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Clarifying Liability for After-Hours Community Use of School Recreational Facilities

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I. INTRODUCTION

The prevalence of overweight and obese Americans,¹ significance of physical activity,² and recognition of the importance of community collaborations³ has prompted the need for policy guidance directed at the state and local levels to encourage physical activity and to fight obesity, cardiovascular disease, and stroke. Policies that promote community access to school recreational facilities during non-school hours (“shared use”) are of particular importance. The policy objective behind shared use is to give the

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1. Katherine M. Flegal et al., Prevalence and Trends in Obesity Among U.S. Adults, 1999–2008, 303 JAMA 235 (2010); TRUST FOR AMERICA’S HEALTH, F AS IN FAT: HOW OBESITY THREATENS AMERICA’S FUTURE 3 (2011), available at <http://healthyamericans.org/assets/files/TFAH2011FasInFat10.pdf>; Cynthia L. Ogden et al., Prevalence of High Body Mass Index in US Children and Adolescents, 2007–2008, 303 JAMA 242, 242 (2010); Danice K. Eaton et al., Youth Risk Behavior Surveillance - United States, 2009, 59 MORBIDITY AND MORTALITY WEEKLY REPORT 1 (2010).

2. Geraldine M. Budd & Laura L. Hayman, Addressing the Childhood Obesity Crisis: A Call to Action, 33 AM. J. MATERNAL & CHILD NURSING 111, 115 (2008); see generally Howard Taras, Physical Activity and Student Performance at School, 75 J. SCH. HEALTH 214 (2005); see generally Rena R. Wing & James O. Hill, Successful Weight Loss Maintenance, ANN. REV. NUTRITION 323 (2001).

3. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HEALTHY PEOPLE 2020: PHYSICAL ACTIVITY OBJECTIVES 10 (2010), available at <http://www.healthypeople.gov/2020/topicsobjectives2020/pdfs/PhysicalActivity.pdf>; Am. Acad. of Pediatrics, Active Healthy Living: Prevention of Childhood Obesity Through Increased Physical Activity, 117 PEDIATRICS 1834, 1839 (2006); NATIONAL PHYSICAL ACTIVITY PLAN, EDUCATION: STRATEGY 6 (2010), available at http://www.physicalactivityplan.org/education_st6.php [hereinafter NATIONAL PHYSICAL ACTIVITY PLAN]; LEADERSHIP FOR HEALTHY COMMUNITIES, ADVANCING POLICIES TO SUPPORT HEALTHY EATING AND ACTIVE LIVING: ACTION STRATEGIES TOOLKIT 2 (2010), available at http://www.eatsmartmovemorenc.com/TheEvidence/Texts/ActionStrategiesToolkit_RWJ.pdf; See generally WHITE HOUSE TASK FORCE ON CHILDHOOD OBESITY, REPORT TO THE PRESIDENT (2010), available at http://www.letsmove.gov/sites/letsmove.gov/files/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf.

community additional opportunities to participate in physical activity and recreation. Schools are an ideal venue for policy action given their central location within many communities, their available recreational/sport facilities at low to no cost for participants, and their potential as a safe place for community members to play sports or participate in other forms of recreation.⁴ The results of several studies suggest that access to safe and well-designed school recreational facilities that are open and shared outside of regular school hours improves the likelihood that community members will be physically active.⁵

Schools may choose to share their recreational facilities in several ways. One way is to open their recreational facilities to the public during non-school hours so members of the community may exercise and play on school grounds. A second way for schools to share their recreational facilities is through a written contract with a community group or agency. For example, schools might share recreational facilities with municipal recreation and park agencies, community sports leagues, or other community groups such as YMCA/YWCAs, Boy/Girl Scouts, and faith-based groups. A third method of sharing facilities is by allowing reciprocal access to partner facilities. For example, a school and park built side-by-side might share their facilities. Sharing facilities with third parties often requires a written contract, otherwise known as a joint use agreement.⁶

Empirical evidence suggests that liability is a key factor in the decision-making process for school administrators when making decisions about whether to open their schools to the community outside of normal school hours.⁷ This Article discusses the American Heart Association's policy on

