

Legal Liability in Campus Recreation

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April 27, 2015

The purpose of this brief is to explore legal liability in campus recreation activities and determine what actions campus recreation managers can be taking in order to eliminate that risk. At what point does that court find that an injury or accident that occurs is a risk that the user has assumed, and at what point is the university responsible for negligence and not upholding their standard of care? This brief will 1) provide a background on the evolution and popularity of campus recreation over the years, 2) review legal definitions concerning the subject matter, 3) present legal cases on both sides of the issues and 4) conclude with a legal opinion on the issue.

Background of campus recreation

In the early 1800s, leisure and recreation was viewed as a sin by religious cultures. It wasn't until the Civil War that leisure time began to play a larger role in society and it was not seen on college campuses until around World War II. From the late 1950s to early 2000s, recreation's role on college campuses has evolved and experienced a substantial amount of growth (McClellan, 2012). What was once deemed unnecessary as a part of campus life began to take a role as an important aspect of campus life. In the 1980s and 1990s, administrators began to recognize campus recreation as a means to retain students and more recently, the health and wellness benefits of recreation for students has been at the forefront of collegiate mind. Now, recreation is not only viewed as an addition to the co-curricular experience, but also an academic experience. The first major case to play a role in campus recreation was Title IX, which opened up more opportunities for women in athletics. With an increase in popularity, participation and demand, campus recreation has become continuously inclusive and has begun to universally expand offerings to include aquatics, personal training, group exercise, wellness, outdoor and adventure. This expansion of offerings has led to more active and healthier campus communities,

however, this also increases risk and campus recreation managers' need to be intentional with their risk management plans and procedures. Although risk is inherent in any and all sports, Young (2005) suggested that "without it, sport would lack the challenge that attracts many participants" (p. 503)¹.

Legal Issues and Definitions

Although most lawsuits involving negligence and liability in campus recreation are held favorable in support of the institution, it is important for campus recreation professionals to have risk management procedures in place and for them to have proper facility management procedures in place. There have been a number of cases in the field in which the ruling has been in favor of the plaintiff and in which the law was unfavorable for the institution. In 2007, a study determined there were 54 court cases involving campus recreation over the previous 30 years, of which 56% were tort law cases. These include personal injuries at facilities, injuries during intramural sports and athletics in sports (Young, 2007). Tort law involves cases in which an individual is wronged by another and the individual requests compensation from the wrongdoer for injuries sustained. Torts can include a wide variety of subjects including trespassing, assault, battery and more commonly in collegiate recreation subjects such as negligence and product liability. Of the cases reviewed for the aforementioned study, the largest number of tort cases involved personal injury and 30% of these cases involved injury at a facility maintained by

¹ Young, S., Fields, S., & Powell, G. (2007, January 1). Risk Perceptions versus Legal Realities in Campus Recreational Sport Programs. Retrieved April 25, 2015, from <http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/11730.pdf>

campus recreation professionals or during a program coordinated by campus recreation professionals (Cornell University Law School, 2014).

The study looked at whether or not campus recreation managers were concerned with the same risks that were appearing in cases being tried in the courtroom. It was determined that campus recreation professionals do worry about tort law issues and are most commonly concerned with issues such as facility maintenance, travel of sport clubs, negligent supervision, training of staff, inappropriate use of equipment and a safe environment. Based on the findings of the study, campus recreation professionals do have appropriate concerns that could not only have financial implications but also negative image implications for their universities. Based on previous studies, we know that the more someone is aware of appropriate concern, the more likely they are to take action to eliminate the risk associated with that concern.

Some defenses commonly used by university and campus recreation professionals when they are faced with a lawsuit include waivers and immunity. Young and Fields (2010) break down campus recreation and court cases as well as common defenses into four main categories including informal sport, intramural sports, club sports and instructional sports². Informal sport describes an activity within campus recreation that is maintained by professionals and could include any facilities or offerings for participants. Intramural sport describes the traditional organized sports that fall under campus recreation in which students form teams on campus to play against each other in a non-competitive environment. Club sports, probably the most dangerous of all of these areas, usually fall under campus recreation but are organized by

² Young, S., Fields, S., & Powell, G. (2007, January 1). Risk Perceptions versus Legal Realities in Campus Recreational Sport Programs. Retrieved April 25, 2015, from <http://www.humankinetics.com/acucustom/sitename/Documents/DocumentItem/11730.pdf>

students and tend to play competitively against club teams from other universities. Finally, instructional sport describes classes or organized activities to the community as a whole.

