

Minors on Campus:

Legal Considerations When Hosting Children

Office of General Counsel

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Minnesota
STATE COLLEGES
& UNIVERSITIES

THIS GUIDE

- Identifies the legal issues and risks associated with the presence of minors on campus
- Provides a legal framework, as well as practical guidance and resources to assist in assessing and managing those risks

FOR FURTHER INFORMATION

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To provide excellent preventative and responsive legal services in support of the missions of the colleges, universities and system.

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DISCLAIMER

This guide is provided as general information only and does not constitute legal advice. Readers should consult legal counsel for assistance when addressing issues discussed in this handbook.

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SECTION I

LEGAL BACKGROUND

WHO IS A MINOR?

Minors, Generally

Under Minnesota law, a “minor” is an individual under 18 years of age. On college and university campuses, minors generally fall into two groups:

- Students who are under 18 (generally first year students or PSEO participants)
- Children of any age participating in programs or activities on campus -- whether sponsored by the institution or a third party.

“Student” vs. “Minor”

An individual who is a minor gains special rights upon meeting the definition of “student” at a public educational institution. A student is an individual who is

1. currently or formerly enrolled or registered at a public educational agency or institution;
2. an applicant for enrollment or registration at a public educational agency or institution; or
3. an individual who receives shared time educational services from a public agency or institution.

Students, regardless of age, have the right to see all records on themselves and the right to control access as permitted by law. See Data Practices at page 8.

Capacity to Contract

Throughout this guide there are many suggestions that an institution obtain a waiver or release to mitigate liability. Remember: as a general rule, minors do not have legal capacity to enter into contracts, to give consent, or to sign waivers and liability releases. All legal documents must be signed by the minor’s parent or legal guardian.

Consent to Medical Treatment

While generally a parent or guardian must give consent for a minor to receive medical treatment, there are limited situations when a minor may seek certain types of treatment independently. The legal capacity of a minor to consent to medical treatment is beyond the scope of this handbook.

Legal Drinking Age

Finally, while an 18 year old is considered an adult in Minnesota, the legal drinking age is 21.

THE BASICS OF DUTY AND LIABILITY

Am I going to be liable if something bad happens?

Lawyers get asked that question all the time. The answer is always the same: it depends. Liability is always determined after the fact: it literally depends on the facts. Understanding the basic principles of civil tort law can help you anticipate problem areas and minimize risk of injury and litigation.

In a typical civil lawsuit, the person bringing the action (the plaintiff) must present evidence that is sufficient to establish the elements of the case. Once a plaintiff has established the elements, the burden shifts to the defendant to articulate any defenses for the act in question.

Negligence is the most common cause of action against a college or university for injury to a minor. The elements of a negligence action are:

1. the institution owed a *duty* of care to the plaintiff (here, a minor);
2. the institution breached that duty of care;
3. the breach caused loss or damage to the minor; and
4. the institution should compensate the minor for that loss.

“**Duty**” in this context is triggered when one person can foresee an unreasonable risk of harm to another. A court will recognize a duty where a person is in a position to prevent foreseeable harm to another.

Some duties are set out in statutes.

One example of a statutory duty is the duty of professionals involved in social services, health care and education to report sexual or other physical abuse of minors to appropriate authorities. (See page 7 for details on this important duty.)

Other duties are based on relationships. As a general rule, a person does not have an affirmative duty to prevent harm to a stranger, but parents owe a duty to their children, and doctors have a duty to provide a certain standard of care to their patients.

Some examples of duties:

- Duty to supervise
- Duty to prevent harm by third parties
- Duty to provide a safe environment
- Duty to warn
- Duty to contact parents
- Duty to call the police
- A promise to perform that another reasonably relies upon

With respect to educational institutions, courts will generally recognize a special relationship where an institution is in a position to protect the student from harm; and the harm is one from which the institution would be expected to protect students.

A promise can give rise to a duty. In the absence of a preexisting duty, such as a special relationship or a statutory duty, a duty can be created by a promise. If a person promises to take an action, and another person reasonably relies on that promise and is ultimately injured because the maker of the promise failed to act, the court may find the maker of the promise liable for the injury. For this reason, take care not to make promises the college or institution is not prepared to fulfill.