4. See NATIONAL PHYSICAL ACTIVITY PLAN, *supra* note 3.

5. Nefertiti Durant et al., *Relation of School Environment and Policy to Adolescent Physical Activity*, 79 J. OF SCH. HEALTH 153, 156-58 (2009); See Thomas A. Farley et al., *Safe Play Spaces to Promote Physical Activity in Inner-City Children: Results From a Pilot Study of an Environmental Intervention*, 97 AM. J. PUB. HEALTH 1625 (2007), DOI: 10.2105/AJPH.2006.092692; Lois A. Brink et al., *Influence of Schoolyard Renovations on Children's Physical Activity: The Learning Landscapes Program*, 100 AM. J. PUB. HEALTH 1672, 1674-76 (2010); See Lehua B. Choy et al., *Increasing Safe Places for Physical Activity Through a Joint Use Agreement: A Case Study in Urban Honolulu*, 5 PREVENTING CHRONIC DISEASE A91 (2008), PMID: PMC2483555.

6. See generally CHANGE LAB SOLUTIONS, *OPENING SCHOOL GROUNDS TO THE COMMUNITY AFTER HOURS: A TOOLKIT FOR INCREASING PHYSICAL ACTIVITY THROUGH JOINT USE AGREEMENTS* (2010), available at http://changelabsolutions.org/sites/default/files/CA_Joint_Use_Toolkit_FINAL_%28CLS_20120530%29_2010.01.28.pdf.

7. See generally Kelly R. Evenson & Alan P. McGinn, *Availability of School Physical Activity Facilities to the Public in Four U.S. Communities*, 18 AM. J. OF HEALTH PROMOTION 243 (2004); John O. Spengler et al., *Liability Concerns and Shared Use of School Recreational Facilities in Underserved Communities*, 41 AM. J. OF PREVENTIVE MED. 415 (2011); Lindsey Cox et al., *Engaging School Governance Leaders to Influence Physical Activity Policies*, 8 J.

shared use and the development and components of policy guidance, which incorporates sample language for legislation that seeks to clarify liability and other issues around shared use.

II. AMERICAN HEART ASSOCIATION ADVOCACY ON SHARED USE AND SCHOOL LIABILITY PROTECTIONS

The American Heart Association (“AHA”) advocates for the shared use of school recreational facilities.⁸ Founded in 1924, the AHA is the nation’s oldest and largest voluntary health organization dedicated to the prevention of heart disease and stroke.⁹ Its mission is to build healthier lives free of cardiovascular diseases and stroke.¹⁰ To this end, the AHA funds cutting-edge research, provides public and professional educational programs, and promotes public health objectives across the country.¹¹ The AHA also supports the creation of initiatives that enhance primordial and primary prevention strategies designed to prevent cardiovascular disease and improve health.¹² One such initiative is for the advocacy of shared use and community access to school recreational facilities. For example, the AHA supports the removal of barriers to the community use of school recreational facilities as perceived by school administrators (liability, cost, staffing, maintenance, etc.) where use occurs outside of regular school hours, such as before and after school hours, on weekends, holidays, and over the summer.¹³

In recognition of this initiative, the AHA developed six points of advocacy for joint/shared use as a starting point toward the development of a formal policy statement on shared use.¹⁴ One point of advocacy was a recommendation that state legislation offer liability protection for schools when they agree to share their recreational facilities with community

OF PHYSICAL ACTIVITY & HEALTH S40 (Supp. 1, 2011).

8. See AMERICAN HEART ASSOCIATION & AMERICAN STROKE ASSOCIATION, SHARED USE AGREEMENTS: SHARING SCHOOL RECREATIONAL FACILITIES WITH THE COMMUNITY 1 (2012), available at http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_312809.pdf [hereinafter SHARED USE AGREEMENTS].

9. See History of the American Heart Association, AMERICAN HEART ASSOCIATION, http://www.heart.org/HEARTORG/General/History-of-the-American-Heart-Association_UCM_308120_Article.jsp (last visited Apr. 28, 2013).

10. See generally Larry B. Goldstein et al., American Heart Association and Non-Profit Advocacy: Past, Present, and Future: A Policy Recommendation From the American Heart Association, 123 CIRCULATION 816, 816 (2011).

11. *Id.*

12. See generally William S. Weintraub et al., Value of Primordial and Primary Prevention for Cardiovascular Disease: A Policy Statement from the AHA, 124 CIRCULATION 967 (2011).

