EXPANDING LIABILITY OF THE UNIVERSITY FOR STUDENT INJURY: FIELD TRIPS; K-12 STUDENTS IN ACADEMIC AND SPORT CAMPS; SUPERVISING UNDERAGE STUDENTS

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Expanding Liability of the University for
Student Injury: Field Trips; K-12 Students in Academic and Sport Camps;
Supervising Underage Students
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The purpose of my segment of the above presentation is to set forth some of the legal issues
associated with two primary topics: 1) the offering of field trips by a university/college for its own
students; and 2) the supervision of minor students as they attend academic and/or sport camps on a
university campus.

FIELD TRIPS

A critical question regarding liability for injuries which occur on field trips is whether the
university owes a duty of care to the student. Although there is little case law on field trips per se, I've
attempted to give a representative listing of cases discussing the issue of duty owed by a university to
its students in a variety of contexts.

I. Duty of University

A. Whether a duty of care exists within a particular situation is a matter of law for the court to
decline.

B. In the university context, a person's status as a "student" does not give rise to a duty to
protect absent a "special relationship".

C. This "special relationship" may arise from, among other things:

1. A college/university's undertaking to render services which should be recognized
as necessary for the protection of a third person. Restatement (Second) of Torts, Section 324A

2. The university's duty as landowner to protect its invitee students from an
unreasonably dangerous condition. Restatement (Second) of Torts, Section 343

II. "No Duty" Cases

A. Bradshaw v. Rawlings, 612 F.2d 135 (3rd Cir. 1979). In this oft-cited case decided in
1979, the issue was whether a college may be subject to tort liability for injuries sustained by one of
its students who was injured in an auto accident when the driver, a fellow student, drove carelessly
because he became intoxicated at a class picnic. The picnic was not on school grounds but was an
annual activity of the sophomore class. A faculty member served as class advisor and was involved in
the preparation for the picnic but did not attend the gathering. The legal drinking age was 21 but the
majority of students who drank alcoholic beverages at the picnic were 19 or 20 years old. At the
district court a jury returned a verdict of $1,108,067 against the defendant college.

1. The American college is not an insurer of the safety of its students.

2. Since the modern college student is an adult, the Third Circuit was unable to find a
"special relationship" giving rise to a duty of care.

3. A college regulation prohibiting alcoholic beverages at college sponsored activities
was not sufficient to support a finding of a custodial relationship with the students.

4. To find a duty of care, in this situation, would place an impossible burden on the
college.

B. Baldwin v. Zoradi, 176 Cal. Rptr. 809 (Ct. App. 1981). In 1981 the California Court of
Appeals dealt with duty as it related to another student injury caused by intoxication. The plaintiff,
who lived in a dormitory, attended a party in the dorm at which alcoholic beverages were served in
violation of a state statute as well as the residential license agreement to use the dorm rooms. The
plaintiff was seriously injured as a passenger in a car accident later that evening when students who
became intoxicated at the dorm party drove in a "speed contest" and the car in which the plaintiff was
riding overturned.

1. No "special relationship" because the license agreement did not create a dependent
relationship which would impose a duty to control the alcoholic intake by students.

2. Court cites to Bradshaw.

C. Campbell v. Board of Trustees Wabash College, 495 N.E.2d 227 (Ind. Ct. App. 1986). In
another intoxication-related injury, a student drank alcoholic beverages in the student's fraternity
house room. As he drove the friend to her residence off campus he became involved in an accident
due to his inebriation. The friend sued the college on the basis that it was negligent in allowing a
student driver to consume alcohol in the fraternity house knowing that he would operate a car
thereafter.

1. No duty to control the conduct of the student.

2. Even if it is foreseeable that students will sometimes drive while they are inebriated,
colleges do not have the power to control this.

3. College did not provide alcohol or was otherwise involved.
D. Beach v. University of Utah, 726 P.2d 413 (Utah 1986). As a part of the requirements of an undergraduate biology class students had to attend a number of field trips, three of which involved overnight stays. During class time the instructor told the students to follow his directions but the students were free to pursue personal interests at other times. On one of the weekend trips the plaintiff attended a gathering, with the instructor, at which she drank alcoholic beverages, although she was underage. When the instructor dropped the students off at the campsite, the plaintiff did not appear inebriated. However, as she searched for her tent, she became disoriented and fell from a cliff suffering quadriplegia.

