



RISK MANAGEMENT **Alert** *Sure* Schools

SCHOOL RISK MANAGEMENT ADVISORY
Utica National Insurance Risk Management Department Bulletin

School Risk Management Alert: Are *Your* Hold-Harmless Agreements Enforceable?

The focus of this School Risk Management Alert is the importance of effective wording and utilization of hold-harmless agreements for use of facilities with adult educational and/or recreational activities by outside groups.

Use of school facilities by outside groups or individuals is an exposure* for which schools must adequately assess and plan. Each suggested activity or group-use request must be evaluated and analyzed beforehand – to help decision makers determine whether the activity or groups use will pose any “unwarranted risk” to school facilities and/or members participating in the activity(ies). Hold-harmless agreements are one method that could protect a school from such an exposure.

** (“Exposure” is also known as a situation, practice or condition which might lead to a loss OR an activity or resource including assets and people.)*

Six Basic Options

A sound risk management approach to this exposure will help schools limit potential liability should an accident or incident occur resulting in personal injury or property damage during such an activity within their campus facilities.

Before approving an activity or outside groups’ use of facilities, school officials should remember the six basic risk and exposure control options available to them, which include the possibility of using hold-harmless agreements:

- 1.) **Avoidance** (i.e. Avoid an activity altogether and do not approve the use of school facilities for the activity in question.) While avoidance is not always practical or desirable for schools, the remaining techniques are typically more palatable to schools and communities.
- 2.) Implement policies and procedures designed to **Prevent** losses from occurring while still allowing outside use of facilities.
- 3.) Employ strategies that will **Reduce** the magnitude or impact (financial and frequency/severity of injury/illness) of a loss that might still occur.
- 4.) **Segregate** or **Separate** exposures that might lead to loss or total loss unless segregated or separated.
- 5.) **Transfer** the risk exposure from the school to another individual or entity (via insurance, certificates of insurance or, in some instances, hold-harmless agreements)
- 6.) Use a **Combination** of the above techniques listed.

Hold-Harmless Wording Makes a Difference

While it is highly advisable for schools to use hold-harmless agreements where warranted, the effective wording of such agreements can make a difference whether a hold-harmless agreement will be



enforceable if a personal injury or property damage incident or accident takes place during use of school facilities.

A Recent Case: A court opinion (*Rigney v Ichabod Crane Cent. School Dist.*), published by the New York State Law Reporting Bureau in February 2009, illustrates the need for school officials to express their intentions to limit schools' liability when crafting their hold-harmless agreements.

In the above referenced case, the Court stated that "while the law grudgingly accepts the proposition that [tortfeasors]** may contract-away their liability for negligently caused injuries, they may do so only on the condition that their intention be expressed clearly and in 'unequivocal terms.'" School officials must therefore "plainly and precisely" state that the "limitation of liability extends to the negligence or other fault of the party (i.e., the school) attempting to shed his [or her] ordinary responsibility."

*** (in this case the school)*

As a practical matter, what does this mean for schools?

Schools wishing to limit their liability (including when their own negligence or fault comes into question) while allowing individuals to participate in adult educational or other recreational use of their facilities may be able to do so if:

- Their intentions are clearly spelled out to those signing the hold-harmless agreements.
and
- Such wording is not prohibited by state law.

Note: Premises liability varies by state. School officials would be well served to review all hold-harmless agreements/provisions, particularly those in boilerplate forms used for participants of adult educational or other recreational activities of outside groups that have requested to use school campus facilities. Any necessary adjustments to wording should be made in consultation with the school's legal counsel.

SAMPLE HOLD-HARMLESS AGREEMENT LANGUAGE

Provided by Jason L. Shaw, Esq.

jshaw@rapportmeyers.com

Rapport, Meyers, Whitbeck, Shaw & Rodenhausen, LLP

(518) 828-9444

In consideration of my participation in the adult educational program of the _____ Central School District ("the District"), I _____ ("the Participant") hereby agree that the District shall not be liable for any damages arising from personal injury or property damages sustained by me in, on, or about the District premises resulting from or arising out of the use or intended use of the District facilities or equipment. I agree to assume full responsibility for any injuries which may occur to me in or about the District's premises, or while using or intending to use the District's equipment, including, but without limitation, any claims for personal injury or property damage resulting from or arising out of the negligence of the District, its agents or employees, or the negligence of any other persons present on the District's premises.

Participant's Signature _____

Printed Name _____

Date _____

District Representative's Signature _____

Printed Name _____ Date _____

5-R-499 Ed. 4-09