Relevant legal cases

It is important for facility managers to have risk management plans in each of the areas of campus recreation discussed. These plans should also include regularly scheduled inspections and a facility preventative maintenance plan. In *Beglin v. Hartwick College*, Michael Beglin was injured while attempting to determine why metal weights in the weight room were jammed and in turn 140 pounds fell on his hands, resulting in injury. During initial hearings, the court received conflicting evidence from fitness center employees over whether or not Hartwick College was aware of the dangerous condition of the weight machine. While judgement ruled in favor of the plaintiff, Beglin was not awarded damages and the case was sent and is currently awaiting another trial with the appellate courts. Regardless of the outcome, this case demonstrates the need for a risk management to include regular facility inspections, a preventative maintenance plan and proper employee training in order for employees to recognize defective equipment prior to an accident occurring (Wolohan, 2010).

When reviewing the usage of fields as recreational activity space, it is important to keep up the maintenance of these spaces as much as the facilities involving equipment. In many cases, the participants assume the risk of field conditions when participating in intramural sports. However, in some instances waivers and releases of liability are found invalid, which must be considered by recreational managers when creating a risk management plan. For example, in *Breheny v. Catholic University of America*, 1989, a student slipped on a wet, muddy field and broke her leg, and she claimed that the school should have postponed the game due to the

weather conditions which made the fields unsafe. The court disagreed, ruling that the student assumed the risk by playing during the weather conditions which she had expressed concern over. However, to avoid the financial implications of a trial, this case demonstrates the necessity for universities to have a weather plan included in their risk management plan.

Another case involving the upkeep of these fields as facilities did rule in favor of the plaintiff. In *Henig v. Hofstra University*, the university was held liable after a student injured themselves playing intramural football. The field was found to be uneven, rough and full of holes which is a standard of care that the university is expected to meet when providing these spaces for their students to participate in recreational activities and intramural sports (Leagle, 2014).

An area of campus recreation that seems to hold more risks than even intramural sports are club sports. It can be argued that these hold more potential risks because of the competitive nature of play. The main difference in these two types of play is that universities are not involved in the organization, regulation or supervision of sport clubs, however, they do exercise this control over club sports. In *Kyriazis v. University of West Virginia*, Kyriazis was injured during a Rugby Club match, the courts ruled in favor of the plaintiff even though he had signed a waiver to play. The release of liability did not hold up in court based on the grounds of public policy in which some states cause waivers and other releases to be invalid. In the state of West Virginia, public policy was outlined in *Murphy v. North American River Runners* which stated that an agreement must be made between parties with an equal bargaining position and that a party could not require a release when failing to conform to the standards of care expected. In the case of *Kyriazis*, they were not in an equal bargaining position as Kyriazis was required to sign in order to play, and the university was providing club sports as a public service as determined by the state of West Virginia (*Kyriazis v. UWV*, 1994).

Another issue involving waivers and instructional sport in campus recreation is Lemoine v. Cornell University (2003) in which a student fell from a climbing wall during an instructional eight-week course. Although she signed a waiver, she argued that it was against public policy in the state of New York. The court disagreed, and did not find the university liable for her injuries where she was under instruction and training. However, the level of instruction and training in sport can have an affect on how the case holds up in court. In DeMauro v. Tusculum College (1980), the court ruled that a university was liable when a freshman in a golf class was struck in the head with a golf ball and injured by the senior student instructor. The court ruled that the institution had breached its duty of care by not providing a more competent instructor (Fields, 2010). This further demonstrates the necessity for proper training of staff as part of a risk management plan by campus recreation professionals.

Legal opinion

After examining these legal cases in the field, it is clear that the best way to avoid legal liability is to ensure that campus recreation professionals have risk management procedures in place that student staff members are properly trained on them. Although cases have been examined in which universities have been held liable and those that have not, the circumstances in which each case falls under seems fair according to the court's ruling. It is best to have a lawyer or legal professional review any risk management procedures and documents when creating a plan to handle these scenarios.

In a case such as Kyriazis v. University of West Virginia, the only instance in which I believe the university should be held liable is if they determine that the university had prior knowledge of an error with the machine, and neglected to fix it. In all personal injury cases, I

believe that the only time liability should fall on the university is if they were negligent or did not follow the proper standard of care expected by a reasonable person.

As always, it is better to be prepared for scenarios that have a small chance of happening rather than being unprepared if the situation were to arise. Additional means of protection include “...guidelines, plans, forms, insurance, responsibilities of directors to prevent risks, health prescreening procedures, CPR and first aid certifications, automatic external defibrillator (AED) training, methods of communication, security, and employee matters related to the facility³.”

³ Schneider, R., Stier Jr., W., Kampf, S., Haines, S., & Gaskins, B. (n.d.). Factors Affecting Risk Management of Indoor Campus Recreation Facilities. *Recreational Sports Journal*, 32, 114-133

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