13. See generally SHARED USE AGREEMENTS, *supra* note 8.

14. *Id.* at 2.

members and groups outside of regular school hours.¹⁵ These advocacy efforts by the AHA are in furtherance of the Institute of Medicine's recommendation to adopt legislative policies, where necessary, to address liability issues that might block community access to school recreational facilities after-hours.¹⁶ The rationale for liability protection stems from research findings suggesting that fear of liability for injuries that occur to users of school recreational facilities is a primary concern of school administrators and a potential barrier to allowing shared use and community access to school facilities after-hours for recreational purposes.¹⁷ Additionally, the results of one study suggest that school administrators in lower-income communities and communities of color desire stronger legislative protections from negligence liability.¹⁸

III. NEGLIGENCE LIABILITY

Negligence liability is the legal responsibility for injury, death, or damages. The necessary elements to prove negligence are: (1) the existence of a duty to act in accordance with the applicable standard of care; (2) a failure to meet the standard of care; (3) a causal connection between the failure to meet the standard of care and an injury; and (4) the existence of an injury.¹⁹ The case of *Sajkowski v. YMCA* (2000) illustrates the first critical element of negligence in a recreation setting.²⁰ In this case, a participant was injured in a YMCA-sponsored Wellness for Life obstacle course.²¹ The course involved swinging on a rope from a log over an "imaginary pit" of "flat, bare dirt" to another log on the other side.²² The rope hung only a foot and a half above the ground in the center of the imaginary pit.²³ As the plaintiff swung across the pit, she lost her grip and fell to the ground, injuring her ankle.²⁴ She subsequently sued the YMCA for negligence for failing to

15. *Id.*

16. INST. OF MED. OF THE NAT'L ACAD., REPORT: LOCAL GOVERNMENT ACTIONS TO PREVENT CHILDHOOD OBESITY I (2009), available at <http://www.iom.edu/~media/Files/Report%20Files/2009/ChildhoodObesityPreventionLocalGovernments/local%20govts%20obesity%20report%20brief%20FINAL%20for%20web.ashx>.

17. See SHARED USE AGREEMENTS *supra* note 8, at 1.

18. Spengler et al., *supra* note 7, at 415-17.

19. W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS 164-65 (5th ed. 1984).

20. *Sajkowski v. Young Men's Christian Assn. of Greater N.Y.*, 269 A.D.2d 105, 105 (N.Y. App. Div. 2000).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

use shock-absorbing materials in the pit.²⁵ The YMCA argued, and the court agreed, that it could not be held negligent because the plaintiff had relieved the YMCA of any duty owed to her by consenting to an obvious risk of injury inherent in participating in such an activity.²⁶

Some legal experts believe the risk of negligence claims against schools is exaggerated.²⁷ Empirical evidence suggests, however, that lawsuits against schools may be more frequent than some would suspect. For example, data from the 2006 School Health Policies and Programs Study revealed that 33% of school districts and 11.8% of individual schools reported being sued for alleged negligence due to an injury occurring on school property or at an off-campus, school-sponsored event.²⁸ The case of *Lundstrom v. City of Apple Valley* (1998) provides an example of a negligence claim in the context of shared use.²⁹ In *Lundstrom*, a city was sued for an injury that occurred on a tennis court in a multi-purpose sports facility jointly owned by the city and the school district.³⁰ After the initial trial and appeal, the Minnesota Court of Appeals found that the city was entitled to immunity under the state's recreational user statute.³¹

IV. CURRENT ENVIRONMENT OF LEGAL PROTECTIONS FOR SCHOOLS

Each state has statutes and case law that outline and interpret the duties and liability protections of school districts and school personnel.³² Understanding the legal landscape of each individual state, however, can be complicated. When considering which laws outline the duties of schools and

25. *Id.*

26. *Id.* at 105-06.

27. See Tom Baker & Hania Masud, *Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: A 50-State Survey*, 80 *J. SCH. HEALTH* 508, 513 (2010); see generally P.J. Maher et al., *Governmental and Official Immunity for School Districts and Their Employees: Alive and Well?*, 19 *KANSAS J. L. & PUB. POL'Y* 234, 249 (2010).

28. The School Health Policies and Practices Study (SHPPS) is a national survey conducted by the Centers for Disease Control and Prevention approximately every six years to assess school health policies and practices at the state, district, school, and classroom levels. See generally Sherry Everett 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, 528, 536 (2007).