Once a court determines a duty exists, it looks to the **level of duty**, meaning, what actions were necessary to fulfill the duty. A college that operates residence halls has a duty to provide a safe environment (for example, ensure adequate locks and lighting; remove snow and ice from walkways). A university that transports students has a duty to ensure the driver is licensed and the vehicle is in good working condition.

Whether a court will find liability is a fact-based determination. Typical factors include:

1. the inherent dangerousness of the activity at issue;
2. the age and skill level of those participating;
3. the maturity and number of children involved;
4. the inherent dangerousness of the surroundings and whether adequate measures have been taken to ensure the safety of the premises and equipment used;
5. whether the children have special needs; and
6. whether the activity is supervised by staff appropriate to the number, age and skill of participants.

For example, a kindergarten teacher has a greater duty to a kindergartner than a professor would have to a graduate student because a small child has greater need for protection and the small child's caregiver has more control over a child's movement and activities.



To minimize the risk of injury and litigation, address these six factors when planning any activity involving minors.

Once the plaintiff establishes facts to support the elements, liability is not automatic. As mentioned above, the burden shifts to the defendant to establish any defenses. For example, the court may determine that the plaintiff has a portion of the responsibility for the injury (called “comparative negligence”) and/or the plaintiff assumed the risk involved.

Best Practice

The evidence that a plaintiff assumed a risk in an activity may be found in the releases, waivers, authorizations and consent forms that an institution requires adult participants or the parents/guardians of minors to sign. Thus, best practices include carefully drafting these documents and having systems in place to ensure all forms are collected and checked for appropriate signature and the date before a person - adult or minor - may participate in activities. See Section III, Proactive Steps to Minimize Risk, at page 15.

STATUTORY DUTY: MANDATORY REPORTING OF MALTREATMENT OF MINORS

It is the public policy of this state to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. Minnesota Statutes Section 626.556, Reporting of Maltreatment of Minors, sets out a legal duty for certain professionals to report the neglect or physical or sexual abuse of children in the home, school, and community settings. Persons mandated to report include:

a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, **education**, correctional supervision, probation and correctional services, or law enforcement...

A report must be made when:

A person who knows or has reason to believe a child is being neglected or physically or sexually abused, []or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff ...

The statute provides specific definitions of “neglect,” “physical abuse,” and “sexual abuse.” For complete information, go to:

<https://www.revisor.mn.gov/statutes/?id=626.556>

DATA PRACTICES

Federal and state laws give students certain rights with respect to data the government collects on them.

Students (as defined on page 4) have the right to see all records on themselves and the right to control access as permitted by law (regardless of age). Most disclosures to third parties require a signed authorization to release data that specifies information to be released, to whom, and for what purpose. This means a parent generally needs authorization from the student for access to the student's records - even if the student is a minor. Exceptions include:

- An institution may release information from any education record to any appropriate party if it determines there is an articulable and significant threat to the health or safety of the student or any other person.
- A limited exception allowing parental access to student records applies where a college or university has a policy allowing parents of dependent students to access the records. Few -- if any -- system colleges and universities have such a policy.

See sample form, Authorization to Release Student Information to Parents or Guardians.

PSEO* Students

PSEO students fit the above definition of students who are enrolled in a postsecondary institution, so access to college or university records of a PSEO student is controlled by the student, not the parent. However, because different rules apply to high schools -- and colleges/universities generally share PSEO records with the student's high school --

When can parents be notified that their college student child has been involved with drugs or alcohol?

There are two parts to the law: first, notification of the existence of the policy and second, notification of the violation itself.

Minnesota state law requires a college or university to inform parents that it will notify parents of a student drug or alcohol violation if the student signs a consent form. This notice can inspire parents to ask their son or daughter to sign a consent form allowing the parent access to the information. Minnesota Statutes § 13.32, subd. 3(q).

If a student authorized an institution to do so, the school may inform parents if the school determines, through its formal or informal conduct process, that the student violated the drug or alcohol portion of the code and the student was under 21 at the time of the violation.