1. The teacher-student relationship did not give rise to a duty to protect the plaintiff from her own intoxication.

2. The Utah Supreme Court cited Bradshaw and Baldwin with approval.

3. No "special relationship"—no dependence by student upon the university.

E. Rabel v. Illinois Wesleyan University, 514 N.E.2d 552 (Ill. App. Ct. 1987). A female student was abducted from her dormitory by an intoxicated fraternity pledge and then accidentally thrown to the ground when he stumbled, causing her serious and permanent neurological injuries.

1. No "special relationship".

2. The university's promulgation of regulations in accord with state drinking laws did not constitute an assumption by the university of a duty to enforce those regulations for the protection of a particular student.

F. Whitlock v. University of Denver, 744 P.2d 54 (Colo. 1987). A student was injured on a rather unstable trampoline which was located outside a fraternity house. The plaintiff had used the apparatus several times before without injury. The jury verdict of over $5 million was upheld by the state appellate court but reversed by the Colorado Supreme Court.

1. No dependence by the student upon the university.

2. The university fostered self-governance by fraternities and there was no reason for plaintiff to depend upon university for an evaluation of the safety of the trampoline.

G. Swanson v. Wabash College, 504 N.E.2d 327 (Ind. Ct. App. 1987). A student was injured at a baseball practice conducted by some of the intercollegiate team players in the "off-season". The students organized the practices and knew that the coach would not be present.
1. Although team equipment was used, the students knew that they were "on their own".

_H. Gehling v. St. George's University_, 705 F. Supp. 761 (E.D.N.Y. 1989). A plaintiff medical student, who was 75 pounds overweight, had high blood pressure and took an amphetamine before a 2.5 mile run in tropical conditions, collapsed and died.

1. No duty to control, monitor or supervise this "fun run".

2. University's "sponsorship" of the race did not give it "sufficient control over the event to be in a position to prevent negligence".

_I. Tanja H. v. Regents of the University of California_, 278 Cal. Rptr. 918 (Ct. App. 1991). A female student was repeatedly raped in a residence hall by members of the university football team.

1. Citing _Baldwin_, the court held that a college has no duty to prevent injuries sustained by students as a result of criminal acts of other persons.

2. "[A]s campuses have... moved away from their former role as semi-monastic environments subject to intensive regulation of students lives...they have become microcosms of society; and unfortunately, sexually degrading conduct or violence in general-and violence against women in particular-are all too common within society at large. College administrators have a moral duty to help educate students in this respect but they do not have a legal duty to respond in damages for student crimes..."

3. The fact that the university might foresee a sexual assault after a drinking party is not sufficient to "shift the liability from the student criminal to the university".

_J. Fox v. Board of Supervisors_, 576 So.2d 978 (La. 1991). The plaintiff was a student at a Minnesota college who, as a member of his college's club rugby team, travelled to LSU to play in a tournament. He alleged that he was injured because of defendant's negligence in scheduling and in failing to ascertain whether the invited teams were properly trained, coached, or supervised.

1. The university did not assume an obligation to scrutinize the club's activities because it allowed the club team to use university property and gave it some financial support.

2. The defendant breached no duty of care as a landowner; there was no defect in the playing field.

_K. Hughes v. Beta Upsilon Building Ass'n_, 619 A.2d 525 (Me. 1993). The plaintiff
fraternity member became a paraplegic after diving into a field which was being used for a "mud" football game. Defendant landlord also served as fraternity advisor particularly as it related to fraternity's liquor policy.

1. The defendant's ability to control activities of fraternity did not give rise to a legal duty to protect the welfare of the adult fraternity members.

2. Since the defendant had taken no active role in the event it had no duty to act affirmatively to protect the plaintiff from a danger it hadn't created.

L. Albano v. Colby College, 822 F. Supp. 840 (D. Me. 1993). The men's college tennis team went to a resort in Puerto Rico during spring break. This annual trip was approved by the athletic department but funded entirely by the students and coach. Except for a 3 hour period for practice each day, the students were on their own. The plaintiff, age 20, was seriously injured after he drank excessively. The coach had told the team not to drink to excess but he did not chastise or attempt to control the plaintiff on the night of the accident even though he knew that the plaintiff had overindulged.

