

2008

Club Sport Legal Liability Practices at NIRSA Institutions

Robert C. Schneider

The College at Brockport, rschneid@brockport.edu

William F. Stier

The College at Brockport, bstier@brockport.edu

Stephen Kampf

Bowling Green State University - Main Campus, skampf@bgsu.edu

Brady P. Gaskins

Bowling Green State University - Main Campus, gaskins@bgsu.edu

Scott G. Haines

The College at Brockport, shaines@brockport.edu

Follow this and additional works at: https://digitalcommons.brockport.edu/pes_facpub

 Part of the [Life Sciences Commons](#)

Repository Citation

Schneider, Robert C.; Stier, William F.; Kampf, Stephen; Gaskins, Brady P.; and Haines, Scott G., "Club Sport Legal Liability Practices at NIRSA Institutions" (2008). *Kinesiology, Sport Studies and Physical Education Faculty Publications*. 39.

https://digitalcommons.brockport.edu/pes_facpub/39

This Article is brought to you for free and open access by the Kinesiology, Sport Studies and Physical Education at Digital Commons @Brockport. It has been accepted for inclusion in Kinesiology, Sport Studies and Physical Education Faculty Publications by an authorized administrator of Digital Commons @Brockport. For more information, please contact kmyers@brockport.edu.

Club Sport Legal Liability Practices at NIRSA Institutions

**Robert C. Schneider, William F. Stier, Jr., Stephen Kampf,
Brady Gaskins, and Scott G. Haines**

Current legal practices in collegiate club sport programs were studied. A 23-item questionnaire consisting primarily of close-ended questions was mailed to 563 campus recreation directors representing all six National Intramural-Recreational Sports Association (NIRSA) regions. Data obtained showed that mean club sport budgets ranged from \$51,657 in Region 4 to \$135,657 in Region 6, with an overall mean of \$69,138 across all regions. Signing a waiver before participating was required by 91% of the directors. Lack of consistency in waiver language and font size was reported. Only 9% of campus recreation directors always require that an institutional employee travel with a club sport team. The most frequent modes of approved travel for club sport participants were students driving personal cars (94%), renting vans from outside vendors (95%), and the use of private transportation such as a chartered bus (70%). Paid coaches were used by 15% of the directors.

Keywords: club sports, legal liability, risk management

Risk management in a collegiate recreational sports program has long been a concern for the campus recreation director. The increase in lawsuits in society has brought to light the need to be prepared and cautious when creating policy, procedures, and rules. Catastrophic injuries in a club sport event seldom occur; however, when a serious problem arises, the campus recreation director must be ready for the fallout—possible litigation.

Today's society is characterized as being very litigious. Increased participation in sports along with the increased awareness of liability and legal rights has led to more lawsuits associated with collegiate club sports. A negative impact of this phenomenon has been program cancellations, increased costs in protective equipment, and increased legal involvement. Some positive effects of increased litigation include an improved standard of care and a concerted effort by campus recreation directors to recognize the need to provide safe programs.

Schneider and Stier are with the Dept. of Physical Education and Sport, and Haines the Dept. of Recreational Services, The State University of New York at Brockport, NY 14420. Kampf is with the Dept. of Recreational Sports, and Gaskins the Office of Residence Life, Bowling Green State University, Bowling Green, OH 43404.

A review of current literature revealed a lack of specific benchmarking information relating to legal liability practices in collegiate club sport programs. Therefore, new research on legal liability in club sports is critical to the collegiate campus recreation director. Specifically, the information gained from this study will provide direction to the director in reviewing and proposing changes to policies and procedures relating to club sport safety.

Related Literature

Legal Documentation

Campus recreation departments have an obligation to assist club sports with safety and liability awareness. This can be accomplished through specific trainings relating to safety procedures, communication protocols, and completion of required paperwork (Fawcett, 1998). One commonly used type of required paperwork is the waiver. The waiver is a legal document signed by the club sport member before participation. The intent of this document is to release an institution from liability for its own negligence (Cotten, 2003).

Effective waiver forms must adhere to strict language guidelines. The vocabulary and sentence structure need to be reviewed when constructing a waiver. In a study to assess the readability of waivers used in campus recreation departments, White and Cardinal (2004) found that 89% were written with language above the 12th-grade level. Although college students are above the 12th-grade level of schooling, it cannot be assumed that all students read at or above this level. In addition, it was found that only 62% of those surveyed even used waivers.

