.state.vt.us/assets/files/Report%20of%20the%20Land%20use%20Working%20Group.pdf>.
- ⁵² *Id.* at 30.

- ⁵³ *Id.* at 30–31.
- ⁵⁴ See generally Ron Zier, ANALYSIS OF THE JOINT USE OF PUBLIC SCHOOL FACILITIES: REPORT TO THE LEGISLATURE, ST. OF WASH.: OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION (Jan. 2010), <http://www.k12.wa.us/SchFacilities/pubdocs/AnalysisofJointUseofPublicSchFacilitiesRptLegisJan2010.pdf>.
- ⁵⁵ Emily Lees et al., *Collaborative School Planning and Active Schools: A Case Study of Lee County, Florida*, 33 J. HEALTH POL. POL'Y & L. 595, 607 (2008).
- ⁵⁶ Tom Baker & H. Massud, *Liability Risks for After-Hours Use of School Property to Reduce Obesity: A 50-State Survey*, 80 J. SCH. HEALTH 508, 508–13 (2010).
- ⁵⁷ TENN. CODE ANN. § 29-20-112 (2012).
- ⁵⁸ MINN. STAT. § 466.03, subd. 23 (2012).
- ⁵⁹ N.D. CENT. CODE § 53-08-03 (2012).
- ⁶⁰ H.R. 382 (Wis. 2011).
- ⁶¹ H.R. 431 (Fla. 2012).
- ⁶² H.R. 540 (Miss. 2012), available at http://www.yaleruddcenter.org/resources/upload/docs/what/policy/legislation/MS_HB_540_Shared_use_of_school_facilities_Barker_2_13_12.pdf.
- ⁶³ H.R. 540 (Miss. 2012), available at http://www.yaleruddcenter.org/resources/upload/docs/what/policy/legislation/MS_HB_540_Shared_use_of_school_facilities_Barker_2_13_12.pdf.
- ⁶⁴ For more information, see ACTIVE LIVING RESEARCH, <http://www.activelivingresearch.org/> (last visited Mar. 30, 2012).



Public Health Law Center
875 Summit Avenue
St. Paul, Minnesota 55105-3076
651.290.7506 · Fax: 651.290.7515
www.publichealthlawcenter.org