29. See *Lundstrom v. City of Apple Valley*, 587 N.W.2d 517, 519 (Minn. Ct. App. 1998).

30. *Id.* at 518-19.

31. *Id.* at 520.

32. See, e.g., Massachusetts has laws that outline how communities can use school property (MASS. GEN. LAWS ANN. ch. 71, § 71; & ch. 71, § 71B (West, Westlaw Next through Ch. 3 of the 2013 1st Annual Session)), as well as liability protections for schools (MASS. GEN. LAWS ANN. ch. 21, § 17C; & ch. 258, § 10 (West, Westlaw Next through Ch. 3 of the 2013 1st Annual Session)). Mississippi recently passed legislation to incorporate school district expectations and liability protections (MISS. CODE ANN. § 37-171-7 (2013)).

potentially provide immunity protection from liability, it is necessary to look at a state's constitution, statutes, and court cases interpreting the laws. Many states limit negligence liability of school districts and other local units of government, usually by a statute that provides partial protection from liability.³³ The existence of such a statute, however, does not prevent negligence lawsuits from being brought in the first place, nor does it negate the costs of defending such claims.³⁴ Also, state laws vary by the degree of protections and types of coverage afforded schools and school personnel.³⁵ In addition to state laws that provide partial immunity from liability, some states limit the amount of damages that can be collected in certain situations.³⁶ Additionally, schools can further minimize their liability risks by properly inspecting and maintaining their facilities, having proper insurance coverage, requiring community groups to have insurance, and entering into written joint use agreements.³⁷

V. RATIONALE FOR AHA POLICY GUIDANCE ON SCHOOL RECREATIONAL USE LEGISLATION

Despite existing legal protections and individual actions to reduce liability risk, there remains a need to offer liability protections where recreational use of school property occurs outside of regular school hours. State laws are complex, vary on the ways in which they protect school districts that open their school property for community recreational use after hours, and do not always protect all the necessary agencies or persons (e.g., school districts, school administrators, and school employees such as supervisors and custodial staff).³⁸ School districts often have to look at a patchwork of laws when attempting to determine what their legal duty of care is in a specific

33. See, e.g., MINN. STAT. § 466.03, subd. 6c (2012) (providing liability protection for municipalities for injuries occurring).

34. Several published and unpublished appellate court cases in Minnesota find the school district immune under MINN. STAT. § 466.03, subd. 6e. See, e.g., *Prokop v. Independent School Dist. No. 625*, 754 N.W.2d 709 (Minn. Ct. App. 2008), *Goetz v. Independent School Dist. No. 625, St. Paul Schools*, 2009 WL 22270 (Minn. Ct. App. 2009), and *Linton v. Independent School Dist. No. 196*, 1996 WL 104745, (Minn. Ct. App. 1996).

35. See PUBLIC HEALTH LAW CENTER, *ELIMINATING BARRIERS FOR COMMUNITY RECREATIONAL USE OF SCHOOL PROPERTY: POLICY GUIDANCE ON LIABILITY AND SHARED USE 1-2* (2012) available at <http://publichealthlawcenter.org/sites/default/files/resources/phlc-fs-shareduse-samplestatute-language-2012.pdf> [hereinafter *ELIMINATING BARRIERS*].

36. Baker & Masud, *supra* note 27, at 512.

37. See generally John O. Spengler et al., *Schools as a Community Resource for Physical Activity: Legal Considerations for Decision Makers*, 21 AM. J. HEALTH PROMOTION 390 (2006).

38. *ELIMINATING BARRIERS*, *supra* note 35, at 1.

situation.³⁹ Additionally, existing state recreational user statutes have traditionally intended to limit liability for recreational use on private land and in municipal parks.⁴⁰ They have not included health outcomes as one of their stated purposes, nor have they often addressed school recreational facilities or many activities conducive to physical activity.⁴¹

Recognizing these drawbacks, the AHA now advocates for state legislation that clarifies liability protections for schools for community use of recreational facilities outside of regular school hours.⁴² As part of this advocacy effort, the AHA has created policy guidance on school liability legislation, with sample language designed to provide a clear statement of immunity and to facilitate changes in state laws, where needed, to encourage public access to school facilities for recreation and physical activity.⁴³ The AHA policy guidance is discussed below.

