



SISC Risk Management Bulletin

Hazardous Recreational Activities

January 2006

Background/Definitions

The purpose of this document is to express and explain SISC II's position with respect to member districts engaging in "hazardous recreational activities."

The significance of this issue stems from the definition itself: hazardous recreational activity is defined in Government Code Section 831.7 as a "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, archery, bicycle racing or jumping, mountain bicycling, boating, cross-country racing, off-road motorcycling or four-wheel driving of any kind, orienting, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, waterskiing, water contact activities, diving from other than a diving board, white water rafting, and windsurfing.



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 recreational activities are likely to hurt people – that makes them worth careful evaluation. SISC does not recommend that districts undertake and/or sponsor any activity that is considered a "hazardous recreational activity."

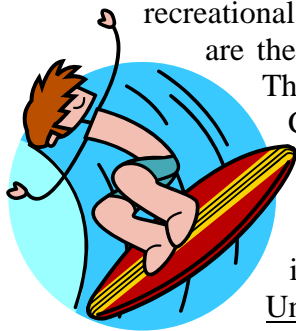
Immunity

Public entities have 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 clear lack of case law that would support the district having 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, i.e. sports activities, physical education classes, etc.

This then brings up the question – what kind of liability is there for engaging in a hazardous recreational activity off-premises and what are the immunities available (if any)?



This question leads to Education Code 44808, which in essence provides immunity to school districts for injuries occurring off school property. One case in particular, Wolfe v Dublin Unified School District concluded that section 44808 “grants a district immunity unless a student was (or should have been) directly supervised during a specified undertaking.”

Education Code 35330 (field trips) provides school districts with immunity for injuries arising out of a field trip or excursion. In Castro v Los Angeles Bd. of Education the court explained that it is the voluntary nature of the activity that distinguishes liability and that it is the voluntary nature of the event that absolves the district from liability. This section is controlling over the more general provisions of section 44808 above. However, the court also noted the difference between “field trip or excursion” and “school-sponsored activity”. This difference can threaten immunity.

Threats to Immunity

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, and 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, 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.”

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 to the available immunity under Gov Code 831.7 (relating to hazardous recreational activities). In Acosta v Los Angeles Unified School District the court 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



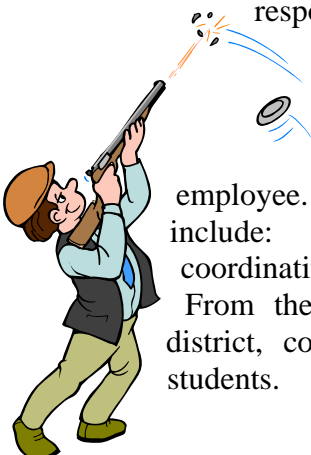
coach present, or any after-school sports programs that are supervised by school personnel are not considered hazardous recreational activities under the law and therefore, the district would have no immunity. This is not to suggest that districts avoid after-hours practices; they should however do so 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 Ramirez v Long Beach

Unified School District the court determined that the school district was not responsible for the death of a student while at a leadership camp. One of the determining issues was that the district did not transport the students to the camp nor assume responsibility for them while participating. Therefore, 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, **SISC does not recommend that districts undertake and/or sponsor any activity that is considered a “hazardous recreational 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. It is for this reason that waivers are not our first choice for risk management with respect to hazardous recreational activities.



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/safetyandlosscontrol>

From the department page, select Forms from the menu on the left.

Responsible Risk Management

Risk is part of life and learning, and avoiding risk as an outright strategy is often not practical or recommended. However, for public schools, with respect to hazardous recreational activities risk avoidance is the most appropriate strategy in the majority of cases.

In other cases, SISC II does acknowledge that hazardous recreational activities may be structured so as to protect the immunities available to the district without putting the

students in unnecessary danger. Keep in mind, there are some activities that are so inherently dangerous that avoidance is still the best, most responsible, course of action.

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.

The least amount of legal protection afforded the district is when the district sponsors an activity, requires participation, assumes responsibility for the activity (which comes automatically with requiring participation), and provides transportation. In this scenario the district is fully responsible for the safety of the activity and the students. There is almost no legal protection available to the district.

Conclusion

This information is intended to provide guidance to district administrators as they consider requests for more “cutting edge, experiential, or thrilling” club, field trip, or even P.E. activities. It is not meant to cover activities such as traditional sports programs (although many involve contact). Football is OK, but SISC’s position is that it isn’t a good idea to have surfing, cliff diving, bull riding, or parachuting as a P.E. class!



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	Skiing and snowboarding
Baseball	Soccer
Basketball	Softball
Cross-county	Swimming and diving
Field hockey	Tennis
Football	Track and field
Golf	Volleyball
Gymnastics	Water polo
Lacrosse	Wrestling

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.