



POLICY PERSPECTIVES

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NEW HEAD CONCUSSION REQUIREMENTS APPLY TO STUDENT ATHLETIC ACTIVITIES

Because of the health risks associated with concussions and other head injuries and the frequency at which such injuries occur in youth athletic activities, the Wisconsin Legislature has enacted a new state law that is intended to ensure that coaches, parents and athletes are provided with important concussion-related information and that athletes receive appropriate attention when a concussion occurs or is suspected.

The new legal requirements were included in 2011 Wisconsin Act 172, which became effective 4/17/12, and apply to all youth athletic activities.

A “youth athletic activity” is defined as an organized athletic activity in which the participants, a majority of whom are under 19 years of age, are engaged in an athletic game or competition against another team, club or entity, or practice or preparation for an organized athletic game or competition against another team, club or entity. This includes school-sponsored sports as well as other organized youth athletic activities in the schools or community that meet the definition. A “youth athletic activity” does not include a college or university activity or an activity that is incidental to a nonathletic program.

Specifically, Act 172 includes the following requirements:

- **Dissemination of Concussion and Head Injury Information** - At the beginning of an athletic activity season, the person operating the youth athletic activity must distribute a concussion and head injury information sheet to (1) each person who will be coaching that

youth athletic activity and (2) each person who wishes to participate in the activity.

The Wisconsin Department of Public Instruction is required by the new law to develop, in consultation with the Wisconsin Interscholastic Athletics Association, guidelines and other information for the purpose of educating athletic coaches and student athletes and their parents/guardians about the nature and risk of concussion and head injury in youth athletics. Once these guidelines and information are developed, they could serve as the information sheet that school officials disseminate to coaches and student athletes to meet this requirement.

- **Eligibility Requirement for Participation in Youth Athletic Activities** - No person may participate in a youth athletic activity unless the person returns the concussion and head injury information sheet signed by the person (e.g., student athlete) and, if he/she is under the age of 19, by his/her parent/guardian. If the person does not return this signed information sheet, he/she cannot participate in the youth athletic activity.
- **Removal of Student from Participation in a Youth Athletic Activity** - An athletic coach, official involved in a youth athletic activity, or health care provider is required to remove a person from a youth athletic activity if the coach, official or health care provider determines that the person exhibits signs, symptoms, or behavior consistent with a concussion or head injury or the coach, official or health care provider suspects the person has sustained a concussion or head injury.

A person who has been removed from a youth athletic activity may not participate in a youth athletic activity until he/she is evaluated by a health care provider and receives a written clearance to participate in the activity from the health care provider.

For purposes of this law, “health care provider” means a person to whom all of the following apply:

1. He/she holds a credential that authorizes the person to provide health care.
2. He/she is trained and has experience in evaluating and managing pediatric concussions and head injuries.
3. He/she is practicing within the scope of his/her credential.

School officials should review district policies and procedures related to emergency nursing services (dealing with student injuries), interscholastic athletics and other related topics and revise them as appropriate to address the above requirements.

NEW LIABILITY EXEMPTIONS FOR DISTRICTS THAT OPEN FACILITIES UP FOR RECREATIONAL ACTIVITIES

Many Wisconsin school boards have adopted school wellness and public use of school facilities policies that promote or encourage the use of school facilities for exercise and other recreational activities during non-school hours. Districts that have adopted such policies, or are considering opening their facilities up for such activities, should be aware of a new state law that provides special liability protections for districts that grant the use of school facilities for recreational activities pursuant to a written recreational agreement.

2011 Wisconsin Act 162 creates section 895.523 of the state statutes and became effective 4/12/12. Under the new law, districts that provide third parties with access to school facilities and/or grounds to engage or participate in recreational

activities pursuant to a written recreational agreement have the following specific liability protections:

1. No school board or school district, and no officer, employee or agent of a school board owes to any person who enters the school grounds to engage or participate in a recreational activity held pursuant to a recreational agreement any of the following:
 - A duty to keep the school grounds safe for the recreational activity.
 - A duty to inspect the school grounds.
 - A duty to give warning of an unsafe condition, use, or activity on the school grounds.
2. No school board or school district, and no officer, employee or agent of a school board is liable for the death of, any injury to, or any death or injury caused by, a person engaging or participating in a recreational activity held pursuant to a recreational agreement and taking place on school grounds.

For purposes of this law, “recreational activities” include: (a) any indoor physical activity, sport, team sport, or game, whether organized or unorganized undertaken for the purpose of exercise, relaxation, diversion, education or pleasure; and (b) any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. “Recreational activity” does not include any indoor or outdoor organized team sport or activity organized and held by a school board or school district.

Districts that grant third parties access to school facilities and/or grounds to engage or participate in recreational activities during nonschool hours (i.e., when the activities in question are not organized and held by the school district) are encouraged to enter into a written recreational agreement to provide for further protection from liability under state law.

The written recreational agreement granting public access to all or a specified part of the school grounds for the purpose of any recreational activity as described above must include all of the following components:

1. A description of the recreational activity or activities to be held on the school grounds pursuant to the agreement.
2. The time and place of the recreational activity or activities.
3. Any eligibility requirements for participation in the recreational activity or activities. For example, if it is a youth athletic activity covered under the new state law discussed above, an activity participant must be provided with a concussion and head injury information sheet and must return a signed concussion and head injury information sheet to the activity coach or official prior to being eligible to participate in the activity.
4. Whether and, if so, to what extent participants who are minors will be supervised. School districts should make it clear to individuals accessing school facilities and/or grounds to engage or participate in recreational activities that the school board shall have no responsibility for the supervision of participants who are minors unless the recreational agreement expressly requires the board to provide supervision.
5. A clear statement describing a participant's assumption of risk.

School officials should be aware that section 895.523 of the state statutes does not limit the liability of a school board or school district, or any officer, employee or agent of a school board for any of the following:

- a death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee or agent of the school board knew, which occurs on school grounds for use in a recreational agreement and being used by a person for a recreational activity held pursuant to a recreational agreement;
- the death of or injury to a spectator that occurs on the school grounds designated for use in a recreational agreement during the recreational activity; or
- the death of or injury to a person participating in a recreational activity involving any of the following pursuant to a recreational agreement: (1) a weight room, (2) a swimming pool, and (3) gymnastics equipment.

Just as with other public use of school property during non-school hours, school officials may charge a fee for the use of school facilities or grounds for recreational activities not to exceed actual costs. For purposes of authorized use of school facilities and property pursuant to a recreational agreement, "actual costs" means reasonable costs for maintenance, security, supervision of participants who are minors, if applicable, and cleaning. It is not clear whether this is an all-inclusive list of the costs that can be charged to persons who are using on school grounds or facilities pursuant to a recreational agreement.

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