Permission Forms

The prevailing practice in public schools is to routinely require permission or release forms for field trips and other activities that pose potential for liability. The legal status of such forms varies, but they are generally considered to be neither rock-solid protection nor legally valueless in terms of immunity. The following case and the accompanying question-and-answer discussion provide specific illustrations of this variance.

The Case

In September 1999, Scott K. was participating in an after-school program operated by the Bismarck, North Dakota, Park District at one of its elementary schools. Scott fell on the school grounds while riding a bicycle, an activity that was not part of the program, and injured his arm. His parent sued the district for damages, claiming negligence in the district staff’s supervision of the program. The district filed a motion for summary judgment, asking for a favorable decision without a trial, based on its claim that the parent’s signing of the following form exonerated the district from any liability:

I recognize and acknowledge that there are certain risks of physical injury to participant[s] in the program and I agree to assume the full risk of any such injuries, damages or loss regardless of severity which I or my child/ward may sustain as a result of participating in any activities associated with this program. I waive and relinquish all claims that I, my insurer, or my child/ward may have against the Park District and its officers...and employees from any and all claims from injuries, damages or loss...on account of my participation of my child/ward in this program.

Inasmuch as the district conceded that riding a bicycle was not one of the “activities associated with this program,” the parent argued that the release form did not apply to the injury at issue. The district counter-argued that the coverage of the form was comprehensive, including the incident in question.

Questions and Answers

What do you think was the ultimate court decision in this case?

North Dakota’s highest court held that the form clearly and unambiguously exonerated the district for injuries sustained by the student, thus resulting in a summary judgment in favor of the district. More specifically, the court interpreted the form as having two distinct clauses. While the clause covering assumption of risk was expressly limited to “activities associated with this program,” the waiver and release clause relinquished all claims for injuries or damages, in the court’s view, “on account of [the child’s] participa-
tion in the [after-school] program.” The court concluded that the language of the form was effective against the alleged negligence of the district.

Do other jurisdictions uniformly share the view that exonerating language in permission forms is an effective defense against liability for negligence?

No. The relatively few courts that have specifically addressed this question have split on their answers. On the one side, in 1988 Washington’s highest court held that releases covering all potential district negligence, which students and their parents were required to sign as a condition for engaging in school-related activities, were invalid as a matter of public policy. However, the Washington court used a series of factors in its decision that do not necessarily apply as strongly, or even as preponderantly, in all school-related activities.

For example, the court found that interscholastic athletic activities were of such public importance that “school districts possess a clear and disparate bargaining strength when they insist that students and parents sign these releases.” The court also reserved judgment as to whether the various risks listed on the release form effectively established assumption of the risk, which could only be determined on a case-by-case basis contingent on whether the plaintiff had full understanding of the specific risk and voluntarily chose to assume it. Finally, the court expressly left to the legislature to decide if school districts should have governmental immunity.

On the other side, much more recently Massachusetts’ highest court ruled that athletic release forms, in this case covering the activity of cheerleading in which the plaintiff-student was injured, were enforceable as a matter of law and public policy. This ruling also had limitations. First, the court did not determine whether the release was required or voluntary, because the plaintiff failed to raise this issue in the lower court. Second, the court also expressly ducked the issue of whether such releases would be enforceable against activities that were compelled or essential, such as attending school. Third, as in the Washington case, the court also avoided deciding whether such releases relieved districts from liability for gross negligence.

Moreover, the prerequisite of “clear” exonerating language in release forms is subject to widely different interpretations. For example, in a New York case where the exculpatory clause—parallel to that of the North Dakota case—released all claims for damages “for any and all injuries” that a student might incur as a result of participating in an interscholastic wrestling tournament, the court regarded the language as too broad to effectively bar the student’s negligence suit.
In jurisdictions and circumstances where liability releases are legally effective, must both parents and the student sign the form?

First of all, the student’s signing is voidable where the student is under the age of majority, which is typically 18. Second, and more importantly, where the child is a minor, jurisdictions split as to whether the parent may effectively waive, or release, claims for negligence of their minor child. For example, in the Massachusetts decision, the court cited California, Colorado, and Ohio as jurisdictions where parents may do so, and Connecticut, Illinois, Tennessee, and Washington as jurisdictions where the courts have held that doing so would violate public policy. Joining the first group, the Massachusetts Supreme Court upheld the effectiveness of parents’ signing “[i]n the circumstances of a voluntary, nonessential activity.” Conversely, New York is another member of the second group, which regards the child as not bound by the parents’ release.

Is there a downside to having students and their parents sign exculpatory forms?

Yes, there are several tradeoffs that need to be considered. First, such forms may cause a district to be hulled into a false sense of security. As the foregoing questions and answers suggest, the threshold questions are whether such forms are enforceable in the applicable jurisdiction and, if so, whether the language and circumstances of the signing establish clear knowledge and voluntary choice. Second, the use of this procedure may cause parents to seek to negotiate exclusions or limitations in the language of the form or, where the form is sufficiently specific and clear, to discourage their child’s participation in the covered activities. Third, the use of such forms can create legal problems associated with their implementation.

For example, in a Missouri case the appellate court upheld the district’s disciplining of a principal who did not follow the board policy requiring teachers to secure written parental permission for field trips. In an Ohio case that was an arguable near miss in terms of liability, the plaintiffs claimed that the district’s failure to monitor its permission-slip policy for student drivers constituted negligence, resulting in injuries. The court concluded that the failure was a breach of legal duty but that its connection was too slender to constitute a cause of the injuries. Finally and ironically, the use of such forms may, in some circumstances, trigger the responsibility of the school or its insurer. For example, in an Ohio case the appellate court concluded that the parent’s signing of a permission slip for a field trip, in which she not only consented to her child’s participation but also agreed to transport some of the students in her own car, sufficiently established that her accident during the trip was covered by the school’s insurance policy. But in a Pennsylvania case, the court concluded that the use of permission slips that included the identification of student drivers conducting a senior project in the community was not sufficient to establish the “control” required for the vehicular exception to the state’s governmental immunity statute.

Conclusion

Release forms and related documents have various uses in schools, including drug testing, searches, and controversial materials. When used to limit district liability, such forms have some value. First, they serve as a communications tool with parents. Second, as a quasi-legal matter, they may discourage suits by parents who believe the forms are legally valid. Third, depending on the specific jurisdiction, activity, and form language, they may serve as part of a district’s risk management program, but not as a substitute for liability insurance. Nevertheless, even where they are otherwise legally effective, the use of such forms also has disadvantages, including practical problems and legal consequences of implementation. Principals need to carefully assess the tradeoffs rather than automatically assume that such forms are either absolutely worthwhile or absolutely worthless.

Notes

3. California has legislated such immunity for field trips. See, e.g., Wolfe v. Dublin Unified Sch. Dist., 65 Cal. Rptr. 2d 280 (Ct. App. 1997).
6. Sharon v. City of Newton, 769 N.E.2d at 745 nn.7–8. For a more recent example from California, where the state’s intermediate appellate court upheld a parental waiver of non-negligence liability for her child’s injuries during cheerleading, see Aaris v. Los Virgenes Unified Sch. Dist., 75 Cal Rptr. 2d 801 (Ct. App. 1998).
7. Sharon v. City of Newton, 769 N.E.2d at 747.

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