BUT: The student can revoke consent at any time.

* Post Secondary Enrollment Options

a parent can often access a student’s college or university records by making a request to the high school.

Children Participating in Extracurricular Programs or Activities

Where a college or university gathers data on a child participating in a program or activity, the data is accessible to the child’s parent or guardian. The data should be treated consistently with the Notice of Use of Data on the forms provided to the parent or guardian when the child enrolls in a college or university sponsored program or activity.

REPRESENTATION AND INDEMNIFICATION OF INDIVIDUAL DEFENDANTS

Generally when litigation is brought against Minnesota State Colleges and Universities as a system or an individual institution, the named defendant is the State, the system or the college/university. Occasionally, system employee is also named as a defendant. State law provides legal representation and indemnification of employees in civil matters, if the individual was acting within the scope of employment or other duties, the individual cooperates fully in defense, and there was no intentional wrongdoing by the individual. Generally, that representation is provided directly by the Attorney General’s Office. When sued in an individual capacity, the individual must be certified for representation by the head of the entity (within the system, the president or chancellor) in order to receive the representation. Questions regarding this process should be directed to the general counsel or assigned assistant attorney general.

SECTION II

SPECIAL TOPICS

ADMISSIONS VISITS

Minors are regularly on campus for recruitment, visit weekends for accepted students and orientation before matriculation. Following are key issues to consider when planning for such programs:

- Ensure that minors receive a copy of the applicable conduct code. If they are to be held to the code of conduct for students of the institution, or to more stringent standards of behavior, the rules should be clear, as should the

- consequences for violating the rules. Have visitors sign a form that they have received, understand and will abide by these rules.
- All hosts, especially student hosts, should be well-trained with regard to what is and is not allowed as extracurricular activity with visiting high school students. Consider whether the student host has been found responsible for drug/alcohol violations or offenses against persons under the campus judicial system. Make hosts aware of the rules and expectations for how they will conduct themselves with visiting students. Hosts should sign acknowledgement and acceptance of this responsibility. The rules should clearly prohibit illegal and risky conduct and provide for disciplinary action for violations. Hosts should be responsible to:
 - Act in a manner that reflects positively on the institution;
 - Entertain in age-appropriate forums and in places where minors will not be exposed to or pressured to engage in illegal activity, including use of drugs, alcohol or illegal sexual activity;
 - Abide by and enforce any curfew for recruits;
 - Immediately notify a responsible college or university official if a minor is injured, missing or engaging in illegal/prohibited activity;
 - If hosts are allowed to transport a minor visitor in the host's own automobile, ensure that the host has a safe driving record and adequate insurance. If your campus provides driver safety training for individuals who drive institution vehicles, consider requiring hosts to take such training before being allowed to transport a minor visitor. If hosts use state vehicles, comply with MnSCU Fleet Program requirements. (See Transporting Minors at page 13.)
 - If visiting minors are staying on campus, ensure that minors are given adequate information about rules and precautions to increase personal safety -- lock the door; do not prop open doors to the outside of the building or to adjacent halls; fire safety, including exit routes, etc. Ensure that minor visitors know how to contact campus security or other emergency numbers in addition to "911."
 - Provide adequate supervision based on the age and experience of the visitors.
 - Ensure that both hosts and minor visitors understand that hazing is prohibited, how to report behavior that may constitute hazing and consequences for engaging in hazing.

ATHLETIC CAMPS

- ❑ See Admissions Visits (page 9), Camps Sponsored by Third Parties, (below) and Section III, Proactive Steps to Minimize Risk page 15).
- ❑ Consider the abilities of the minors involved when planning activities. Those planning a sporting event for eight to ten year olds must have some knowledge of the skills and cognitive abilities of that age group, and not anticipate the same level of independence and ability to assess and avoid harm as might be present in a group of high school or college students participating in the same type of activity.
- ❑ Review with your risk management office whether adequate insurance is in place for the scope of planned camps or activities.