Waivers must be clearly identified and easy to read (White & Cardinal, 2004). White and Cardinal found that 55% of institutions surveyed used a font size smaller than 12 point. Cotten and Cotten (1997) suggested waivers with a font size smaller than 12 might be deemed hard to read. Therefore, campus recreation directors need to pay particular attention to this detail instead of trying to type wording to fit onto one page for the sake of saving the cost of copying. One of the main objectives when writing a waiver is to ensure that the document is readable and participants understand what they are signing (White & Cardinal, 2004).

A well-constructed, properly administered waiver that is voluntarily signed by the club sport participant can potentially protect the campus recreation department from liability for injuries resulting from ordinary negligence. However, each state is different in how it views a waiver in a club sport activity. There is not one law for all states that covers the admissibility of a waiver in the court of law. In the case of *Lemoine v. Cornell University*, a student sued the university for negligence resulting in injuries sustained from a fall from a climbing wall. The student signed a contract agreeing to follow all rules and safety procedures associated with the recreational climbing wall. In addition, the document included language holding the university harmless of any injuries incurred, including those caused by negligence. A New York appellate court ruled in favor of the university based on the fact that the student signed a contract that unmistakably recognized the inherent risk in rock-climbing walls. In addition, the court found the language to be enforceable in holding the university harmless for injuries incurred (Fossey, 2006).

Another recent challenge to a waiver in the courts involved *Atkins v. Swimwest Family Fitness Center*. This case involved a wrongful death action against Swimwest after the plaintiff drowned while using Swimwest's 4-foot deep lap pool. At the time of first attendance to Swimwest, the plaintiff was given a guest registration card that contained a waiver release statement. The court found the waiver to be invalid. The court cited the following reasons for its decision: (a) the release was overly broad and all-inclusive, (b) the guest's waiver of liability was insufficiently highlighted, and (c) the guest did not have the opportunity to bargain over the terms of the release (Pendleton, 2005).

In a case specific to collegiate club sports, *Kyriazis v. University of West Virginia* invalidated a release used in men's rugby. Kyriazis, while playing in his first rugby match, left the game in the second half after he became dizzy and lost his balance. Later medical studies revealed he had suffered a basilar-artery thrombosis. The court found that the university had superior bargaining power. That is, the university's *Code of Student Rights and Responsibilities* requires students to follow the instruction of a representative from the administration. The release signed by Kyriazis was prepared by a lawyer, and nothing in it reveals that the student had benefit of counsel before signing the document. If the student wished to play club rugby, he or she had to sign it. Because the university qualifies as a public service and it has a decisive bargaining benefit over the student when they signed the release, the release was ruled invalid as a matter of public policy (Fossey, 2006).

It is apparent that the use of waivers is somewhat contradictory when comparing various court cases from around the country. Most legal experts recommend the continued use of such documents. White and Cardinal (2004) suggest, "programs cannot be fully protected from liability for injury unless participants are able to read and understand the waivers they sign" (p. 41). However, Cotten and Cotten (1997) caution that campus recreation directors need to learn about waivers in their respective states and their effective use in collegiate recreation. Waivers have their limitations because some states will uphold the language of the waiver and others will not.

Club Sport Travel

Club sport teams traveling to away games present some serious legal issues to the campus recreation director. The teams typically have four options when considering traveling to an away contest: (a) independent contractor, (b) university/departamental-owned vehicles, (c) employee vehicles, (d) students' private vehicles. The independent contractor offers the club sport the "best legal option, since the contract for service shifts liability to the contractor" (Pittman & Lehr, 2003, p. 159). The drawback to the independent contractor option is cost. Many club sport budgets do not have the funding source to pay for a chartered bus or flight to an away contest.

The university/departamental-owned vehicles present the club sport participants a more economical option when compared with the independent contractor but might cause some legal concerns. McGregor (2000) suggests that all university/departamental vehicles should be inspected and maintained on a consistent basis. In addition, the National Highway Traffic and Safety Administration (NHTSA) recommends checking the tire pressure on vans before taking a trip (NHTSA, 2004).

