



March 26, 2018

TO: SISC II Member Districts
FROM: Safety & Loss Control Staff
SUBJECT: Hazardous Recreational Activities

Background

A hazardous recreational activity is defined in Government Code 831.7 § (b) as, “... recreational activity conducted on property of a public entity which creates a substantial, as distinguished from a minor, trivial, or insignificant risk of injury to a participant or a spectator.”

Activities that are listed specifically in the code include:

Animal riding (including equestrian competition)	Rodeo Activities
Archery	Rope Swinging
Bicycle racing or jumping	Scuba
Boating	Skiing, downhill & cross country
Motorized Vehicle Racing	Sky diving
Mountain bicycling	Spelunking
Off-road motorcycling or four-wheel driving of any kind	Sport parachuting
Orienteering	Surfing
Paragliding	White Water Rafting
Pistol and rifle shooting	Body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants)
Rock climbing	
Rocketeering	

Please keep in mind that this information pertains to hazardous recreational activities only. It is not meant to cover activities such as regular field trip activities, traveling in general, traditional sports programs (although many involve contact), or traditional P.E. programs.

Hazardous Activities

Should a District choose to engage in one of these activities, very careful consideration should be given before proceeding. SISC strongly recommends that the member district consult with their assigned Safety and Loss Control Specialist before engaging in any activity. In addition, it must be noted that SISC takes the position that some of these activities do not qualify for

Student Accident Coverage contained within the Memorandum of Coverage (see Section VIII in the SISC II Memorandum of Coverage/School Liability Program.) Should you need further clarification regarding whether or not your proposed activity is afforded coverage under Section VIII please contact the SISC II Safety & Loss department.

Immunity

The California Government Code 831.7 § (a) give public entities statutory immunity for injuries arising out of participation in a hazardous recreational activity. This immunity provides that, “Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity...for any damage or injury to property or persons arising out of that hazardous recreational activity.” However, there are circumstances that limit this immunity; therefore, it is important for the District to protect its interest.

The intent of the code and attending cases appear clear, the immunity is afforded when someone voluntarily engages in a hazardous recreational activity on the public entity’s premises. There is a question whether or not a district would have immunity for an off-premises club activity.

Further, school sponsored or school supervised events conducted on school property have been held to fall outside the scope of the immunity—sports activities, physical education classes, etc.

Education Code 44808 provides immunity to school districts for injuries occurring off school property. Education Code 35330 (field trip) provides school districts with immunity for injuries arising out of a field trip or excursion.

Although the above code sections outline immunity that school districts have available, there are many issues that can undermine or eliminate that immunity. Such issues include:

- Whether an activity is a school-sponsored activity.
- Whether the district transports students to and from the activity.
- Whether the district assumes responsibility for the students during the activity.
- Whether a known dangerous condition is guarded or warning given.

All of these issues serve as measures that can eliminate immunity.

School-sponsored Activity

One of the first issues involves whether the activity is considered a “field trip or excursion” or a “school-sponsored activity.” This determination identifies which immunity section prevails. Field trip immunity is absolute and, therefore, the district would enjoy immunity. However, it is questionable whether a surfing club would be considered as a field trip or excursion. The Castro court noted that a “field trip” is defined as a visit made by students and usually a teacher for purposes of first hand observation (as to a factory, farm, clinic, or museum). “Excursion” means a journey chiefly for recreation, a usual brief pleasure trip, departure from a direct or proper course, or deviation from a definite path.”

Hazardous Activities

From this definition it could be easily argued that the ongoing activities of the club would not qualify as a field trip; therefore, it is unlikely that the district would have immunity under Ed. Code 35330. The provisions of Ed. Code 44808 would still provide immunity (for off-premises activities) if the club were not district sponsored. The off-premises immunity provided under section 44808 is eliminated when the district sponsors the activity and assumes responsibility (supervision) of the participating students.