CAMPS SPONSORED BY THIRD PARTIES

- ❑ Third parties that offer camps on campus should be required to sign a facilities use agreement that indemnifies the college or university from legal action taken as a result of the negligence of camp operators and their staff. Contact the campus business office or risk manager for assistance.
- ❑ Require materials advertising the camp to clearly distinguish the camp operator (the third party) from the camp location (college or university campus).
- ❑ Require the camp operator to provide proof of insurance.

CHILD CARE CENTERS

Ensure that any child care center on campus is properly licensed and that all licensing requirements are followed. If the center is staffed by college or university employees, conduct a criminal history check on applicants for employment or volunteer positions in the center. See Hiring Best Practices, page 16.

PSEO (Post Secondary Enrollment Options)

Occasionally PSEO students will enroll in a class that addresses adult subject matter. Disclosure of planned topics/materials as early as possible can help parents guide students to appropriate course selection during the registration process. For example, students should be aware that:

- ❑ Courses may have frank discussions about sensitive topics.
- ❑ Audio-visual presentations may be graphic in their content.
- ❑ Instructors cannot inform anyone, including parents, of last minute class cancellations or early class releases. If classes are released early, instructors cannot sit with underage students while they wait to be picked up.

Providing this information early will serve as a precaution to allow minor students and their parents/guardians to understand what a college setting is like so that they can have a safe, positive educational experience.

See also, Data Practices considerations at page 8.

STUDY ABROAD

Minors might seek to participate in study abroad programs in any of several ways. Each carries special challenges.

Minor family members accompanying instructor or chaperone. An instructor leading a group of students is working; the instructor's children do not have a place in the work place and should not be allowed to tag along on school-sponsored activities. System Procedure 5.19.3, Travel Management, prohibits family members from traveling in state owned or rented vehicles.

Enrolled students who happen to be minors. In this case, the student might be the only underage participant in a group comprised of young adults. Insist that a parent or guardian be involved in the program orientation and that the parent or guardian sign all documents. Colleges and universities may, as a policy matter, decide that PSEO students will not be permitted to participate in study abroad programs. Such policy decisions may be based on factors such as a determination that PSEO students lack sufficient academic preparation to benefit from such programs, or financial considerations relating to costs that must be borne by the college. If minors are permitted to participate in study abroad, their parents or guardians must be included in the health and safety orientation and must sign the releases on behalf of the students.

Other points:

- ❑ Address unscheduled free time in clear and explicit terms in communications with parents/guardians and in applications and exculpatory or assumption of risk documents. Colleges and universities should not take on the responsibility to supervise minors during unscheduled free time.
- ❑ Potential travel to countries under travel warnings is subject to prior approval under System Procedure 5.19.3, Travel Management. In such cases, the procedure requires system participants, or if a minor the parent or guardian, to sign a written release acknowledging the travel warning.

- All students should be required to carry appropriate insurance for health and other emergency assistance.

TRANSPORTING MINORS

System Procedure 5.19.3, Travel Management, addresses vehicle use, including state-owned, rented or leased vehicles, as well as personal vehicles (see Subparts A, B, C). In addition, Guideline 5.19.3.1, Driver's License Record Check, sets forth the process used by Minnesota State Colleges and Universities to identify acceptable drivers.

Colleges, universities, and the Office of the Chancellor, are responsible for verifying at least once each year that their employees have appropriate drivers' licenses if the employees use state vehicles. Drivers must undergo a motor vehicle records check prior to operating a state vehicle. See MnSCU Fleet Safety Programs:

<http://www.finance.mnscu.edu/facilities/insurance-riskmgmt/index.html>



Vehicle
safety
starts with
safe drivers

- In addition, the MnSCU Fleet Use Program requires that students who operate state vehicles sign a Vehicle Use Agreement and consent for Motor Vehicle Records checks.
- All drivers should be qualified with an appropriate level of license pursuant to state law and for the type of transportation to be provided, number of children, etc.
- Require drivers to enforce use of seat restraints/seatbelts with minors.
- Provide training for drivers to ensure knowledge of applicable laws and safety measures. Stress the importance of following all laws.
- Prohibit drivers from dropping children off at a location where there is not either a designated campus official (if dropping off on campus) or identified parent/guardian (if transportation is provided home) to take custody of the child.

