



Checklist

Revising or Drafting Effective Releases

A release is a multipurpose risk management tool that can benefit both the people who participate in an activity and the educational institutions that sponsor one. It can educate the person signing the document (the signor) about the potential risks of an activity. In addition, if a signor is injured while participating in an activity covered by the release, it may:

- Deter the signor from bringing a claim
- Act as leverage for negotiating the settlement of a claim brought by the signor
- Persuade a court to dismiss a negligence lawsuit filed by the signor

Only a small fraction of signed releases are ever subjected to judicial scrutiny. In fact, most benefits from a release do not hinge on a court's determination that the document is enforceable but on the perception of enforceability.

How to use this checklist

This checklist highlights guidelines for revising or drafting effective releases. Check the box if the statement in bold type is true. If it is not true, determine if modifications to the release are possible. The more checked boxes, the better. A high number of checked boxes increases the chances the release will be perceived as enforceable.

1 Prerequisites for Drafting or Revising a Release

Before drafting or revising, consider the activity that is the subject of the release, the risks, potential signors, and reviewers. A well-written release is informative about these issues.

- 1. The release describes a voluntary activity.**
Releases are most effective with activities not required by the institution for course credit or other reasons. Elective activities show the signor is not forced to participate or sign the release. Examples of voluntary activities suitable for releases include recreational trips, fitness center use, student clubs, and intramural sports.

Actions Needed

Actions Needed

-
- 2. The release is narrowly tailored and specific to the activity it covers.**
To help the drafter narrowly tailor the release, have the person most knowledgeable about the activity provide the following information:
 -
 - The start and end dates.
.....
 - If applicable, the different phases of the activity such as the preparation, setup, practice, and transition.
.....
 - The locations of the activity.
.....
 - The different representatives from the institution who will facilitate the activities.
List these individuals by their position, not their names.
.....
 - The participants and whether any of them are minors (that is, individuals under the age of 18 years old).
.....
 - The institution's role. Is the institution sponsoring the activity or allowing its premises to be used for the activity?
.....
 - The risks associated with the activity. For example, note if there is a risk of severe bodily injury or death.
.....
 - The skills required for the activity.
.....
-
- 3. The potential signors of the release have been identified.**
Examine the potential pool of participants for the activity and note their age and language preference.
-
- 4. None of the potential signors is a minor.**
A release is not enforceable against minors under the age of 18 (and in some states under the age of 21). For all underage signors, require that their parents or guardians sign the release. While parents cannot waive their child's right to sue, they can waive their own right to sue.
-
- 5. All of the potential signors understand English.**
If any of the participants do not understand English, employ someone certified in that person's language to translate the release.
-
- 6. The institution's legal counsel has agreed to either write or review the release.**
Since a release is a legal document, a lawyer with experience drafting releases in the relevant jurisdiction is an ideal drafter. Enlist legal counsel as a reviewer when the institution is using a layperson as the drafter or adapting a release developed by another organization.

2 Drafting or Revising Release Language

To show the signor understood what he or she was signing and its significance, use easy-to-understand language that is specific to the underlying activity.

-
- 7. The title explicitly conveys the purpose of the release.**

State clearly (a) which party is asking to be released from liability (that is, the institution), and (b) for what types of wrongs (that is, negligent actions). The following titles, for example, clearly denote the institution's request that the signor give up his or her right to sue the college for negligence:

.....

 - "Consent to Fully Release the (insert name of institution) and Its Representative From Future Negligence"

.....

 - "Full Release and Promise Not to Sue (insert name of institution) and Its Representatives for Negligence"

.....

Avoid titles that do not fully reflect this primary purpose, such as *assumption of risk, release, waiver, permission slip, sign-up sheet, indemnification, hold harmless*, or any other inaccurate title.

 - 8. The name of the institution and the party signing the release are accurate.**

To enforce the release, be certain that the names of the issuing and signing parties are correct. Where relevant, include each party's legal status or type of entity (corporation, company, governmental entity, and so forth). Also, ask the signor to print his or her full name and address.

 - 9. The activities constituting the subject of the release are described with sufficient detail.**

Incorporate information gathered about the activity (see check mark 2), such as the different phases of the activity, the locations, and the institution's role.

