

Athletic Liability

Presented by Katharine M. Nohr, J.D.

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Books by Ms. Nohr:

Managing Risk in Sport and Recreation: The Essential Guide for Loss Prevention (2009
Human Kinetics)

Land Sharks (2016 Written Dreams)

Freewheel (2017 Written Dreams)

VO2 Max (2018 Written Dreams)

Football Checklists provided to attendees are contained in *Managing Risk in Sport and Recreation*, which also includes checklists for 13 other sports as well as other safety and risk management checklists for use in sport and recreation.

FOOTBALL FIELDS

When assessing the risk of a football field, the layout and configuration should be evaluated as set forth below.

Considerations	Yes or No (check one)	Notes for follow-up
Is there a track surrounding the field?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Will there be runners using the track during football practice?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other track and field events being practiced in close proximity to the football field?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does your field overlap with other fields?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there sufficient barriers between the field and vehicular traffic?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have apparatuses used in other sports been left on the playing field or in the immediate vicinity?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there any environmental concerns, such as proximity to pollutants or environmental hazards?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for football fields?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

INSPECTION OF THE FOOTBALL FIELD

Inspecting the football field for defects requires evaluation and examination of the ground, fencing, grass or turf, lines used to mark the field, lighting, drainage system, and sprinkler system. Defects in these areas have been known to cause injury. You will need to address the following questions.

Considerations	Yes or No (check one)	Notes for follow-up
Are there holes in the ground or protruding objects that are obvious or concealed by grass or synthetic turf?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the field have an adequate drainage system?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Will sprinkler heads on a grass field pose a hazard?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the pylons in the end zones made of material that will not cause injury if a player runs into them?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the lines marking the field made out of any substance that could cause injury to a player's eyes or respiratory system?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the football field been inspected in 10-yard increments before the practice or game by walking across the grass and looking for balls, equipment, garbage, glass, rakes, shovels, or any other objects that should be picked up and cleared away before play begins?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have objects been cleared from the field before play begins?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If the field is made of artificial turf, has it been checked for exposed and unmatched seams and any other irregularities in the turf?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the grass been mowed before the event?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have sprinkler heads, irrigation stand pipes, and drainage hole covers been inspected to make sure they will not pose a hazard to players?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have rocks and clumped mud been removed from the field to eliminate tripping hazards?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have all tripping hazards been eliminated before play begins?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for inspection of the football field?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

STRUCTURES ON THE FOOTBALL FIELD

Goalposts and sideline markers can pose a hazard to players. The following questions should be asked in this regard.

Considerations	Yes or No (check one)	Notes for follow-up
Are the goalposts in good condition?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the goalposts sturdy and well anchored?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Can the goalposts be secured so they cannot be torn down or tampered with when not being used?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the goalposts located in the back of the end zone so as to prevent injury from players running into them?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have the goalposts been sufficiently padded to protect players?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the sideline markers made of material that will likely cause injury to players?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the sideline markers padded and made of a thin material with flat (rather than spiked) bottoms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for structures on the field?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PREPARING THE FOOTBALL FIELD FOR PLAY

After inspections have been performed and documented, defects and hazards should be repaired or removed before play begins. The following questions should be asked when preparing the field for play.

Considerations	Yes or No (check one)	Notes for follow-up
Have lines on the field been marked with slaked lime that could cause serious eye damage to players when tackled?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have you made sure the substance (chalk or paint) used to mark lines on the field will not be hazardous to players?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If a hazard cannot be corrected before play, has it been determined whether the field is safe for play or whether to cancel play?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If the field is safe for play but a hazard exists on the field, have clear and adequate warnings been provided to all players and other persons who will be utilizing the area of play (e.g., coaches, referees, and other officials)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are extra balls and other equipment removed from the field during play?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If the weather is excessively hot and humid or if there is lightning or rain, has the game or practice been relocated or canceled to prevent injuries or illnesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for preparing the field for play?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PLAYING ON FIELDS THAT ARE USED FOR OTHER PURPOSES BESIDES FOOTBALL

Sometimes injuries occur when a field is used for a sport it is not intended for. If the structure of the field or objects or infrastructure that is part of the field can cause injury when it is being used for football, you should consider moving your game or practice to a more appropriate field. The following questions should be addressed.