Whether an activity is a “school-sponsored” activity also bears on the available immunity under Gov. Code 831.7 (relating to hazardous recreational activities). In general courts have held that as a matter of law, “hazardous recreational activities” do not include school-sponsored extracurricular activities under the supervision of school personnel. In other words off-season sport practices that are conducted with the coach present or after-hour practices with a coach present, or any after-school sports programs that are supervised by school personnel are not considered hazardous recreational activities under the law; therefore, the district would not have immunity. This is not to suggest that districts avoid after-hours practices; they should, however, do so knowing they are responsible for the safety of the students.

Transportation

Whether the district provides transportation to an activity is another measure in determining if immunity shall be provided. In general when a district provides transportation to an activity, it can be argued that the activity becomes a school-sponsored activity and the district becomes responsible for the safety of the students. However, this is only one argument; transportation alone will not be the determining factor.

Supervision

As with the transportation issue, when the district assumes supervision of the students the immunity provided under Ed. Code 44808 is removed and the district becomes responsible for the safety of the students while the students are, or should be, under the immediate and direct supervision of a district employee. The functions of a club advisor include: supervising, directing, and coordinating the activities of the students. From these functions—approved by the district—comes the responsibility for the students.

Because hazardous recreational activities are recognized in the code as having a substantial risk of injury and because of the issues that so easily eliminate immunity, careful consideration needs to be given and consultation with a SISC Safety and Loss Control Specialist is recommended before embarking on any such activity.

Application of Waivers and Releases

However, we do acknowledge that some districts choose to undertake such activities in spite of the increased risk. In these cases “assumption of risk” waivers are used in an attempt to mitigate liability. These waivers do have some limited effectiveness, but it should be understood that waivers will not provide complete protection in all circumstances. In fact if not carefully crafted and properly implemented, a waiver may provide no protection at all.

SISC does have a model Voluntary Activities Participation Form, which can be modified for specific activities. It can be downloaded from our website at <http://sisc.kern.org/pl/forms>

Hazardous Activities

The most common requests we see from member districts involve surfing clubs, skiing clubs, and various water activities. The best way to organize such an activity to preserve all of the immunities available is to:

- Allow students to organize their own club (that is not district-sponsored).
- Participants and parents would be required to sign activity waivers and acknowledgement forms if the club activities are coordinated or conducted on school property.
- The activity is completely voluntary and is in no way tied to curriculum or is compulsory in any way.
- Any transportation is provided by the participants, not the district.

The next level of protection involves organizing the activity as follows. Although immunity is reduced, there is still some margin of protection for the district.

- The activity is part of a district-sponsored club.
- Ensuring adequate supervision.
- Ensuring any volunteers are properly cleared (fingerprinted if necessary).
- Participants and parents would be required to sign activity waivers and acknowledgement forms.
- Parents are required to sign field trip/excursion permission forms for every trip or off-campus activity.
- The activity is completely voluntary and is in no way tied to curriculum or is compulsory in any way.
- Transportation should not be provided by the district.

CIF Approved Sports

The following activities are approved CIF sports. Each sport has specific CIF rules and CIF has jurisdiction over the activity (when conducted as a competitive sports team). It is SISC's recommendation that districts limit extracurricular clubs and other school-sponsored extracurricular activities to the following:

Badminton	Golf	Tennis
Baseball	Gymnastics	Track & Field
Basketball	Lacrosse	Volleyball
Competitive Cheer	Skiing Snowboarding	Water Polo
Cross Country	Soccer	Wrestling
Running	Softball	
Field Hockey	Swimming & Diving	

Even though a district chooses to authorize one of the above activities as a club in lieu of an official district sports team, the club should still be conducted under CIF rules as applicable.

Conclusion

When in doubt please contact your SISC Safety & Loss Control Specialist for guidance. Often times your Specialist can make recommendations that can help limit the risk involved with a certain activity in order to provide maximum protection to your district. Your Specialist may recommend against a certain activity since some activities simply carry too much risk and are best left to outside clubs or venues.

Please contact your SISC Safety Specialist at (661) 636-4495 if you have any questions.

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