The use of 15-passenger vans has become an issue when examining travel options for club sports. The NHTSA has issued reports discussing the 15-passenger van's propensity for rollover. The reports noted that when loaded with 10 or more occupants, the rollover factor for 15-passenger vans is three times more likely than when loaded with 5 or fewer passengers. When filled with over 15 passengers, the 15-passenger vans have a rollover ratio of 70%. Other precautions recommended are using competently trained drivers, not placing loads on the roof of the vehicle, and ensuring all passengers wear a seatbelt (NHTSA, 2004).

Another option to club sport travel is the student-owned vehicle. This is the least expensive option, but McGregor (2000) warns that having participants drive and transport others increases the university's exposure to liability. He recommends implementing policies and procedures directed at documented vehicle insurance, inspection, and maintenance records. In addition, McGregor suggests university officials review their policies regarding who is allowed to transport participants. Such qualifications that could be reviewed include ensuring the validity of a driver's license and checking criminal records for vehicular offenses such as driving under the influence of drugs or alcohol, accidents, speeding, and other violations. Pittman and Lehr (2003) suggest that other policies be reviewed such as who is allowed to travel, distance restrictions, nighttime travel, emergency procedures, and driver qualifications.

Nesbitt and Bryant (2004) presented an incident that occurred at their institution involving the men's club hockey team traveling to an off-campus site for an event. The incident involved the team's exposure to nitrogen oxide at the off-campus site causing some members to be hospitalized as a result of respiratory distress. The results of the legal counsel's findings concluded that it was beyond the scope of the campus recreation department to effectively check insurance policies for every member of a club sport at their institution. Furthermore, it was suggested that having a club sport participant present a valid driver's license at the beginning of a semester does not guarantee that that participant's license will still be valid days and weeks later.

Coaches of Club Sports

A club sport consists of a group of individuals who want to participate in a recreation activity for a variety of different reasons. Typically, club sport participants organize their own activities, assume leadership, and establish internal policies (Mull, Bayless, & Jamieson, 2005). At times, the club sport seeks advice and coaching from an individual outside the club. The role of this individual varies from such tasks as teaching skills to driving the van to an away contest. Club sport coaches can be compensated for their time, and others perform the duty with an altruistic frame of mind. Nesbitt and Bryant (2004) caution that the use of coaches in the club sport program could become problematic if legal issues arise. Coaches should be restricted to providing teaching and instruction and should refrain from becoming involved in the overall administrative responsibilities of the club. In addition, it is important to remember that unpaid coaches are not employees of the university. Therefore, in most cases, unpaid coaches would not be covered by the university's insurance or given the protection of legal counsel because they are not considered employees of the institution.

When club sport coaches are used, it is important that they are trained on all emergency procedures including first aid, cardiopulmonary resuscitation (CPR), automated external defibrillator (AED) certifications, and training in prevention of disease transmission (National Collegiate Athletic Association, 2006). The case of *Kleinknecht v. Gettysburg College* brought to light the need for coaches in collegiate athletics to have training in first aid and CPR. Although this case represents a collegiate athletic department, many parallels to the college club sport program can be seen in the findings such as the need to have a person with CPR present during all club sport activities.

The *Kleinknecht* case involved allegations of negligent emergency medical assistance procedures and lack of first aid treatment administered to an athlete who collapsed and died of cardiac arrest during a varsity lacrosse practice. The courts questioned the emergency preparedness of the college team's coaches who were present during practice but were not certified in CPR. An athletic trainer was not present, and the nearest telephone was 200 to 250 yards away. The court found that the college did not have legal duty of care to provide an athletic trainer. However, the college should have required an appropriate medical emergency response plan, as well as provided reasonable emergency care to injured athletes (Anderson, Courson, Kleiner, & McLoda, 2002).

Other Legal Concerns

Additional legal concerns involving club sports include establishing emergency protocols, developing written emergency action plans, and determining the appropriate supervision of club sport events. Mulrooney, Styles, and Green (2004) conducted a study that examined risk management practices at collegiate recreation centers. They found that 12% of programs did not have a written policy or procedural manual, 29% did not develop their risk management program with legal counsel, 31% did not perform periodic risk audits, 29% did not identify a staff member as the facility risk manager, and 20% did not review risk management procedures with employees during formal training.