1. The coach had no duty to prevent this adult student from drinking.

2. Relying on the Hughes cases, the district court held that the mere ability to control does not give rise to a legal duty.

M. Fisher v. Northwestern State University, 624 So.2d 1308 (La. Ct. App. 1993). A freshman cheerleader alleged negligent supervision as the student was injured during a practice conducted without supervision. The plaintiff had attended cheerleader camp but practices were conducted by captains of the cheerleading squad.

1. Relying on Fox, the court held that there was no duty to provide supervision or to monitor the cheerleaders.

2. The court noted that the university tried to have students gain responsibility through autonomy and that it would be a "nigh-impossible" burden to provide more supervision.

N. Leonardi v. Bradley University, 625 N.E.2d 431 (Ill. App. Ct. 1993). A college student was sexually assaulted in a fraternity house. The suit against the university alleged a failure to warn her or to take any precautions to protect her from sexual assault.

1. The court distinguished Rabel on the basis that it did not raise the issue of the duty
owed to a business invitee.

2. In this case, plaintiff was not an invitee at the time of the assault because she was engaged in noncurricular activities on property not owned by the university.

3. A strong dissent argued that plaintiff was indeed an invitee since her presence on the campus provided a benefit to the university. Further, even if plaintiff could not show a business invitee status, universities should have the duty to disseminate information regarding the incidence of sexual assault on campus.

III. "Duty" Cases

A. Furek v. University of Delaware, 594 A.2d 506 (Del. 1991). A fraternity pledge was seriously injured in a hazing incident when he was burned by a lye-based oven cleaner poured over him. A jury awarded the student $30,000 but the trial court entered a judgment notwithstanding the verdict on behalf of the university.

1. The Delaware Supreme Court rejected the precedent of Bradshaw, Beach, and Whitlock. No authority is cited in these cases for the assertion that the supervision of potentially dangerous student activities would create an inhospitable environment or be largely inconsistent with the objectives of a college education.

2. There was a duty of care because the university had assumed responsibility for safety by its repeated emphasis through its dissemination of disciplinary policies for hazing.

3. There was also a duty of care based upon plaintiff's status as an invitee. A landowner who knows or should have known of an unreasonable dangerous condition on the property has a duty to safeguard against such hazards. This duty extends to the acts of third persons which are both foreseeable and subject to university control.

4. The justification for following the policy analysis of Bradshaw has been seriously eroded by changing societal attitudes toward alcohol use and hazing. The likelihood of an injury during fraternity activities occurring on university campuses is greater than the utility of university inaction.


1. Although a governmental unit has the discretionary authority to choose whether or
not it will operate a facility, once it has decided to operate it, it assumes the common law duty to operate the facility safely.

2. The plaintiff stated a cause of action against the defendant alleging:
   a. failure to have trained lifeguards on duty
   b. failure to warn of known dangerous conditions
   c. failure to instruct in the proper operation and use of lifevests.

C. Kleinknecht v. Gettysburg College, 989 F.2d 1360 (3rd Cir. 1993). A varsity lacrosse player suffered cardiac arrest during practice. No trainers or student trainers were present nor did the coaches have certification in CPR. The player died allegedly because of the delay in procuring emergency medical treatment.

1. There is a duty of care based on the "special relationship" between the college and a recruited student-athlete.

2. "We cannot help but think that the college recruited Drew for its benefit, probably thinking that his skill at lacrosse would bring favorable attention and so aid the college in attracting other students".

3. A college owes a duty to a recruited intercollegiate athlete to provide prompt and adequate emergency medical service to the student-athlete who is engaged in a college-sponsored athletic activity for which he has been recruited by the college.

D. Nero v. Kansas State University, 861 P.2d 768 (Kan. 1993). A female student was sexually assaulted in a coed residential hall by a male student resident who had been previously "accused" of committing another sexual assault upon a female in a co-educational residence hall.

1. The university-student relationship did not give rise to a duty of care, i.e., no "special relationship", no "custodial control".

2. The university did have a duty as a landlord to exercise due care to protect its tenants from "reasonably foreseeable" criminal actions of third parties.

3. In effect, the court implicitly held that where a college rents space to a student "accused" of a criminal act, it may be held liable for subsequent criminal acts by that student.