RESIDENCE HALLS

Conduct a premises safety risk assessment keeping in mind safety issues for the age group that will be staying in the residence hall if not a typical college cohort.

- Review window openings, accessibility of locks on windows and doors, safety of room fixtures/furniture for minors, stairs and stairwells, automatic closing doors.
- Consider limiting access in the residence hall to a specific wing and ground floor only.
- If children are in a range of ages, group them by age; keep the groups separate.

Address the following in clear and explicit terms in communications with parents/guardians, in applications and in exculpatory/assumption of risk documents:

- Unscheduled free time and who has duty to supervise
- Transportation risks
- Internet access if it will be available
- Safety issues: keep doors locked at night, etc.
- Prohibited conduct, underage drinking, hazing, sexual misconduct, with a clear statement that a minor may be immediately dismissed from the program and parents contacted to pick up a minor for violation of safety rules.

“TRESPASSERS” AND OTHER VISITORS

Sometimes neighborhood kids just show up on campus. As with adults who are not members of the campus community, minors may be asked to leave if they are disruptive.

Many housing contracts allow students to invite guests to stay in the residence hall for the weekend. At times guests include younger friends or siblings. The housing contract and residence life policies should require the hosting student to assume responsibility for any guest. The policy might include a provision that requires residents to escort their guests in the residence hall between 10:00 PM and 9:00 AM.

SECTION III

PROACTIVE STEPS TO MINIMIZE RISK

AUDITS: PROGRAMS, PREMISES, POLICIES

When planning for the presence of minors on campus and prevention of injury to those minors, as well as limitation of risk for the institution, audits can be valuable tools. Audit all programs involving minors to learn locations, departments sponsoring camps, scope of activities, ages of minors who will be participating. Know where you have minors on campus. See Risk Assessment Checklists for Events Involving Minors at (B). Develop and use activity-specific checklists for your programs.

When auditing your programs, consider:

- Assess the age of the children who will be involved.
- Assess the inherent risk associated with that activity.
- Assess the degree of skill and experience of the campus officials responsible for planning and implementing the program and for the direct instruction/care of the children involved.
- Consider the number of individuals who will be supervising the activity and whether the level of supervision is sufficient based on the age and independence of the minors involved in the activity.
- Consider the use of exculpatory waivers and ensure that waivers are in use (get assistance from the Office of General Counsel or Attorney General's Office in drafting so they will pass muster under state law).
- Ensure that the program's activities are accurately and carefully described in any written materials provided to participants and parents/guardians so that the type and degree of risk associated with the activity is clear.
- Ensure that appropriate orientation sessions are conducted at the beginning of activities.

- ❑ Ensure that parents and minors are given information regarding how to make a complaint.
- ❑ Provide checklists to the directors of these programs so that they can periodically review the propriety of practices for selection of participants and selection of employees to supervise and run these programs, as well as general reminders regarding doing safety checks of equipment and premises.
- ❑ Consider the abilities of the minors to be involved when planning for safe and enjoyable activities for minors. Those planning a sporting event for eight to ten year olds must have some knowledge of the skills and cognitive abilities of that age group, and not anticipate the same level of independence and ability to assess and avoid harm as might be present in a group of high school or college students participating in the same type of activity.
- ❑ Ensure that a process is in place for collecting and maintaining medical information.
- ❑ Review with your risk management office whether adequate insurance is in place for the scope of camps or activities identified in your audit.
- ❑ Review your institution's policies.



HIRING BEST PRACTICES

When hiring workers to interact with minors, pay attention to best practices in hiring. Thorough checking of references, credentials and education background are highly recommended. Criminal history checks using local law enforcement, Bureau of Criminal Apprehension, or FBI databases should be conducted only when required by law or authorized by system human resources guidelines. The guidelines contain specific steps to follow. See this link for full information:

http://www.hr.mnscu.edu/guide_interpretations/tofc.html

TIPS FOR DRAFTING DOCUMENTS

Exculpatory Agreements, Waivers, Permission Forms

Exculpatory agreements (also called “waivers of liability”) and “permission slips” are often combined into a single document. In order to be effective as a liability waiver, the form must be specific with regard to:

1. the type of activity involved;
2. the risk and degree of injury; and
3. the scope of relinquishment of duty that would otherwise fall to the institution.

