

RISK MITIGATION STRATEGIES FOR SCHOOL FACILITY USE BY THE PUBLIC DURING COVID-19

Marty Malloy, M3 Insurance

Your school facilities are the cornerstone of community activities and events. This year, as COVID-19 continues to be a threat to the health and wellbeing of students, staff and the community, school leaders must review their risk management strategy, in order to mitigate the district's liability for public use of school facilities.

As school districts open their facilities to the public, they need to consider the following factors in mitigating risk:

Statutory Protections

First, let's consider Wisconsin's general approach to liability, and how that may come into play in regard to COVID-19.

- Recreational Immunity for Outdoor Facilities, Statute 895.52 – protects land owners from liability when a person is engaged in any outdoor activity for the purpose of exercise, relaxation, or pleasure on the land.
- Open Gym Act for Indoor Facilities – provides liability limitations for public school districts for the public's use of indoor recreational facilities.
 - Exceptions include fitness facilities, swimming pools, gymnastic equipment and school sponsored events
- Statute 893.80 which limits liability in lawsuits against Wisconsin public schools

The statutes listed above provide no protection in federal lawsuits.

Contractual Risk Mitigation

COVID-19 has proposed a unique challenge for schools as they attempt to navigate current statutes and guidance regarding facility use while slowing the spread of the virus. Using statutory as well as contractual risk mitigation is one way to limit your school's liability risk.

For Individuals

Community members may want to make use of both your outdoor and indoor facilities during this time. To maintain the district's recreational immunity, the district must make sure no known hazards exist on the property. An injury caused by a known hazard could void recreational immunity.

In addition, consider adding coronavirus warnings to existing waivers or facility use agreements with community members for use of your fitness facilities or swimming pools.

For Groups

If large groups are interested in using your school's facilities, consider adding COVID-19 language to your facility use agreement.

- Check the hold harmless and indemnity agreements that already exist in your facility use agreements to ensure you're proactively addressing your liability if an individual were to contract the virus.
- Review the insurance requirements on your facility use agreement. Best practices are:
 - Make sure your district is an additional insured on the liability policies of the group using facilities.
 - Get a Certificate of Insurance from the group.

Although you have immunity, the users' insurance will provide defense to your district if an incident were to occur to remove the district from the lawsuit.

Using statutory protections and contractual risk management can help your school maintain immunity from liability for use of your facilities by the public, and assist you in creating a safe facility for the use of your community. Reach out to [your Account Executive](#) for insights and guidance specific to your school's facilities.