4. For a further discussion of Nero, see Brian A. Snow and William E. Thro, "Redefining the Contours of University Liability: The Potential Implications of Nero v. Kansas State

Supervising the Underage Student on Campus

There are a number of legal problems which may arise when students who have not reached the age of majority use the facilities, or otherwise engage in activities, on the college campus. This most often occurs in the context of academic and/or sport camps which are held on campus and often administered by university personnel, e.g., coaches. In the case of sport camps, it is often the case that a coach, as a perquisite of his/her employment, is allowed to use the university facilities for little or no compensation and keeps the lion's share of the profits for himself/herself. Since in this situation, the coach is given virtual autonomy in the operation of the camp, liability issues may have a tendency to be given minimal attention.

There are three major legal issues which I'd like to explore in conjunction with this topic. First, what is the duty of care owed to the minor student, i.e., how does it differ from the duty of care owed to the college student? Second, what is the liability of the university for actions of the camp employees/volunteers which result in injury to campers? Issues of vicarious liability and liability based on negligent hiring, supervision, or retention will be discussed. Third, what type of documentation should be provided to campers concerning the risks of the activities? In this regard, I will discuss the differences between the waiver/release and the agreement to participate.

I. Duty of care owed to the minor student on campus

A. Graham v. Montana State Univ., 767 P.2d 301 (Mont. 1988). A minor high school student, age 16, who was participating in a summer program, the Minority Apprenticeship Program (MAP), at a university, was injured in an accident that occurred while she was riding as a passenger on a motorcycle. MAP was designed to encourage minority high school students to pursue careers in the sciences by providing work-related experience in various scientific research taking place at the university. The students lived on-campus in a university residence hall. Summary judgment for the university was affirmed on the basis that if the university was negligent, that negligence was not the proximate cause of the minor's injuries. However, the court discussed the duty of care owed to the minor student and noted the following.

1. When the university undertook to have the minor student live on its campus and
supervise her during the MAP program, it assumed a custodial role similar to that imposed on a high school because the student is a juvenile. Once the university assumed that role, it was charged with exercising reasonable care in supervising the MAP participants.

2. The court distinguished the cases of Bradshaw and Beach (see above outline on Field Trips) which were relied upon by the defendant university. The reasoning employed in both those cases showed a distinction between them and the case at bar.

B. Cutler v. St. John's United Methodist Church of Edwardsville, Ill., 489 So.2d 123 (Fla. Dist. Ct. App. 1986). Although this is not a university case, it is relevant on the duty owed to a minor who drowned while swimming in the ocean on a trip sponsored and organized by defendant church. On the duty question, the court noted that the church, which undertook to care for the decedent child, had the duty of ordinary care for the protection of the child, measured in accordance with the ability of the child to care for herself.

C. Kessling v. United States Cheerleaders Ass'n, 655 N.E.2d 926 (Ill. App. Ct. 1995). A thirteen-year-old was injured at a cheerleading camp held on the campus of a university. The child was injured as she attempted a "toe pitch" maneuver in which she was thrown into the air. The defendant was the corporation which operated the cheerleading camp, not the university. Although a judgment was affirmed for the defendant, the court implicitly acknowledged the existence of a duty to act reasonably in its supervision of the minors who attended the camp.

D. Martinez v. Western Carolina Univ., 271 S.E.2d 91 (N. C. Ct. App. 1980). A fourteen-year-old, who attended a summer camp for gifted children, at a university, was injured as he slipped in a puddle of water on the floor of the dormitory. The allegations of negligence by the plaintiff related to the medical care given to the student, which resulted in an improper diagnosis and delay in treatment for a ruptured Achilles tendon. Although the university prevailed, the court implicitly acknowledged a duty of care by the university to act reasonably for the welfare of the students in the program, including the provision of proper medical care.