Considerations	Yes or No (check one)	Notes for follow-up
Is the field designed and intended for football? If No, list what other sports or activities the field is used for in the Notes column.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the field been properly designed for dual purposes? If No, list what hazards might exist if you use the field for football.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have all dangerous items or equipment been removed or separated from the field?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for fields that are used for other purposes besides football?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PLAYING ON FIELDS THAT ARE USED FOR OTHER PURPOSES BESIDES FOOTBALL

Sometimes injuries occur when a field is used for a sport it is not intended for. If the structure of the field or objects or infrastructure that is part of the field can cause injury when it is being used for football, you should consider moving your game or practice to a more appropriate field. The following questions should be addressed.

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Has the field been properly designed for dual purposes? If No, list what hazards might exist if you use the field for football.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have all dangerous items or equipment been removed or separated from the field?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for fields that are used for other purposes besides football?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

LIGHTING OF FOOTBALL FIELD AND SPECTATOR FACILITIES

If football is played in the dark, it is important to make sure there is sufficient illumination. The following questions can be asked on this topic.

Considerations	Yes or No (check one)	Notes for follow-up
Are the lights illuminating the field turned on before dusk?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Do the lights provide proper illumination of the field (i.e., not too bright or too dim)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have light poles been inspected for stability and safety?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the bleachers or stands and other spectator areas sufficiently illuminated?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for the lighting of field and spectator facilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

FOOTBALL HELMETS

Football helmets are made of hard plastic that is lined with absorbent material, such as air cells or foam. Each helmet should have a removable face mask that will protect the player's face from injury. The quarterback's helmet will likely have an earpiece, allowing the coach to communicate plays to him. The following questions address helmet fit and safety.

Considerations	Yes or No (check one)	Notes for follow-up
Are there helmets available to fit each player?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have the helmets been adjusted so they fit each player properly?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the person adjusting the helmets been sufficiently trained in doing so?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Do helmets have an NOCSAE or equivalent safety seal?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Do the helmets provide full coverage to the ears and jaw?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Do the helmets have face guards?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the helmets light enough so as not to cause injury?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have players been instructed as to how to care for their helmets?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have players been instructed not to throw or sit on their helmets?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have players been instructed not to modify their helmets in any way?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is an air pump or other device available during games and practices to reinflate air bladders in the helmets?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are helmets inspected on a regular basis by a helmet reconditioning company or comparable experts to determine if they are in good condition?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the helmets designed for the age and experience level of athletes using them (e.g., junior high school, high school, college or professional)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for helmets?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PROTECTIVE FOOTBALL EQUIPMENT

Football players have to protect themselves from injuries that might be sustained while tackling and being tackled. Because of the full body contact and potentially violent nature of the game, it is important that each player be fully equipped with well-fitted protective equipment that is free from defects. The following questions should be asked in relation to protective equipment.

Considerations	Yes or No (check one)	Notes for follow-up
Are there shoulder pads, neck support pads, shin guards, mouth guards, rib pads, hip pads, lumbar pads, forearm pads, knee pads, thigh pads, and athletic supporters available to fit each player?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the equipment been adjusted so that it fits each player properly?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the person adjusting the equipment been sufficiently trained in doing so?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for protective equipment?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

OTHER FOOTBALL EQUIPMENT ISSUES

All equipment that is used in football should be subject to scrutiny. Make sure players are using safe balls, wearing proper cleats, and not wearing anything, such as jewelry, that could injure themselves or other players. You should ask the following questions.

Considerations	Yes or No (check one)	Notes for follow-up
Will players need to wear cleats? If Yes, list what type of cleats the players will need to wear in the Notes column.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are the cleats appropriate for the age level and field surface?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are players instructed to remove jewelry and watches?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for other equipment issues?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

INSPECTION OF FOOTBALL SPECTATOR FACILITIES

Before football games, parking lots may be used for tailgating parties, where spectators consume alcoholic beverages and food. People may be grilling food, which could cause a fire or burn injuries. Special attention should be given to areas where tailgating parties are held. Your parking lot and surrounding grounds should be inspected and monitored and the following questions asked.