VI. COMPONENTS OF POLICY GUIDANCE AND SAMPLE LEGISLATION

The AHA and the Public Health Law Center⁴⁴ have developed policy guidance in the form of sample legislation for individual states to use as a starting point in developing policies to eliminate or reduce barriers to community recreational use of school facilities.⁴⁵ This policy guidance has several key components, including: (1) findings; (2) purpose; (3) definitions; (4) liability provisions; (5) liability exceptions; and (6) implementation.⁴⁶ Each component, or section, is discussed below. In addition to describing the sample language for each component, the source identifies key considerations for stakeholders to discuss as individualized state policy is considered and developed.⁴⁷ Actual sample language for each component is provided in the footnotes to the discussion.

39. See *id.*

40. John O. Spengler, et al., Policies to Promote the Community Use of Schools: A Review of State Recreational User Statutes, 39 AM. J. PREVENTIVE MED. 81, 82 (2010) [hereinafter Policies to Promote].

41. *Id.* at 86.

42. See SHARED USE AGREEMENTS, *supra* note 8.

43. ELIMINATING BARRIERS, *supra* note 35.

44. The Public Health Law Center is a national non-profit organization of law and policy specialists that help health leaders, officials, and advocates use the law to advance public health. Founded in 2000, the organization today is a preeminent authority in U.S. public health policy and a respected legal resource for dozens of local, state, national and international health organizations. The center is located at William Mitchell College of Law, the largest law school in Minnesota and one of the top U.S. law schools in public interest law. See About Us, PUBLIC HEALTH LAW CENTER, <http://publichealthlawcenter.org/about> (last visited March 22, 2013).

45. ELIMINATING BARRIERS, *supra* note 35.

46. *Id.* at 2.

47. *Id.*

A. Findings and Purpose

“Findings are brief statements of fact, statistics or other evidence that outline the issue being addressed and support the need for the policy.”⁴⁸ A well-worded and evidence-based findings section frames the policy rationale and reduces the potential for legal challenges to the statute. Conversely, poorly worded and inapposite findings may open the statute to legal arguments in civil lawsuits. For example, in *Sorrell v. IMS Health* (2011), the United States Supreme Court held that Vermont’s Prescription Confidentiality Law violated the First Amendment, using the legislation’s own findings to show that the law placed a content- and speaker-based burden on free speech.⁴⁹ It is important that statements made within the findings section be evidence-based. Findings with references to an authoritative source(s) are important in establishing a scientific basis for statements made in support of the legislation and that frame the policy rationale.

In the sample language of the AHA policy guidance, the rationale to promote community use of school sport/recreation facilities is based on, and references, relevant research on the issue(s).⁵⁰ Additionally, the policy guidance provides a number of legislative findings, each of which should resonate with a particular constituency. The breadth and scope of the findings developed by the policy guidance allow each community to pick and choose the findings that best meet its particular needs. For example, there may be a community for which maximizing public resources is a critical element. For that community, it would likely be important to highlight findings supporting that premise. In another community, to gain the approval of school administrators, it may be better to use findings that support the connection between academic performance and physical activity, in addition to the overall community benefits of recreational use.

The purpose is closely linked to the findings. The purpose is a broad statement that supports the findings and explains the goal(s) the policy

48. *Id.*

49. *Sorrell v. IMS Health*, 131 S.Ct. 2653, 2663-4 (2011).

50. Sample findings include: “Whereas, nationally in 2006, only 28.8 percent of public and private schools provided community access to school recreational spaces outside of the school day; Whereas, disadvantaged individuals and communities often live in urban areas with higher pollution levels, less green space and fewer recreational facilities; Whereas, schools located in communities at a high risk for obesity can be safe, affordable and accessible places for community members to be physical active; Whereas, shared use of facilities by school districts and local governments is important in promoting greater collaboration within governmental agencies and increasing physical activity; Whereas, fear of liability among school administrators is a key perceived barrier to allowing community access to school sport and recreational facilities after-hours.” See *ELIMINATING BARRIERS*, *supra* note 35, at 3-4 (footnotes omitted).

intends to achieve. For example, the purpose of maximizing community resources supports the finding that shared use promotes greater collaboration within governmental agencies.

