



**2018 NBOA Annual Meeting
Goldmine**

Zip-Lines, Camping Trips and Ubers, Oh My!: Developing Liability Waivers
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I. Why Use a Liability Waiver – Not a One Trick Pony:

- A. Liability Waivers/Permission Slips/Authorizations get agreement from the parents that:
Their child will be participating in a school-related activity;
1. They have had a chance to evaluate the risks involved in their child participating in that activity;
 2. With knowledge of those risks, are permitting their child to participate; and
 3. Agree not to sue and indemnify the School if their child and/or someone else is injured while participating the activity.
- B. Liability Waivers are also a useful tool to set forth the School's expectations for participation in the school-related activity, and any other related issues that need to be addressed with the Parents, such as medical information.

II. When to use a Liability Waiver:

- A. It depends!
1. Is there language in your enrollment agreement about participation in School-related activities?
 2. Do you get a separate permission agreement from parents that covers certain activities?
 3. What is involved in the activity?
- B. Generally speaking, best practice is to have a blanket authorization that you can use for all your local trips (i.e., trips to the museum, etc.) and develop more involved forms for any overnight trips/domestic travel, trips involving particularly dangerous activities and/or that involve international travel.
1. You also want to develop liability waivers for your chaperones, including both employee and volunteer chaperones.
 2. To the extent any of these activities involve exchange programs or third party providers (i.e. student travel companies), you also want to consider developing a waiver as between the school and the third party.

III. Essential Components of the Well-Crafted Liability Waiver:

- A. Before you put pen to paper - always go back to the "Why" – why are we developing a liability waiver? The "Why" will define the "What" – what we include?
- B. Define the Terms:
1. The School
 2. The Student
 3. The Parents



4. The Trip: When does the trip start (i.e., when do our employees assume responsibility for the students? Upon arrival at the airport? At the destination?)

C. Establish that Participation is Voluntary:

1. This is important, but often overlooked – this is a critical component to being able to enforce the agreement

D. Terms of Payment (if any):

1. Establish amount of and payment deadlines
2. Exclusion from the trip for failure to meet payment deadlines

E. Terms to Set the Respective Risks and Responsibilities Arising from Those Risks:

1. Recognition and Assumption of the Risk:
 - a. Set forth the activities involved in the Trip – including service activities, hiking/zip lining/rafting, transportation mechanisms, lodging, etc.
 - b. Acknowledge the risks – tailored to the trip: is there travel out of the United States? Differing legal and social customs? Availability of first responders and medical care as compared to the United States?
 - c. Accept the risks – “Parents acknowledge that they are aware of and have had an opportunity to evaluate/discussed with the student/sending on the trip with the knowledge of the risks”
2. Waiver and Release of Liability:
 - a. In exchange for the School permitting the Student to participate in the trip, you agree not to sue the School if the student is hurt
 - b. There are limits to this – you cannot waive gross negligence (or you can try, but it won’t be enforced)
3. Indemnification:
 - a. Parents also agree not to seek money from the School for any other claims arising out of Student’s participation in the Trip
4. Third Parties:
 - a. Acknowledgment that the School doesn’t own or operate third party carriers that may provide services (e.g., airlines, bus companies, etc.)
 - b. The School will not be held liable for their actions or failure to act
5. Government Issued Travel Alerts and Disease Information:
 - a. Obligation on the parents to review travel and disease outbreak advisories from the State Department/CDC (as appropriate) and discuss with the Student
 - b. With such advisories in mind, Parents and Student still agree to participate
6. Force Majeure:
 - a. Acknowledgment that there are events or actions completely beyond the School’s control (e.g. weather, terrorist activities)
 - b. Parents release the School from any legal claims or causes of action arising out of such events



F. Tending to the Student's Medical Needs:

1. Medical and Emergency Contact Information
 - a. Establish that it is the Parent's responsibility to ensure that the School has accurate and up-to-date medical information, including whether the student will be taking prescription or over the counter medications on the trip
 - b. Consider developing a separate medical authorization form for Parents to fill out that will include verification that the parents have consulted with a doctor about the travel
2. Authorization to Provide Care/Treat
 - a. Secure Parents' authorization for the School/Trip Chaperones to administer first aid, perform CPR, etc.
 - b. Secure Parents' authorization to permit the School/Trip Chaperones to authorize further medical treatment by a physician, hospital, etc.
 - c. Establish that Parents are responsible for the costs of such treatment

G. Terms to Regulate Student Behavior:

1. Student Conduct:
 - a. Incorporate the regulations of the Parent/Student Handbook and any other rules as established by the School
 - b. Advise Parents that the student is required to abide by the directives of the Trip Chaperones
 - c. For international trips – consider including regulations about the legal drinking age, if different from the US
 - d. Failure to abide by these rules may result in discipline – which may trigger the School's obligation to report to colleges and universities
2. Student Dismissal from the Trip
 - a. Establish that failure to abide by the rules may result in dismissal from the Trip
 - b. Parents are responsible for transportation costs and/or for providing for a supervision

H. Signature:

1. Best practices is to get signature for both parents, only permitting single parent signature where two parent signature is impractical and/or the signing parents represents that they have the authority to agree to the terms on behalf of the other
2. Consider getting student signature – while generally not enforceable as to the student individual until the student is 18, it can be helpful in getting the student's agreement that she/he has also read the agreement