Considerations	Yes or No (check one)	Notes for follow-up
Is security adequate in the parking lot and surrounding grounds?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is there proper lighting in the parking lot and surrounding grounds?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the parking lot well marked so that traffic is flowing safely?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there adequate personnel to assist with parking?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are parking personnel wearing bright and reflective vests or clothing with safety flashlights?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have parking personnel received training as to how to safely perform their functions?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there slippery areas or objects that might cause a person to slip or fall?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have warning signs been erected to inform visitors and others of slippery areas and obstructions?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is consumption of alcohol allowed in the parking lot?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there any city or county laws or ordinances that pertain to the consumption of alcohol in the parking lot?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If consumption of alcohol is allowed, have the necessary permits been acquired?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
May patrons bring coolers or alcohol into the facility?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is cooking or grilling allowed in the parking lot?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there any city or county laws or ordinances that pertain to cooking or grilling in the parking lot?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(continued)

Inspection of Football Spectator Facilities (continued)

Considerations	Yes or No (check one)	Notes for follow-up
If cooking or grilling is allowed, have the necessary permits been acquired?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is tailgating limited to ticket holders?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is tailgating restricted to certain hours?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are there other considerations for inspection of spectator facilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Athletic Liability

Elements of Negligence

1. Duty or Duty of Care
2. Breach of Duty
3. Proximate Cause
4. Damages

Duties of Athletic Administrators and Coaches:

- Duty to Supervise
 1. Athletics administrator's duties to supervise coaching staff;
 2. Supervise contests to make sure spectators don't create unsafe or disruptive environment;
 3. Supervise condition, safe usage, upkeep and maintenance of equipment and facilities.
 4. Consider the age of the participants
 5. Consider the number of participants
 6. Consider the ability level of participants
 7. Nature of danger involved in activity
 8. Consider proximity of danger to activity
 9. The duty to properly instruct
 10. The duty to warn
 11. Physically present
 12. Control impulsive behavior
 13. Provide competent instruction and structured practices that are appropriate for age and maturity of players
 14. Prevent foreseeable injuries and respond to injuries or trauma in an approved manner
 15. Lock and deny access to facility when competent staff is not physically present to supervise.
- Duty to plan in order to prevent injury or loss:
 1. Coaching competence
 2. Medical screening
 3. Appropriate activities that consider age, maturity, and environmental conditions
 4. Facility and equipment evaluation and improvement
 5. Injury response
 6. Warnings to athletes and their families
 7. Insurance of athletes
 8. Child advocacy in cases of alcohol or other drug use or family neglect or abuse

- Duty to Assess Athletes Readiness for Practice and Competition
 1. Health and physical readiness skills and physical condition of athletes
 2. Progression of skill development
 3. Medical screening in accordance with state regulations before participation
 4. Some children may require special medical assessment
 5. Injured athletes may not be allowed to return to practice or competition without written permission from physician
 6. Assessing readiness of disabled children pursuant to applicable law.

- Duty to Maintain Safe Playing Conditions
 1. Improve unsafe environments
 2. Remove or repair defective equipment
 3. Disallow access to unsafe equipment or environments
 4. Consider weather conditions (heat and cold)
 5. Plan for responding to dangerous weather conditions
 6. Building codes and laws adhered to as they relate to ventilation, air filtration, capacity and lighting.

- Duty to provide proper equipment
 1. Appropriate for age
 2. Clean, durable and safe
 3. Fitting in accordance with manufacturer's specifications
 4. Protective equipment worn as required for sport or activity
 5. Inspection and maintenance of equipment

- Duty to instruct properly
 1. Logical sequence of fundamentals
 2. Consider developmental level of the athletes
 3. Identify and avoid dangerous practices and conditions
 4. Instruction must demonstrate appropriate and safe techniques
 5. and include warnings of unsafe techniques and prohibited practices.