The physical supervision of club sport events is somewhat of a questionable practice. Many college recreation programs do not have the staffing to physically supervise every club sport activity. Gaskin (2003) suggests that "when their organization sponsors an activity, the organization has a duty to supervise that activity" (p. 138). Factors that contribute to the appropriateness of supervision include the level of danger associated with the activity and the foreseeability that the presence of a supervisor would have prevented an injury. In addition, it is imperative that supervisors of sporting activities establish appropriate emergency action plans that deal with potential risks (Connaughton, Connaughton, & Spengler, 2004).

Purpose of the Study

The purpose of this study was to determine the current legal practices in collegiate club sport programs. Observations for this study were based on a review of the literature and testimony from campus recreation directors in North America holding an institutional membership in the National Intramural-Recreational Sports Association (NIRSA).

Methodology

A questionnaire was designed based on the review of current literature, as well as the researchers' knowledge and expertise in the area of club sport legal issues. For the purpose of seeking feedback related to the substance of the questions and to help validate the questionnaire, a pilot study was conducted with six experts in the field of collegiate campus recreation. The experts were members of the NIRSA who had held the position of campus recreation director for at least 10 years. After making the appropriate modifications based on expert feedback, the survey questionnaire was mailed to all campus recreation directors whose institution held membership in the NIRSA, which totaled 563.

Along with the questionnaire, a cover letter that provided instructions on how to complete the document was included in the mailing. In addition, the cover letter contained a statement making it clear that participation in the study was optional and the respondents could, at any time, remove themselves from the study by declining to complete and return the questionnaire. For those choosing to participate in this study, the process was one of anonymity in that their identity and their institution's name were not revealed.

The 23-item questionnaire consisted of closed-ended questions for which the campus recreation directors could choose from predetermined responses. In addition, some yes/no questions were part of the questionnaire. Background information was gathered to provide statistical analysis based on the respondents' region within the NIRSA, type of institution, locale of institution, and total size that included undergraduate and graduate student populations.

A self-addressed, stamped envelope was provided for the purpose of returning the completed questionnaire. Of the 563 questionnaires mailed to campus recreation directors, 213 were returned for a response rate of 38%.

Results

Demographics

Regarding the locations of the institutions, the respondents categorized themselves as (a) rural, 25%; (b) urban, 42%; and (c) suburban, 33%. For the purpose of this study, the responding institutions were classified by student enrollment as small (5,000 and less, 23%), medium (5,001–15,000, 37%), large (15,001–25,000, 21%), and extra large (25,001 and above, 19%). All of the six NIRSA regions were represented in the study. The percentages of institutions that responded to this survey, broken down by their locations within the six NIRSA regions, include Region 1, 22%; Region 2, 22%; Region 3, 13%; Region 4, 18%; Region 5, 9%; and Region 6, 16%. Of the institutions that responded to the survey, 72% were public and 28% were private.

Club Sport Administration and Finance

Respondents were asked about specific departmental information relating to club sports including number of club sports offered, direct oversight of club sports, and overall budget. Overall, 76% of the respondents indicated that their department had

direct oversight of club sports on their campus. Of the 24% of respondents who indicated that they did not have direct oversight of the club sport program, student governments and the campus activities office were most mentioned as having this responsibility. The overall mean budget for club sports was \$69,138.

Table 1 shows the mean club sport budgets by NIRSA region, institutional type (i.e., public or private), and institutional size by student enrollment. The mean club sport budgets by region ranged from \$51,657 in Region 4 to \$135,657 in Region 6. By NIRSA regions, the largest club sport budgets were \$135,657 in Region 6 and \$82,523 in Region 5. The private institutions' mean club sport budgets (\$83,492) were about \$19,000 higher than those of public institutions (\$64,633). Institutions with enrollments of less than 5,000 students and those with enrollments greater than 25,000 students had larger mean club sport budgets than institutions with medium- and large-size student enrollments. In addition, statistical tests were conducted to determine if there was a statistically significant difference for club sport budgets based on size of institution. Based on the responses received, institution size does have a statistically significant impact on the monetary commitment to club sports. These data suggest that institutional commitment to club sport programs on college campuses measured by budget allocations varies considerably based on regional location, student enrollment, and whether the institution is public or private. It is not clear why the largest and smallest institutions by student enrollment, private institutions, and those institutions in Region 5 and 6 have larger budget commitments when compared with other demographic groupings.