The sample purpose statement in the AHA policy guidance is directly linked to the evidence-based findings.⁵¹ It is also more expansive than simply providing the public health message of promoting physical activity and obesity prevention, since that message alone may not resonate with all constituent groups. Therefore, it includes the purpose of maximizing community resources and promoting support for schools for potential use depending on the needs of a particular constituency.

B. Definitions

Definitions explain and describe key terms used in the sample legislation.⁵² Definitions of key terms and concepts in legislation often vary by state and are open to varying interpretations by the courts.⁵³ Therefore, it is important that definitions are clear and that they define and apply terminology in a consistent manner. For example, if a state already has a definition of school property that encompasses indoor and outdoor facilities, it may be important to use that definition for the purpose of consistency.

The sample definitions of AHA policy guidance include, for example, the term “sport.”⁵⁴ The AHA policy guidance defines this term as “an activity requiring physical exertion and skill, and which by its nature and organization is competitive, includes a set of rules and is generally accepted as being a sport.”⁵⁵ This definition clarifies and provides a common definition for use

51. A sample purpose statement language: “The purpose of this legislation is to make school property available to community members outside of the school day for recreational activities to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community support for public schools.” *Id.* at 4.

52. Sample definition language includes: “As used in this section [or subdivision], the following terms have the meanings indicated: 1. ‘Non-school hours’ means any time prior to and after regular classroom instruction on a school day, and any time during weekends, holidays and vacation breaks. 2. ‘Public’ means members of the community, including students during non-school hours and school staff when not working as employees of the school. 3. ‘Recreation’ means any indoor or outdoor game or physical activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport, or pleasure. 4. ‘School’ means [add in existing language from state law or cross reference to existing state law, if needed]. 5. ‘School property’ means all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district. 6. ‘Sport’ means an activity requiring physical exertion and skill, and which by its nature and organization is competitive, includes a set of rules and generally accepted as being a sport.” *Id.* at 4-5.

53. See Policies to Promote, *supra* note 40, at 6.

54. See ELIMINATING BARRIERS, *supra* note 35, at 5.

55. *Id.*

by advocates, states, and local communities. “Sport” was broadly defined to capture those types of activities, in addition to recreational activities, that have rules and are competitive in nature.⁵⁶ The term was also defined to capture those types of activities that resulted in physical activity and were thus reflective of the legislative purpose of supporting active living.

The challenge in drafting definitions is to provide clear and succinct language, yet still ensure that the purpose is being met. The AHA sample language is not intended to change the duty of a school as it relates to staff and students, such as an employee who may be injured while supervising recess, or a student injured while participating in physical education class. However, the sample language is intended to include coverage of school-sponsored recreational activities such as tennis, track, or football, and staff and students who become members of the community during non-school hours.

C. Liability Provisions and Liability Exceptions

The liability provisions are the heart of the sample legislation and provide either restrictions or requirements.⁵⁷ The provisions should identify the parties to whom the provisions apply, clearly state which activities are being promoted, controlled or restricted, and identify the responsibilities of the affected parties. There are a variety of provisions that are often included in a comprehensive statute.

In the AHA policy guidance, one provision is meant to make clear that school facilities can and should be made available for public use at the discretion of the school district.⁵⁸ This provision also defines when such

56. See *id.*

57. Sample liability provision language includes: “Except as provided in this subdivision, a school district [and school personnel] [is/are] not liable for any loss or injury arising from the use of indoor or outdoor school property and facilities made available for public recreation or sport during non-school hours.” *Id.* at 6.

58. Sample language includes: “1. [School districts/schools] are encouraged to allow the public to use of indoor and outdoor school property during non-school hours for recreational purposes or sport, provided the use does not interfere with a school function or purpose. 2. School districts are encouraged to negotiate mutually acceptable, fiscally responsible, legally binding shared use agreements with governmental and community agencies and organizations to keep school or district-owned facilities open for use by students, staff, and community members during non-school hours. ‘Shared Use Agreement’ means 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. Shared-use agreements 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. 3. [School districts/Schools] [should/shall] work with recreation agencies and other community organizations to coordinate and enhance opportunities

recreational use is appropriate. Another provision specifies that liability protection covers injuries resulting from recreational use of both indoor and outdoor school property.⁵⁹

The AHA policy guidance also provides exceptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy.⁶⁰ Some examples of exceptions to liability protection include gross negligence or willful and wanton conduct. “To avoid confusion and potential uncertainty in application,” sponsors of legislation should refer to standards already used in existing state statutes.⁶¹ For example, if the majority of immunity statutes in one’s own state do not provide immunity from liability for harms caused by “willful or wanton” acts, then those statutes should be used for guidance.