 - 10. The activity's start and end dates are correct.**

Provide a definable term for the covered activity and be sure the timeframe listed is accurate.

 - 11. The possible risks and injuries associated with the activities are noted.**

Incorporate the information about the potential risks of harm gathered for check mark 2. Specifically, note if the activity poses a risk of severe bodily harm or death.

 - 12. The signor acknowledges that he or she understands and is assuming the risks associated with the described activities.**

Consider a statement to this effect, and require the signor to initial this statement.

 - 13. The signor acknowledges that he or she is voluntarily choosing to participate in the described activity and is not required to do so by the institution.**

Consider a statement to this effect, and require the signor to initial this statement.
-

Actions Needed

Actions Needed

-
- 14. The release includes language stating “in consideration for his or her participation ...” the signor is agreeing to give up certain described rights.**
For a contract to be binding, each party must give something of value to the other (that is, consideration). In the case of a release, signors give up their legal right to hold another party liable in exchange for their participation in an activity.

 - 15. The language releasing the institution from liability stands out from the release’s text.**
Highlight only the language relinquishing the signor’s right to sue or bring claims by using bold-face type, all capital letters, different colored text, a box around the text, or underlining.

 - 16. The language releasing the institution from liability does not use legal jargon.**
State plainly that the signor is agreeing to assume responsibility for injuries caused by the institution’s negligence.

 - 17. The language releasing the institution from liability also releases the representatives of the institution.**
Be sure to include the institution’s representatives because the document will not cover claims against them if the release only mentions the institution as an entity.

 - 18. The signor is not asked to release the institution for injuries caused by its gross negligence or intentional and reckless acts.**
Do not ask a party to accept responsibility for another party’s gross negligence or willful misconduct; that would not be enforceable.

 - 19. The signor understands that he or she may have an attorney review the release before it is signed.**
Consider a statement to this effect, and require the signor to initial this statement.

 - 20. The spelling, formatting, grammar, and punctuation used in the release are all correct.**
Proofread carefully. Typos or errors can hurt the clarity of a release and its perceived enforceability.

③ Issuing and Storing a Release

The manner in which a release is issued is important. Signors need adequate time to read and understand a release. Additionally, institutions should develop a plan for collecting, reviewing, and storing signed releases.

-
- 21. A separate release document is issued to each signor.**
Give each signor a separate document to demonstrate that the signing party actually read and understood the release. A group document calls into question whether each member of the group read the release before signing.
-

Actions Needed

-
- 22. The signor is given the opportunity to read, contemplate, and negotiate the terms of the release.**

Create an environment that shows the signor had sufficient time to understand what he or she was signing and voluntarily chose to sign the document. Consider these ideas:

 - Prior to the start of the activity, hold a mandatory orientation meeting. Distribute the release at the meeting. Go over the release's contents. Cover the risks associated with the activity and safety strategies. Encourage questions from those in attendance. Upon conclusion, request that those in attendance sign and date the release.

 - If an orientation meeting is not possible, make sure participants receive a copy of the release at least one day before the activity begins. Provide contact information for an institutional representative who can answer questions about the release's contents. Also, consider putting this contact information into the body of the release.

 - Give the signor the option to pay a fee to opt out of signing the release. When the signor has an alternative to signing the release, it supports the voluntary nature of his or her signature. If offered, the fee charged should correlate to the institution's liability exposure when a participant does not sign the release. For example, determine if a fee of \$100 sufficiently covers the potential claims or increased insurance premiums that might result.
-
- 23. The signed release is stored according to the institution's record retention policy or for the term recommended by counsel.**

At a minimum, retain releases for the relevant statutes of limitations for bringing claims.
-
- 24. The release complements but does not supplant the institution's risk management efforts.**

A release is not a substitute for risk management. Rather, the document should be one part of an institution's overall strategy to manage an activity's risks. Ensure the institution takes additional steps to mitigate or eliminate the risks associated with the activity.
-

Resources

[Electronic Waivers](#)

[Minors and the Use of Releases](#)

[Getting One Consent at a Time](#)

[Release and Assumption of Risk Forms in Concussion Management](#)

[Cotten, Doyice, "How Broad Should Your Waiver Be?" In Sport Waiver \(February 2017\)](#)

[Eilerman, Eric, and Titlebaum, Peter, "Understanding Liability Waivers." In Recreation Management \(August 2009\)](#)

[League of Minnesota Cities. "Waivers: Are They Worth the Paper They're Written](#)

On?” St. Paul, Minn., (January 2009).