Table 1 Club Sport Mean Budget for NIRSA by Region, Public/Private, and Size of Institution

	Budget mean
NIRSA region	
1	\$55,964
2	\$58,913
3	\$54,529
4	\$51,657
5	\$82,533
6	\$135,657
Public	\$64,643
Private	\$83,492
Size of institution ^a	
small <5,000	\$71,425
medium 5,001-15,000	\$54,044
large 15,001-25,000	\$55,109
extra large >25,000	\$120,040

^a Statistically significant difference for sport club budget by size of institution ($p < .05$)

Legal Documentation

For the purpose of this study, the use of legal documentation by a campus recreation department was examined. Ninety-one percent of the respondents indicated that they required club sport participants to sign a waiver to participate. A waiver was defined as a legal document that is signed before participation that helps protect the provider from liability for injuries resulting from ordinary negligence (Cotten, 2003). In another question, the respondents were asked to indicate the font size used in their waivers. Forty-six percent of the respondents indicated that a font size smaller than 12 point was used on their waiver document. In addition, only 19% of the respondents indicated that the words *ordinary negligence* were used in their club sport liability forms.

Table 2 illustrates the procedures used by campus recreation departments for club sport participants to sign waivers or other types of liability paperwork. These response data are broken down by overall response rates, type of institution (private or public), and institutional student enrollments. The most common procedure used for having club sport participants sign waivers was placing the responsibility on the club sport officer (44%). This was followed by having the participants sign liability paperwork when they initially signed up for the team (19%) or during an entire team meeting (18%). Interesting to note, 4% of the respondents reported that online registration was a widely held practice in campus recreation. Overall, there does not seem to be any apparent differences in the procedures used to have club sport participants sign liability paperwork when comparing the responses of public and private institutions. In addition, responses based on the size of an institution were very similar.

Club Sport Travel

The permitted modes of travel for club sport participants were examined in this study. Overall, campus recreation directors allowed for students driving personal cars (94%), renting vans from an outside vendor (95%), the use of private transportation (95%), and the use of rental vans from within the university (70%). Although the use of students driving personal cars was viewed as being acceptable, recreation directors indicated that they placed some restrictions on this type of transportation. Restrictions on the amount of driving permitted by students using personal cars was reported by 42% of campus recreation directors; the average maximum amount of hours of driving permitted in one day was 13. In addition, 20% of campus recreation directors did not permit students to drive personal cars before 6:00 AM, and 23% did not allow them to drive past midnight. Conversely, the use of 15-passenger vans (40%) was not as highly acceptable for club sport travel when compared with the other modes of transportation.

The practice of requiring an institutional employee to travel with a club sport team was examined. It was revealed that 30% of campus recreation directors *never* require an institutional employee to travel with club sport teams during away activities. Conversely, only 9% of the respondents reported *always* requiring an institutional employee to travel with a club sport team for away travel. In addition, 16% of campus recreation directors reported requiring an institutional employee to travel with a club sport team when traveling out of the country, 11% required

Table 2 Procedures for Club Sport Participants to Sign Liability Paperwork

Procedure for club sport participants to sign liability paperwork	Overall response	Public	Private	Small <5,000	Medium 5,001–15,000	Large 15,001–25,000	Extra large >25,000
Participants are not required to sign a waiver	3%	2%	5%	5%	2%	4%	2%
Entire team meetings	18%	20%	13%	17%	17%	15%	23%
Individual meeting with department representative	8%	8%	8%	12%	10%	4%	6%
Responsibility of club sport officer	44%	41%	52%	49%	45%	44%	38%
Online	4%	2%	7%	5%	3%	4%	3%
When participant signs up for team	19%	22%	11%	10%	17%	27%	23%
Other	4%	5%	3%	2%	5%	2%	5%

an institutional employee to accompany the club sport team when they travel out of state/province, and 9% indicated requiring an institutional employee to travel with the club sport team based on the length and time of such a trip.

