



Tennessee's shared use law protects local school boards and officials by making it harder to find them liable when a member of the public is injured while engaging in recreational activity on school premises.

Tennessee's Shared Use Law¹

In 2011, Tennessee enacted a law that makes it harder to find school boards and officials liable when a member of the public is injured while engaged in recreation on school grounds.² Limiting liability in this way encourages school boards and officials to open school recreational facilities for public use. 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 Tennessee.

The Shared Use Law

Tennessee law already authorizes local school boards to permit the use of school property for community or recreational purposes.³ The shared use law adds a new component that protects school boards and officials from liability in case a community member is injured while engaged in recreational activities on school property.⁴

The law applies to school “premises,” which is broadly defined as “any and all real property, natural or artificial landscape or waterway thereon, building, bathroom, gymnasium, facility, track, playground, tennis or badminton court,



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horseshoe pit, bleachers, stage, or other improvement erected on the premises for recreational purposes.”⁵ The law also broadly defines “recreational activity” to include “any activity undertaken for exercise, pleasure, or other recreational purposes including, but not limited to, basketball, football, soccer, baseball, softball, tennis, lacrosse, running, walking, wrestling, cheerleading, taekwondo, karate, community gardening and music lessons.”⁶

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 recreational use, school boards and officials 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 Tennessee, 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.⁷



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

The shared use law protects local school boards and officials by making it harder to find them liable when a member of the public is injured while engaging in recreational activity on school premises. It provides that school boards and officials do not owe a duty of care to keep the premises of a public school safe for public use outside of regularly scheduled school activities or to warn of unknown dangerous or hazardous conditions, uses, structures, or activities.⁸ Thus, if no duty of care is owed to a member of the public who uses the recreational facilities outside of school hours, the school board is, essentially, immune from liability should an injury occur. Of course, school boards will want to continue to provide safe conditions for both its students and the public, but providing immunity may encourage school boards to open their recreational facilities to public use. The law does not, however, grant immunity if a board or an official causes an injury or damage due to gross negligence or willful, wanton, or malicious conduct.⁹ Immunity laws rarely, if ever, protect a person or entity that deliberately or maliciously harms someone else.

Under the law, then, school boards and officials that open school facilities to the public for recreational use should be well protected from liability in case a public user is injured.

The law also addresses the liability of school boards and officials that authorize public recreational use under a “recreational joint use agreement.”¹⁰ It defines a “recreational joint use agreement” as a “written authorization by a local board of education or a school official permitting a public or private entity to access the premises of a public school for the purpose of conducting or engaging in recreational activity and addressing conditions under which the permission is granted.”¹¹ The legislature lets local school boards determine the conditions under which the public or private entity may access the property.¹²

When entering into an agreement, the law encourages local school boards and officials to require that the partnering entity have adequate liability and accident insurance coverage. It also encourages them to address issues such as school security, adult supervision of recreational activity, prohibited activity, hours of operation, use of equipment, maintenance, and damage to the premises.¹³

The law provides the same level of immunity described earlier to school boards and officials that open school property for public use under a shared use agreement.¹⁴ It further provides that entering into such an agreement shall not be interpreted as waiving any immunity to which the boards or officials may be entitled.¹⁵ But it allows a school board or official, if specified in the agreement, to choose to impose upon themselves a greater duty of care toward those who use the property than provided in the law.¹⁶ In other words, a school board or official could opt out of the law's protection; this enables a school board or official to set its own rules and conditions as part of an agreement with another governmental or private entity. Finally, the immunity protections under shared use agreements do not apply if an injury or damage was caused by gross negligence, or willful or malicious conduct.¹⁷

In Conclusion

Tennessee's shared use law offers substantial protection from liability for school boards and officials who open school premises to members of the public so they can engage in recreational activities. By granting this protection, the legislature encourages school boards to open their recreational facilities for public use. The legislature also authorizes and urges school boards to enter into "recreational joint use agreements" with other public and private entities to share the costs and responsibilities of public recreation on school premises during nonschool hours.

For more information on Tennessee'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 and contact us at www.changelabsolutions.org/contact-us.



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¹ The terms "shared use" and "joint use" are often used interchangeably. Government entities (or sometimes private, nonprofit organizations) use these terms when they agree to open or broaden access to their property and/or facilities for community use. Although Tennessee law refers to "joint use" and "joint use agreements," we use the term "shared use" throughout this document.

² 2011 Tennessee Laws Pub. Ch. 368 (H.B. 1151), codified at Tenn. Code Ann. § 29-20-112. Unless otherwise specified, all further statutory references are to Tennessee Codes Annotated.

³ § 49-2-203(b)(4).

⁴ § 29-20-112(b)(1). In general, civil claims against public entities, including school boards, are governed by the Tennessee Government Tort Liability Act (codified at § 29-20-101 *et seq.*).

⁵ § 29-20-112(a)(1).

⁶ § 29-20-112(a)(2).

⁷ Tenn. Jur. *Negligence* § 4 (2004) [hereinafter Tenn. Jur.]. The Tennessee Supreme Court has described the elements as (1) a duty of care owned by the defendant to the plaintiff, (2) conduct falling below the standard of care amounting to a breach of that duty, (3) injury or loss, (4) causation in fact, and (5) proximate or legal cause. *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993).

⁸ § 29-20-112(b)(1).

⁹ § 29-20-112(b)(3).

¹⁰ § 29-20-112(b)(c),(d), and (e).

¹¹ § 29-20-112(a)(3).

¹² The law applies to all shared use agreements entered into or renewed on or after July 1, 2011. § 29-20-112(e).

¹³ § 29-20-112(d).

¹⁴ § 29-20-112(b)(2). The shared use agreements must also contain notice of the immunity provided by the law. § 29-20-112(d).

¹⁵ § 29-20-112(c)(1) For more information on other legal protections to which a school board may be entitled, see *Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: Tennessee* at www.changelabsolutions.org/publications/liability-schools-50-states.

¹⁶ § 29-20-112(b)(2).

¹⁷ § 29-20-112(b)(3).