Validity and enforceability will depend on state law. These types of agreements are most likely to be upheld where they contain:

- Specific information about the activities involved
- The inherent risks associated with the activity
- The fact that injuries, including serious injuries and death, may occur
- Representation by the participant/parent/guardian that the participant is physically able to participate in the activity - physician statements are recommended, especially for high risk activities or activities requiring a high level of physical conditioning
- Specific acknowledgement that injuries may occur even where the camper and staff use all due care
- Specific reference to release of the institution even when staff may be negligent.

Ensure that all forms are signed by *parents or guardians* before a minor may participate in activities.

Use of a release that has been approved by the Office of General Counsel or Attorney General’s Office is very highly recommended for all study abroad trips, especially those that are operated by a system college or university. See sample MnSCU Student Release and Waiver - Study Abroad Opportunities at (J). Other types of activities for which a release may be used include optional domestic field trips or extracurricular activities such as theatre, sports or clubs if they involve significant risk of injury or travel. See sample of a basic release at (I). Releases are unlikely to be valid for classroom activities that are mandated by program requirements. Releases may also be used for clinical internships, especially if the student has chosen the location and made independent arrangements. Even if releases are not used, students need to understand the inherent risks through other means of notice.

Since the enforceability of releases will depend to a large degree on state law, it is essential for the AGO or OGC to be consulted when drafting to ensure appropriate language. The following guidelines may be helpful when creating initial drafts of a release form:

- Use language that is clear, unambiguous and understandable
- Do not use (copy) legal jargon
- Specify with particularity the conduct that the parties intend to be covered
- Make the release language conspicuous
- Where practical, negotiate the release and provide an alternative to signing (perhaps in the form of an increased fee); if this is not practical, provide contact information for someone to answer questions and allow adequate time for consultation
- Clearly label the document to provide notice of its function, e.g., "General Release and Covenant Not to Sue"
- Use a separate release document for each releasing party
- Include a declaration of having read and understood the release, of the voluntary nature of the activity, and of the shared responsibility for safety
- Provide releasing party with sufficient time and an appropriate place for signing the agreement
- Above all, draft the release to be informative and educational - include with specificity all potential risks inherent in the activity; remember, the goal is to present an informed choice about whether to voluntarily participate.

It is important that faculty or staff who use releases understand that their conduct must be consistent with the content. The validity of a release will be undermined by oral representations that the release is "just a technicality" that should not be taken seriously or that the described risks are overblown. Do not promise safety.

Following these guidelines cannot guarantee that the releases will be valid and enforceable, but they will increase the odds.

Contact the Office of General Counsel for assistance in drafting an appropriate release for your activity. Releases for study abroad programs may be especially detailed. See sample MnSCU Student Release and Waiver - Study Abroad Opportunities at (J).

More on Permission Forms

- Permission forms should include an acknowledgement by the parent/minor that behavioral expectations have been explained and the minor agrees to abide by those expectations.

- Permission forms should also include a statement that all information provided on fitness/medical conditions/limitations is accurate. Include the date on the signature line and ensure that all forms are collected and appropriately signed and dated before a minor may participate in activities.

Consent for Medical Treatment

Where minors are participating in camps, field trips or attending child care on campus, a valid consent for medical treatment/emergency care should be required. Essential elements include:

1. Child's full name, date of birth and address
2. Full names of parents/guardians
3. Contact information, including address and phone numbers, for parents/guardians and other emergency contact(s) if parents/guardians cannot be reached
4. Dates of event for which the medical release is granted
5. Details of medications the child is currently taking (Avoid assuming responsibility for administering medication)
6. Permission to obtain professional emergency medical treatment for child
7. Health insurance information.

CONCLUSION

Anticipate foreseeable harm and implement reasonable preventive measures:

- Think proactively about preventing risk.
- Have and follow appropriate policies.
- Conduct safety orientation for extra-curricular participants.
- Use releases.
- Always ensure competent supervision of minors.
- Have emergency planning in place for institution-sponsored events.

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