Coaches of Club Sports

Table 3 represents the types of coaches used in club sports based on an institution's club sport budget. For the purpose of this study, the types of coaches reported by campus recreation directors were analyzed based on an institution's club sport budget. The overall mean budget for all club sports was \$69,138; mean budget responses were broken into four quartiles to determine if the size of a club sport budget has any influence on services offered. The four quartiles represented are first quartile = under \$13,000, second quartile = \$13,001–\$37,000, third quartile = \$37,001–\$78,000, and fourth quartile = over \$78,000. Overall, campus recreation directors reported using volunteer coaches the most (40%), followed by player/coaches (29%), paid coaches (15%), and student volunteer coaches (15%). Differences based on an institution's budget were seen in the use of player/coaches and volunteer coaches. First quartile respondents reported using a player/coach most frequently (42%), whereas the fourth quartile respondents reported using a volunteer coach the most (58%). Surprisingly, the use of a paid coach was somewhat consistent throughout the budget quartiles.

Campus recreation directors were asked to note the types of certifications required to be a club sport coach. Overall, the directors reported CPR was required for club sport coaches the most (32%), followed by first aid certification (27%; 81% of campus recreation directors reported requiring a first aid kit at home club sport competitions), and AED certification (13%; only 17% of campus recreation directors reported requiring an AED at home club sport competitions). Surprisingly, two respondents indicated requiring club sport coaches to obtain certifications or trainings in driving a van.

Other Legal Concerns

Campus recreation directors were asked about the practice of requiring physical supervision at a club sport home competition. It was revealed that 41% of the respondents indicated that they require some sort of physical supervision at home club sport competitions. The most widely used practice of physical supervision

Table 3 Type of Club Sport Coaches

Type of club sport coach	Overall response	1st quartile, under \$13,000	2nd quartile, \$13,001–\$37,000	3rd quartile, \$37,001–\$78,000	4th quartile, over \$78,000
Paid coach	15%	8%	15%	21%	15%
Volunteer coach	40%	33%	36%	39%	58%
Student volunteer coach	15%	17%	15%		

was using a campus recreation student employee (18%), followed by a campus recreation professional (12%), campus recreation graduate assistant (7%), and campus safety or university police (4%).

The use of off-campus facilities by club sport participants was examined. In terms of requiring club sports to obtain a certificate of insurance for use at off-campus facilities for practices or competitions, it was found that 36% of campus recreation directors require this document and 64% do not require this type of documentation.

Table 4 represents club sport access to athletic trainers at their competitions. Overall, access to professional athletic trainers was reported by 35% of campus recreation directors, 28% reported having access to professional athletic trainers from outside the institution, and 29% reported having access to students enrolled in a certified athletic training curriculum. For the purpose of this study, access to athletic trainers as reported by campus recreation directors was analyzed based on an institution's club sport budget. The overall mean budget for all club sports was \$69,138; mean budget responses were broken into four quartiles to determine if the size of a club sport budget has any influence on services offered. The four quartiles representing club sport budgets were first quartile = under \$13,000, second quartile = \$13,001 to \$37,000, third quartile = \$37,001 to \$78,000, and fourth quartile = over \$78,000. Institutions with a club sport budget greater than \$37,000 had the most access to professional certified athletic trainers from their institution. Overall, institutions with an overall budget below \$13,000 saw the least amount of availability of any type of trainer for their events.

The use of medical insurance was examined on an individual participant and institutional level. Overall, 17% of campus recreation directors reported requiring club sport participants to complete a health screening/history form before participation; only 4% reported requiring physical examinations for all club sport participants before participation. However, 56% of directors reported requiring club sport participants to have documentation of medical insurance. The purchasing of additional catastrophic medical insurance for club sport participants was reported by 21% of campus recreation directors. Finally, the practice of requiring the presence of an ambulance at club sport competitions was not highly reported. The club sport of rugby saw the highest requirement of having an ambulance present at home

Table 4 Athletic Trainer Availability to Club Sport Participants

Athletic trainer (AT) availability	Overall	1st	2nd	3rd	4th
		quartile, under \$13,000	quartile, \$13,001–\$37,000	quartile, \$37,001–78,000	quartile, over \$78,000
Professional certified AT from your institution	35%	22%	30%	50%	44%
Professional certified AT from outside your institution	28%	13%	28%	44%	30%
Student enrolled in a certified AT curriculum	29%	17%	22%	38%	41%

competitions, with 7%, followed by ice hockey, soccer, and lacrosse, with 4% of campus recreation directors reporting this practice.