- Duty to match athletes
 1. Maturity
 2. Age
 3. Size
 4. Speed
 5. Skill
 6. Avoid mismatches in all categories

- Duty to condition properly
 1. Cardiovascular and musculoskeletal conditioning to prepare athletes for practices and competition
 2. Consider readiness and maturation
 3. Consider weather conditions that might impact student's health

- Duty to Warn
 1. Participants of unsafe practices that could cause injury or death
 2. Issue warning in writing and require students and parents to provide written certification of their comprehension

- Duty to ensure athletes are covered by injury insurance
 1. Screen athletes to make sure they are covered by family, school or other basic medical insurance
 2. Athletes shouldn't be allowed to participate without insurance
 3. Explain co-payments and deductibles

- Duty to provide emergency care
 1. Administer accepted, prioritized, standard first aid procedures in response to a range of traumatic injuries, especially those that are life threatening.

- Duty to develop an emergency response plan
 1. Develop plans for uninjured athletes while injured athlete is being attended to;
 2. Plans must be in place to ensure access to telephone, stocked first aid kit, spine board and other emergency response equipment;
 3. Plan for timely call to EMS and station personnel to allow access to injured person.

- Duty to provide proper transportation
 1. Use of bonded commercial carriers
 2. Self or family transportation with adequate insurance coverage
 3. Age and maturity of athletes considered when using public transportation

- Duty of Athletic Administrators to select train and supervise coaches
 1. Ensure that coaches are capable of providing safe conditions and activities as outline in list of duties.

Defenses in Negligence Actions

1. Comparative or Contributory Negligence
2. Statute of Limitations
3. Assumption of Risk
4. Waiver
5. Sovereign (Governmental) Immunity
6. No Supervisory Responsibility
7. Incident was Unforeseeable
8. Lack of Causation

Sports Facility Liability Issues

- The initial design and field construction or installation and any subsequent renovations.
- Field use different from that for which the field was designed.
- Maintenance issues and field conditions, with failure to inspect, identify potential problems and rectify them.

Limiting Liability

- Liability is the risk that your organization will be sued for injuries (or property damage) that occur at your facility.
- You can't eliminate liability, because some disasters are unforeseeable, but you can make your events as safe as possible, obtain waivers, and purchase liability insurance in order to reduce your risk.
- Facilities and athletic programs that have done everything they can to keep participants and visitors safe will be exposed to less liability.
- Venues can generally be held liable for injuries that result from situations that they knew or should have known were dangerous. If you know something is dangerous, you are obligated to mitigate the risk.

Constitutional Rights of Student Athletes

- Is suspension of student who criticized a coach a violation of student's first amendment right to free speech?
- Is suspension of a student-athlete who attended a party where alcohol was served a violation of student's first amendment right to freedom of assembly?

- Is suspension of student for failing a drug test a violation of the student's fourth amendment rights related to search and seizure?
- Suspension for misbehavior: Fifth and Fifteenth Amendment Due Process challenge.
- Punishment more severe than that given to others: Fourteenth Amendment equal protection challenge.

Hazing

- School and athletics personnel can be found vicariously liable in those situations where the official had knowledge that the hazing was occurring and exhibited deliberate indifference to immediately correcting the situation.
- Courts typically impose liability to schools who don't have a hazing policy or for developing a policy that is substantively inadequate or ineffectively implemented.

Sexual Harassment

- Knowledge of elements of a hostile environment sexual harassment claim
- Development and implementation of a strong and effective anti-sexual harassment policy that is communicated to all athletic personnel and student-athletes, and parents
- Knowledge and adherence to state's child abuse reporting statute.
- Courts have tended to find school and athletics personnel vicariously liable in those instances where the official when had knowledge that the harassment was occurring and exhibited deliberate indifference in correcting the situation.

Transgender Policies

- Civil rights guarantees in Title IX extend to all students, regardless of their sexual orientation or gender identity.

Disabilities Laws Applied to Athletic Programs

- Students with disabilities should be granted equal access to participate in school athletic programs, school clubs, intramural sports and physical education courses. If a student with a disability is not otherwise qualified to participate and reasonable accommodations can't be made, then schools have an obligation to provide sports participation opportunities through an adapted athletics programs or allied programs

Title IX and Gender Equity in Athletic Programs

- Equivalence between girls and boys teams as to:
Facilities and locker rooms
Equipment and uniforms
Travel and transportation
Access to quality coaching
Publicity and marketing support
Game and practice scheduling
Etc.