



## Mississippi's Shared Use Law

*Mississippi's shared use law encourages school districts to open their property and facilities for community recreational use.*

In 2012, Mississippi enacted a law that encourages school districts to allow the public to use school property and facilities during nonschool hours for recreational purposes.<sup>1</sup> This fact sheet provides general information on the law. For information on how the law may affect your legal rights in a particular situation, we recommend that you contact a lawyer licensed to practice in Mississippi.

### The Shared Use Law

The intent of the law is to “make school property available to community members during nonschool hours for recreational activities in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community support for schools.”<sup>2</sup> The law encourages local school districts to adopt policies that allow public use of school property and facilities, indoors and out, for recreation and sports when school is not in session.<sup>3</sup> School districts must ensure that the community’s use of school property and facilities does not interfere with educational purposes.<sup>4</sup>



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The law also encourages school districts to enter into shared use agreements with community organizations and local governmental agencies. These agreements outline the rights and responsibilities of each party when a school opens its grounds for community use. Local government entities are authorized to spend funds and use public labor, equipment, and commodities to carry out such agreements.<sup>5</sup>

Finally, the law directs the State Department of Education, in consultation with the Department of Health, to develop a best practices toolkit for school districts interested in shared use agreements. The toolkit must include information on the law's liability protections, model language for shared use agreements, lists of technical assistance resources, potential community partners for shared use agreements, and funding opportunities available to school districts to promote community recreational use of school property.<sup>6</sup> The Department of Health has posted its toolkit on its website at: [http://msdb.ms.gov/msdbsite/\\_static/resources/5066.pdf](http://msdb.ms.gov/msdbsite/_static/resources/5066.pdf).

## Understanding the Law

To better understand the law's impact, it is helpful to be familiar with basic liability and immunity principles.

### LIABILITY LAW BASICS

When opening school property to the public for use during nonschool hours, school districts may be concerned about being legally responsible or "liable" for an individual's injury. Usually, when a person or entity is liable, that person or entity must compensate the victim for the injury suffered by paying money, also known as "damages." To prevail in a negligence action in the state of Mississippi, the injured person seeking compensation (the "plaintiff") must prove all four of the following elements:

1. the defendant owed the plaintiff a legal responsibility – a duty – to use ordinary care;
2. the defendant breached that duty by acting below the standard of care (in other words, the defendant was "negligent");
3. the defendant's breach caused an injury to the plaintiff; and
4. the plaintiff was harmed or damaged.<sup>7</sup>



### IMMUNITY BASICS

Sometimes, even if a person or entity's negligence causes an injury, they may be "immune" from liability. If a person or entity has immunity, they cannot be liable for damages. Legislatures or courts may grant immunity to certain people or entities because of public policy. For example, many states have "good Samaritan" laws that protect citizens from liability if they attempt to help someone in serious danger, provided that they do not make the attempt recklessly. Legislatures want to encourage citizens to assist others in immediate need, so they shield those good Samaritans from liability.

### IMMUNITY IN THE SHARED USE LAW

To encourage school districts to open their property and facilities to the community for recreational use during nonschool hours, the shared use law gives school districts and their employees some immunity from liability. The law provides, with two exceptions, that, "[s]chool districts and school district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport."<sup>8</sup> Before enactment of this shared use law, there was no explicit grant of immunity for schools that opened their facilities for community recreational use (although a court might have found some protection from liability under other state laws).



There are two exceptions to this grant of immunity to school districts and their employees. First, there is no immunity for “[d]eliberate, willful or malicious injury to persons or property by a school district employee.”<sup>9</sup> Immunity statutes rarely, if ever, shield a person from liability who deliberately or maliciously harms someone else.

Second, there is no immunity from “[i]njury resulting from a lack of proper maintenance or upkeep of a piece of equipment or facilities, unless the school district or school district employee had attempted to restrict access to a piece of equipment or facilities area in need of repair which would endanger a student during normal school hours.”<sup>10</sup> This common-sense provision imposes a duty on school districts to properly maintain their equipment or to make a reasonable effort to block access to equipment or facilities that they know need repair. As a practical matter, this exception is likely to have little impact on schools, because Mississippi schools already have a duty during the school day to maintain their equipment and facilities safely or to prevent students from accessing unsafe equipment and facilities so that students are not harmed.<sup>11</sup>

Because the shared use law was drafted as a separate law and not incorporated into the Mississippi Tort Claims Act (“Act”),<sup>12</sup> it is not certain how the law fits with other parts of the Act that offer protections to school districts. The statute expressly states that it “may not be deemed to create or increase the liability of any person.”<sup>13</sup> Although no court has interpreted this provision, this language likely ensures that the shared use law cannot remove protections that school employees and, perhaps, school districts may have under the Act.<sup>14</sup>

For more information on Mississippi’s shared use law, or for technical assistance concerning any aspect of shared use, including drafting or implementing policies or agreements, please visit: [www.changelabsolutions.org/childhood-obesity/joint-use](http://www.changelabsolutions.org/childhood-obesity/joint-use) and contact us at [www.changelabsolutions.org/contact-us](http://www.changelabsolutions.org/contact-us).

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<sup>1</sup> 2012 Miss. Laws WL No. 84 (H.B. 540).

<sup>2</sup> Miss. Code Ann. § 37-171-1(2). Unless otherwise specified, all further statutory references are to the Mississippi Code Annotated.

<sup>3</sup> § 37-171-5(1).

<sup>4</sup> *Id.*

<sup>5</sup> § 37-171-7(1),(2).

<sup>6</sup> § 37-171-7(3).

<sup>7</sup> *Rolison v. City of Meridian*, 691 So. 2d 440, 444 (Miss. 1997).

<sup>8</sup> § 37-171-5(2).

<sup>9</sup> § 37-171-5(2)(a).

<sup>10</sup> § 37-171-5(2)(b).

<sup>11</sup> *Lang v. Bay St. Louis/Waveland School Dist.*, 764 So.2d 1234, 1241-42 (Miss. 1999).

<sup>12</sup> In Mississippi, the law governing claims against government entities, including school districts, is known as the Mississippi Tort Claims Act (codified at § 11-46-1 *et. seq.*).

<sup>13</sup> § 37-171-5(2)(b).

<sup>14</sup> The statute does not define the term “person,” so it’s unclear whether this protection extends only to employees or officials (as individuals) or whether it also protects a school district.