Discussion

Legal Documentation

The findings from this study revealed that campus recreation directors, throughout the six NIRSA regions, primarily rely on the sport club officer to administer and collect legal liability documentation. This represents a common theme of providing students in the club sport programs a practice that enhances their sense of responsibility. The responsibilities of the club sport officer could range from scheduling practices, budgetary paperwork, and, as this study verifies, ensuring club sport participants sign liability paperwork. The use of online registration to sign liability documents has not yet permeated into the club sport area of campus recreation. This piece of information should be closely followed in the future because online registration could be an instrument to streamline the process and save on paperwork. For those institutions using online procedures, it is recommended that they provide the profession more information on this process. In addition, it might be useful to check with the institution's legal counsel to ensure the validity of the online signature.

The practice of having club sport participants sign waivers to participate was apparent in this study. Waivers should be easy to read and understandable to the participant. Particular attention should be given to the font size and language when developing and administering liability waivers (White & Cardinal, 2004; Cotten & Cotten, 1997). The results of this study revealed the lack of consistency in club sport waiver language and font sizes. It is recommended that campus recreation directors review their documents to ensure easy readability for the participant.

Club Sport Travel

This study revealed that the most frequent modes of approved travel for club sport participants were students driving personal cars, renting vans from outside vendors, and the use of private transportation such as a chartered bus. The practice of requiring an institutional employee to travel with the club sport team was not a widely held one. In addition, there does not seem to be any consistent restriction placed on club sport travel as it relates to time, distance, and location of the event.

The results of this study indicated that a large majority of campus recreation directors do not require that an institutional employee travel with a club sport team. Furthermore, it was found that club sport participants were allowed to travel out of their respective state/province and abroad without an institutional employee. In addition, it was revealed that time of travel and length of travel did not warrant an institutional employee accompanying the club sport team. This could signify a lack of personnel or funds dedicated to club sport travel. Along similar lines, club sport travel seems to be a source of anxiety for those involved with club sport supervision. The results of this study could serve as a reminder for campus recreation directors to annually review club sport travel policies. In addition, as Pittman and Lehr (2003)

suggested, it might be prudent to examine the feasibility of establishing policies on travel time, distance, and driver qualifications.

Coaches of Club Sports

The findings of this study revealed that a majority of collegiate club sport coaches are volunteers and player/coaches. The size of an institution's budget did not show much correlation to the type of coach used for club sport programs. The only difference found was those with smaller budgets using player/coaches. Conversely, campus recreation departments with more budgetary resources are using volunteer coaches at a higher rate than departments with fewer resources. The most revealing finding in this study was that paid coaches are not being used at a rate that appears much different from unpaid coaches. In fact, there was not any difference found based on an institution's budget and the use of paid coaches. The lack of paid coaches for these activities lends itself to support the commonly held belief that club sports should be self-administered and self-regulated (Mull et al., 2005). A paid club sport coach could become domineering and take on some of the roles most club sport participants accomplish in the process of learning and student development. These roles include, but are not limited to, budgeting, recruitment, and scheduling practices and competitions.

The NCAA (2006) and the case of *Kleinknecht v. Gettysburg College* (Anderson et al., 2002) brought to light the importance of emergency preparedness needed in coaches of sport teams. The data suggest that most club sports are required to have a first aid kit available at home competitions. However, certifications were not needed by the club sport coach in first aid, CPR, and AED. It could be thought that a club sport coach is the person responsible for being present at a majority of practices and competitions. Therefore, it would be prudent, based on past research and recent court cases, that someone be present at a club sport activity that has certifications in first aid, CPR, and AED. If this person is not the club sport coach, campus recreation directors should identify a club member to serve in this role.

Other Legal Concerns

In the area of physical supervision of club sport home competitions, most programs are not requiring any oversight of these events. When supervision was required, it was found that a student employee was used the most. The results of this study mirror those found in past research (i.e., club sport programs are not required to have supervision at their events; Mulrooney et al., 2004; Gaskin, 2003; Connaughton et al., 2004). If supervision is not required, it would be important for campus recreation directors to create documented procedures that address emergency procedures. Included in this document should be key communication protocols on who to contact in the event of an emergency.

The use of professional and student athletic trainers at club sport competitions was not a widely held practice. This study revealed that club sport programs with budgets over \$37,000 had a greater likelihood of providing such services. Along similar lines, this study revealed that club sport programs are not requiring an ambulance to be present during home competitions.