D. Implementation

The final component of the AHA policy guidance is implementation.⁶²

available to students, staff and the public for physical activity during non-school hours.” (footnotes omitted) Id.

59. Sample liability language includes: “Except as provided in this subdivision, a school district [and school personnel] [is/are] not liable for any loss or injury arising from the use of indoor or outdoor school property and facilities made available for public recreation or sport during non-school hours.” Id.

60. Sample exception language to the liability provisions includes: “Nothing in this subdivision limits the liability of a school district [and school personnel] for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or acts or omissions constituting gross, willful or wanton negligence.” Id.

61. Id. at 5.

62. Sample implementation language includes “1. [School districts/schools] are encouraged to allow the public to use of indoor and outdoor school property during non-school hours for recreational purposes or sport, provided the use does not interfere with a school function or purpose. 2. School districts are encouraged to negotiate mutually acceptable, fiscally responsible, legally binding shared use agreements with governmental and community agencies and organizations to keep school or district-owned facilities open for use by students, staff, and community members during non-school hours. ‘Shared Use Agreement’ means 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. Shared-use agreements 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. 3. [School districts/Schools] [should/shall] work with recreation agencies and other community organizations to coordinate and enhance opportunities available to students, staff and the public for physical activity during non-school hours. 4. The Department of Education, in consultation with the Department of Health, [should/shall] develop a toolkit for school districts. This toolkit [should/shall] include: 1) information outlining liability protections for both the school district and school personnel for injuries resulting from community recreational use of school property; 2) model Shared Use Agreement language; 3) a list of technical assistance resources available for the school districts to promote community recreational use of school property; 4) a list of potential community partners for Shared Use Agreements; and 5) a list of any grants or funding opportunities

This component provides the effective date for the legislation and steps to disseminate, publicize, and implement it.⁶³ In addition to clarifying or limiting liability in the legislation, it is important to communicate key provisions to school administrators. Amendment to the sample implementation language is an excellent opportunity to address challenges and motivators in promoting community recreational use of school property. Therefore, sponsors should include language in the proposed legislation that: (1) “authorizes and supports implementation of shared use agreements”; (2) “requires schools to work with community organizations” on behalf of students and staff; (3) provides “a centralized structure for training about liability, model shared use agreements, lists of technical assistance resources, community partners, and funding”; (4) “identifies statewide resources to promote community recreational use of school property”; and (5) “requires school districts to have a school health council (otherwise known as a ‘school wellness committee’) to address community recreational use of school property”.⁶⁴ Some states may wish to include some of these directives, such as the creation of a school wellness policy, in the provisions sections as opposed to implementation sections.

VII. CONCLUSION

The AHA has taken an important step on this major policy issue. The development of policy guidance on school recreational use legislation, in addition to AHA advocacy efforts around shared use, has the potential to build healthier lives, increase physical and social health within communities, and strengthen community collaborations. Support from the Public Health Law Center has been central to development of the AHA policy guidance. Additional support for these proposals from researchers, advocates, community and school groups, and professional associations continues to

available to the school districts to promote community recreational use of school property. This toolkit [should/shall] be posted on a state website and [should/shall] be reviewed and updated on a regular basis. The Department of Education, in consultation with the Department of Health, [should/shall] provide online public access to school district policies or procedures that promote community recreational use of school property, in order to encourage information sharing among school districts. This information [should/shall] be reviewed and updated regularly. 5. Every [school district/school] [should/shall] create and maintain a School Health Council, (also known as a School Wellness Committee), to improve the health of students, staff and the community. A School Health Council [should/shall] include representatives of educators, administrators, parents, students, community members and other stakeholders, and [should/shall] operate in accordance with procedures specified by the school district. School districts, in consultation with the School Health Council, [should/shall] address community recreational use of school property.” Id. at 6-7. (footnotes omitted).

63. Id. at 6.

64. Id.

build. Additionally, future research is needed to evaluate the outcomes of school recreational use legislation where such legislation is implemented. Advocates and policy makers can use this policy guidance from the AHA to help make informed and reasoned decisions about school recreational use legislation.