II. Liability of University for Actions of Camp Employees/Volunteers

A. Vicarious Liability—Dismuke v. Quaynor, 637 So.2d 555 (La. Ct. App. 1994). A fifteen year old female, Evonne, was enrolled as a camper in the National Youth Sports Program (NYSP), an educational day camp for boys and girls aged 10 through 16. The camp was sponsored by
Grambling State University and staffed by Grambling employees and student aides. Campers attended classes daily from 9:00 a.m. through 3:00 p.m. Campers were instructed to stay out of the Student Union; it was "off limits" out of fear that the Union was a dangerous place for campers because of the risk that they might be battered, injured or sexually abused by students or third persons there. On the day of the incident, campers were dismissed at noon instead of 3:00 p.m. because of bad weather. Parents were informed of the early dismissal in the morning when the children were dropped off but Evonne did not hear the information. When Evonne and a friend were dismissed at around noon, they went to the Student Union and Evonne was raped as she entered a second-floor restroom. Her assailant, Quaynor, was a 25 year old Grambling student and former of the football team who had been hired as an aide to the NYSP boys' flag football program. Although the aide did not have supervisory authority over the girls' program, all students and staff were together at roll call every morning and at the end of each day. Quaynor testified that he had gone to the Student Union to make sure that the boy campers had caught their rides and gone home. Additionally, according to Evonne, her assailant had made some suggestive remarks to her a few weeks before the rape. The trial court held the university to be vicariously liable and the Louisiana Court of Appeal affirmed. The higher court devoted much of its opinion to a discussion of whether the university could be vicariously liable.

1. It noted that specific conduct may be considered within the course and scope of employment "even though it is done in part to serve the purposes of the servant or of a third person" (court's emphasis, p. 560).

2. Based on the facts of this case, the court's analysis focused on the following: 1) the employee committed a wrongful act during normal class hours and almost immediately after classes had been dismissed on that day; and 2) the employee was, to some appreciable extent, engaged in an employment-related activity, even though he was probably technically off duty for the day. Thus, one of the employee's motives, albeit secondary, for going to the Student Union, promoted Grambling's interest in supervising NYSP campers. The court further noted that there was a very short time interval between the time the employee left work and when the tort occurred. This time interval was insufficient to break the connection with his employment activities.

3. Also, there was, according to the court, a strong causal connection between the
employment and the tort. The assailant's position as a staff member facilitated the contacts with Evonne and gave him a superior position to observe her. "Quaynor ultimately seized the opportunity to commit the tort when he found her alone at a time and place where her class was normally held" (p. 561).

4. Finally, on the question of foreseeability, the court held that this incident was "the more or less inevitable toll" of Grambling's business of running a sports program for children, in which teenage girls were placed under the general supervisory authority of a 25 year old male college student" (p. 562).

5. The above case raises the spectre of a very disturbing approach to vicarious liability since the general trend of case law does not hold an employer vicariously liable for an employee's sexual misconduct. If employer liability is to be found in this type of case, it is usually predicated upon some finding of negligence by the employer, e.g., negligent hiring or negligent supervision.

B. Liability Predicated upon Negligent Hiring, Supervision or Retention—Akins v. Estes, 888 S.W.2d 35 (Tex. Ct. App. 1994). An assistant scoutmaster (Estes) for a boy scout troop molested a child (Chance Curtis) in the troop on 4 separate occasions. The scoutmaster learned that "something was amiss with Estes" and relayed this concern to an employee of the Golden Scout Council (GSC). The employee made a report of the conversation to the GSC Executive. Nonetheless, the GSC selected Estes to be a scoutmaster for a new troop and Estes resumed his advances upon the minor Chance Curtis. This suit was brought against Estes, the Boy Scouts of America (BSA) and the GSC, a BSA chartered council. The allegations against BSA and GSC were based on a violation of their duty to reasonably and properly screen, select, train, supervise, and retain scoutmasters. Specifically, the essence of plaintiff's complaint was that GSC and BSA were negligent in failing to investigate reports of inappropriate sexual behavior on the part of Estes and in failing to take steps to remove Estes from his position as a troop leader. Summary judgment in favor of BSA and GSC was reversed.

1. No agency relationship between Estes and BSA/GSC is necessary to find a duty since plaintiff alleged that GSC and BSA were directly negligent in their failure to properly screen, select, train, supervise and retain scoutmasters.

2. A claim of negligent hiring is based on direct negligence not vicarious liability.

3. Liability for negligent hiring does not depend upon a finding that an employee
was acting within the scope of his employment when the employee's tortious act occurred.

4. The negligent hiring doctrine is applicable even though Estes was a volunteer, not an employee of GSC or BSA.

5. The negligent hiring doctrine is applicable despite the fact the BSA and GSC exercise no direct control over the daily activities of local scout troops and adult leaders.