This study revealed that few institutions require club sport participants to complete a physical examination and a health screening/history form before participation. Conversely, over half of the respondents indicated requiring participants to provide proof of medical insurance before participation.

Conclusions

The purpose of this study was to determine the current legal practices in collegiate club sport programs. The research suggests that most club sport programs are allowing participants to self-administer and self-regulate their programs. The use of written waivers is a widely held practice; however, the inconsistencies found in language and appearance tend to put the validity of these forms into question.

Most club sport participants are traveling to off-campus competitions in personal cars, rental vans, and chartered buses. Using personal cars and rental vans for transportation typically requires students to drive these vehicles. The lack of travel policies related to length of time, distance, and driver's history has the potential to place the campus recreation program in a precarious situation.

Club sport programs are not requiring medical exams, physical supervision, or medical care at home events. In addition, if club sport programs are not requiring a coach to have appropriate certifications (first aid, CPR, AED), ambulance presence at home competitions, professional supervision at home competitions, and access to athletic trainers, then there are potentially legal liability problems related to the lack of properly trained personnel, supervision, and accountability to address emergency response procedures at these events. Rather than having these issues and problems decided in the courts, it is recommended that campus recreation directors proactively refer to their respective institution's legal counsel to determine the proper course of action.

References

- Anderson, J.C., Courson, R.W., Kleiner, D.M., & McLoda, T.A. (2002). National Athletic Trainers' Association position statement: Emergency planning in athletics. *Journal of Athletic Training, 37*(1), 99-104.
- Connaughton, A.V., Connaughton, D.P., & Spengler, J.O. (2004). Automated external defibrillators in sport, recreation, and fitness programs. *Recreational Sports Journal, 26*(2), 9-19.
- Cotten, D.J. (2003). Waivers and releases. In D.J. Cotten & J.T. Wolohan (Eds.), *Law for recreation and sport managers* (pp. 105-113). Dubuque, IA: Kendall/Hunt Publishing.
- Cotten, D.J., & Cotten, M.B. (1997). *Legal aspects of waivers in sport, recreation, and fitness activities*. Canton, OH: PRC Publishing.
- Fawcett, P. (1998). Sport club risk management. *NIRSA Journal, 22*(3), 18-19.
- Fossey, R. (2006). Colleges' liability releases: Are they worth the paper they're printed on? *Education Law Association Notes, 42*(1), 8-9.
- Gaskin, L.P. (2003). Supervision of participants. In D.J. Cotten & J.T. Wolohan (Eds.), *Law for recreation and sport managers* (pp. 138-148). Dubuque, IA: Kendall/Hunt Publishing.
- McGregor, I. (2000). Travel trouble. *Athletic Business, March*, 66-73.

- Mull, R.F., Bayless, K.G., & Jamieson, L.M. (2005). *Recreational sport management*. Champaign, IL: Human Kinetics.
- Mulrooney, A., Styles, A., & Green, E. (2004). Risk management practices at higher educational sport and recreation centers. *Recreational Sports Journal*, 26(2), 41–49.
- National Collegiate Athletic Association (NCAA). (2006). Guideline 1c emergency care and coverage. In *2006–07 NCAA sports medicine handbook* (pp. 10–11). Indianapolis, IN: The National Collegiate Athletic Association.
- National Highway Traffic and Safety Administration (NHTSA). (2004). *Analysis of crashes involving 15-passenger vans*. Springfield, VA: National Technical Information Service.
- Nesbitt, G.M., & Bryant, J. (2004). Anatomy of a crisis: Nitrogen dioxide poisoning and its impact on sport club policies. *Recreational Sports Journal*, 28(2), 31–41.
- Pendleton, A.T. (2005). Enforceable exculpatory agreements: Do they still exist? *Wisconsin Lawyer*, 78(8). Retrieved January 31, 2008, from <http://www.wisbar.org/>
- Pittman, A., & Lehr, C. (2003). Transportation. In D.J. Cotten & J.T. Wolohan (Eds.), *Law for recreation and sport managers* (pp. 157–168). Dubuque, IA: Kendall/Hunt Publishing.
- White, B.J., & Cardinal, B.J. (2004). Readability of waiver of liability forms used in collegiate intramural and recreational sports programs. *Recreational Sports Journal*, 27(2), 37–47.

Copyright of *Recreational Sports Journal* is the property of Human Kinetics Publishers, Inc. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.