

## Wisconsin's Open Gym Act

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Wisconsin's Open Gym Act, § 895.523 Wis. Stat. (attached), may provide immunity for a school district that opens its facilities to the public for recreational activities. Under this statute, the school district does not owe a duty to a person entering the school grounds to participate in a recreational activity to (1) keep the school grounds safe for the recreational activity, (2) inspect the school grounds, or (3) warn of an unsafe condition, use, or activity on the school grounds. However, certain requirements must be met before the statute applies and there several important exceptions to the statute.

### WHO IS PROTECTED

The act covers school districts; school boards; governing bodies of charter schools; and officers, employees, and agents of a school board or governing body of a charter school.

### REQUIREMENTS

The statute applies to “**recreational activities**” on the school grounds. “Recreational activities” are broadly defined in the statute as indoor and outdoor activities, including physical activity, sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure. The statute also provides a nonexclusive list of outdoor activities that would qualify as recreational activities. Things like community-based rec leagues will likely qualify as recreational activities.

The statute requires a written “**recreational agreement**” between the school district and person using the school grounds for recreation. The written recreational agreement must include the following:

- A description of the activity;
- The time and place of the activity;
- Any eligibility requirements for participation;
- Whether and to what extent minors will be supervised; and
- A clear statement describing the participant's assumption of risk.

Based on these requirements, it is a good idea to have each participant sign a separate recreational agreement. For example, if a rec league team wants to use the basketball court, rather than having one agreement for the entire team, each team member will need to complete an agreement. Additionally, postings for open gyms should ideally include notice of the immunity granted by § 895.523 Wis. Stat., the participant's assumption of risk, and the requirement that participants sign a recreational agreement before using the facilities.

### EXCEPTIONS

There are certain limitations on the immunity provided under the Open Gym Act. There is no immunity from liability for the following:

- Organized team sports or activities organized and held by a school district;
- Death or injury for recreational activities involving a weight room, pool, or gymnastics equipment;
- Death or injury to a spectator; or
- A malicious act or malicious failure to warn against an unsafe condition.

The school district may still have immunity from liability for certain of these activities, such as activities involving a weight room, pool, or gymnastic equipment, under separate statutes addressing recreational or governmental immunity.

#### **ADDITIONAL SOURCES OF POSSIBLE IMMUNITY**

If the Open Gym Act does not apply in a certain situation, for example, if the incident involves a spectator or activities in a pool or weight room, the school district may still have governmental immunity under § 893.80(4) Wis. Stat. or recreational immunity under § 895.525 Wis. Stat. However, there are limits to these statutory immunities. Governmental immunity does not apply if the district was required to act under a ministerial duty or the claimant was injured by a known danger. Recreational immunity does not apply where an admission fee is charged or where the school district acted maliciously, among other situations. The analysis in these immunity cases is fact-driven and depends on the specific circumstances surrounding the accident.

**WIS. STAT. § 895.523**  
**RECREATIONAL ACTIVITIES IN A SCHOOL BUILDING OR ON SCHOOL GROUNDS;**  
**LIMITATION OF LIABILITY.**

**(1) DEFINITIONS.**

In this section:

(a) "Governing body of a charter school" means the person that operates a charter school established under s. 118.40 (2) or (2m) or the entity that operates a charter school established under s. 118.40 (2r) or (2x).

(b) "Injury" means an injury to a person or to property.

(c) 1. Except as provided in subd. 2., "recreational activity" means all of the following:

a. Any indoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure.

b. Any outdoor activity undertaken for the purpose of exercise, relaxation, or pleasure, including practice or instruction in any such activity. In this subd. 1. b., "outdoor activity" includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature, sport shooting, and any other outdoor sport, game, or educational activity.

2. "Recreational activity" does not include any indoor or outdoor organized team sport or activity organized and held by a school district, school board, or governing body of a charter school.

(d) "Recreational agreement" means a written authorization granted by a school board or the governing body of a charter school to a person that permits public access to all or a specified part of the school grounds for the purpose of any recreational activity and that satisfies the requirements under sub. (5).

(e) "School board" means the school board or board of school directors in charge of the public schools of a school district.

(f) "School building" means a building designed for and used as a school by a school district, by a school board, or by the governing body of a charter school.