6. Organizations, such as the Boy Scouts, whose primary function is the care and education of children, owe a higher duty to their patrons to exercise care in the selection of their workers than would other organizations.

7. Although BSA and GSC did not have direct and immediate supervision over Estes, they did have an affirmative obligation to relieve Estes from his duties with the Boy Scouts if they knew or had reason to know he was unfit.

8. The recommendation of a man as a scoutmaster who allegedly had "been messing with boys", created an unreasonable risk of harm to the young scouts GSC served.

III. Documentation Provided to Campers

A. Exculpatory Agreement. Under contract law principles, a minor who has signed an exculpatory agreement may ratify or void the agreement upon reaching majority. Also, a parent or guardian can't release or waive the potential claims of the minor. See, e.g., Childress v Madison County, 777 S.W.2d 1 (Tenn. Ct. App. 1989).

B. Agreement to Participate. In those situations, as here with the summer camp populated by minors, where the exculpatory agreement may be unenforceable, it is still important that participants be apprised of the risks inherent in an activity. This information is important in order to maximize the ability to use assumption of risk as a defense. See, e.g., O'Connell v. Walt Disney World Co., 413 So.2d 444 (Fla. Dist. Ct. App. 1982) (for express assumption of risk to be valid it must be clear that plaintiff understood that he was assuming the risk of particular conduct by defendant which caused injuries); Restatement of Torts 2d, Section 496 B, comment d. The dissemination of risk information is also important to prevent a plaintiff from making a claim in negligence based on a failure to warn.

1. Nature of the activity.
2. Possible injuries which may occur.
3. Expectations of the participant.
4. Physical Condition of participant.

Hypothetical Situations to Consider:

1) At a science camp sponsored by a university and held on campus for elementary school children, a chemistry experiment in a lab is being supervised by a college junior. Something goes awry and a 9 year old child gets a caustic substance in her eye. Unfortunately, the supervisor has no knowledge of first aid and the child suffers a vision loss because the caustic substance remained in her eye until the EMT's arrived. Liability? On what basis? Against whom?

2) At a summer soccer camp for teenagers run by the head soccer coach of Sweatson University and located on the university campus, the counselors are primarily college soccer players chosen because of their technical competency and ready availability. During a "free" period, fifty of the campers are taken to the university's outdoor pool for an hour of recreational swimming. Two counselors accompany the campers and remain at the pool although the counselors view this time as their "free" period also. There is one lifeguard on duty. Horseplay ensued at the pool and a 14 year old camper, in the water, is injured when another camper jumps onto him from the edge of the pool. Liability? On what basis? Against whom? What would you like to know about the head soccer coach's "deal" with the university regarding the operation of this camp?

3) The head football coach of Sports R Us University runs a very popular football camp for boys aged 10-16 in the summer on campus. The counselors, primarily volunteer high school football coaches from the area, who want a chance to work with this highly-regarded coach, are also responsible for supervision on the dorms at night. At 10:00 p.m., shortly before "lights out", a counselor notices that one of the exterior doors to the dorm has been propped open, presumably to allow one or more of the campers, to get back into the dorm after curfew. Adopting a "boys will be boys" philosophy, the counselor leaves the door propped open. At 11:30 p.m., a stranger enters through the propped door and assaults a 10 year old camper in the first floor restroom. Liability? On what basis? Against whom?

The above scenarios raise the following considerations:
1) What are the qualifications of those who are being selected as counselors? Are they paid employees or volunteers? What competencies do they have beyond the technical skill required by the sport/activity? Are the persons "suitable" to supervise minors?

2) What policies have been developed relating to:
   A) Medical Emergencies
   B) "Free Play"
   C) Dorm Behavior
   D) Restricted Areas on Campus
   E) Ratio of Supervisors to Participants
   F) Early Release Time (for day camps)
   G) Restrictions Relating to Off-Campus "Hangouts"

3) What training is given to counselors beyond the technical skills of the sport/activity?

4) What does the documentation between the university and the coach/overseer of the camp provide regarding liability issues? If the camp is completely controlled by the coach, is the university indemnified in the event of an incident? What insurance has been procured? Is it sufficient?

5) What documentation is provided to campers? Exculpatory clauses will not be enforceable with this population of minors but Agreements to Participate should be developed.