(g) "School grounds" means real property, and any school buildings, accessory buildings, structures, and improvements thereon, owned, leased, or rented by a school district, by a school board, or by the governing body of a charter school and used primarily for public school purposes.

(gm) "Spectator" means a person who attends or watches a recreational activity but does not engage or participate in or intend to engage or participate in the recreational activity.

(h) "Sport" means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and includes a set of rules for play.

**(2) NO DUTY; IMMUNITY FROM LIABILITY.**

(a) Except as provided in sub. (3), no school district, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, owes to any person who enters the school grounds of the school board or of the governing body of a charter school to engage or participate in a recreational activity held pursuant to a recreational agreement any of the following:

1. A duty to keep the school grounds safe for the recreational activity.
2. A duty to inspect the school grounds.
3. A duty to give warning of an unsafe condition, use, or activity on the school grounds.

(b) Except as provided in sub. (3), no school district, no school board, no governing body of a charter school, and no officer, employee, or agent of a school board or of a governing body of a charter school, is liable for the death of, any injury to, or any death or injury caused by, a person engaging or participating in a recreational activity held pursuant to a recreational agreement and taking place on the school grounds of the school board or of the governing body of a charter school.

**(3) LIABILITY.** Subsection (2) does not limit the liability of a school district, a school board, a governing body of a charter school, or an officer, employee, or agent of the school board or of the governing body of a charter school for any of the following:

(a) A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee, or agent of the school board or of the governing body of a charter school knew, which occurs on the school grounds of the school board or of the governing body of a charter school designated for use in a recreational agreement and being used by a person for a recreational activity held pursuant to the recreational agreement.

(b) The death of or injury to a spectator that occurs on the school grounds of the school board or of the governing body of a charter school designated for use in a recreational agreement during the recreational activity.

(c) The death of or injury to a person participating in a recreational activity involving any of the following pursuant to a recreational agreement:

1. A weight room.
2. A swimming pool.
3. Gymnastic equipment.

**(4) NO DUTY OR LIABILITY CREATED.** Except as expressly provided in this section, nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine creates any duty of care or ground of liability toward any person who uses school grounds to engage or participate in a recreational activity held pursuant to a recreational agreement.

**(5) RECREATIONAL AGREEMENT.** Each recreational agreement shall include all of the following:

(a) A description of the recreational activity or activities to be held on the school grounds pursuant to the agreement.

(b) The time and place of the recreational activity or activities.

(c) Any eligibility requirements for participation in the recreational activity or activities.

(d) Whether and, if so, to what extent participants who are minors will be supervised.

(e) A clear statement describing a participant's assumption of risk.

**RECREATIONAL AGREEMENT**

This recreational agreement entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the [ABC] School District School Board and \_\_\_\_\_, (hereafter referred to as participant), grants to participant the use of the School District's gymnasium and appurtenances thereto for purposes of the participant's recreational activity, namely, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The School District's gymnasium shall be available to participant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_. This agreement does not apply to the weight room, swimming pool or gymnastic equipment, if any. If participant desires to use the weight room, swimming pool or gymnastic equipment, the participant must contact the gymnasium office and obtain separate permission and agreement for use of those facilities.

Participant represents that he/she, or all its members, are 16 years of age or older; if any participant is under 16 years of age, he or she must be accompanied by a person or persons 21 years of age or older. The participating adult agrees to supervise those participants in his or her care under 16 years of age.

All participants understand that each of them is assuming the risk of injury or death while participating in the recreational activity covered by this agreement and that the [ABC] School District owes to the participant no duty to keep the school grounds safe for the recreational activities; no duty to inspect the school grounds upon which the recreational activity is taking place; and no duty to give warning of an unsafe condition, use or activity on the school grounds.

I have read this entire agreement and understand each of its terms.

\_\_\_\_\_  
Participant

## NOTICE

PURSUANT TO WIS. STATS. § 895.523, any person using these facilities for recreational purposes assumes all risk of injury or death while participating in a recreational activity which includes physical activity, sport, team sport, or game undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure. This assumption of risk does not apply to the weight room, swimming pool or gymnastic equipment, if any. If you wish to use those facilities, please see the gymnasium office for permission and separate agreement.

Before using these facilities for the aforementioned recreational purposes, you must check in at the gymnasium office and sign a recreational agreement.

Thank you.