(All law review articles are available for download from Westlaw)

Connell, Mary Ann, and Savage, Frederick G. “Releases: Is There Still a Place for Their Use by Colleges and Universities?” *Journal of College and University Law* 29(3), pp. 517–617.

Fossey, Richard. “School Districts’ Negligence Release Forms: Are They Worth the Paper They’re Printed On?” *West’s Education Law Reporter*, Aug. 14, 2003.

Sample Releases

These sample releases demonstrate many of the points identified in the checklist. However, as samples, these releases are not narrowly tailored to an activity and do not constitute legal advice. An institution should not rely on these releases without seeking the advice of an attorney.

[University of California, Office of the President, Waivers and Releases](#)

[Goucher University Aquatic Center Participation Release](#)

[The University of North Carolina at Chapel Hill Volunteer Waiver of Liability](#)

Actions Needed

Sample Release

This sample release demonstrates many of the points identified in the checklist. However, as a sample, this release is not narrowly tailored to an activity. Rather, this release provides general information and does not constitute legal advice. An institution should not rely on this release without seeking the advice of an attorney.

Consent to fully release the university [insert official name] and its representatives from future negligence

WARNING: BY SIGNING THIS FORM, YOU GIVE UP IMPORTANT LEGAL RIGHTS! INCLUDING THE RIGHT TO SUE PLEASE READ CAREFULLY! ALL PARTICIPANTS MUST BE 18 OR OLDER

Name of participant: _____

Address of participant: _____

Phone No: _____

Birth date: _____

Student ID: _____

Emergency contact: _____

Relationship: _____

Phone No: _____

DISCLAIMER CLAUSE

The University, its officers, directors, employees, volunteers, members, and representatives (hereafter referred to as “the University”) are not responsible for any injury, loss, or damage sustained by any person while participating in the Activity, which might be caused by the negligence of the University.

ASSUMPTION OF RISKS

In consideration of my participation in the Activity, I acknowledge that I am aware of the possible risks, dangers, and hazards associated with my participation in the Activity, including the possible risk of severe or fatal injury to myself or others.

_____ (initial here)

These risks include but are not limited to:

- a. Risks associated with travel to and from location(s) to be visited during the Activity, including transportation provided by commercial, private and/or public motor vehicles

_____ (initial here)

- b. Possibility of bodily injury including broken bones, soft tissue damage, emotional distress, and even death incurred while transporting to, or participating in the Activity

_____ (initial here)

- c. Risks associated with returning to my residence after the Activity

_____ (initial here)

INDEMNIFICATION AND RELEASE OF LIABILITY

In return for the University allowing me to voluntarily participate in the Activity, I agree:

1. **TO ASSUME AND ACCEPT ALL RISKS** arising out of, associated with, or related to my participating in the Activity, even though such risks may have been caused by the negligence of the University
_____ (initial here)
2. **TO BE SOLELY RESPONSIBLE FOR ANY INJURY, LOSS, OR DAMAGE** which I might sustain while participating in the Activity, even though such injury, loss, or damage may have been caused by the negligence of the University
_____ (initial here)

ACKNOWLEDGMENT

I acknowledge that I have read this agreement, that I have executed this agreement voluntarily, and that this agreement is to be binding upon myself, my heirs, executors, administrators, and representatives in the event of my death or incapacity.

Signed this _____ day of _____, 20 ____,

Signature of Participant (must be 18 or over) _____

Printed Name of Participant _____



EduRisk™ provides education-specific risk management resources to colleges and schools and is a benefit of membership with United Educators (UE). As a member-owned company, UE is committed to helping educational institutions by offering stable pricing, targeted insurance coverage, extensive risk management resources, and exceptional claims handling.

To learn more, please visit www.UE.org.

The material appearing in this publication is presented for informational purposes and should not be considered legal advice or used as such.

Copyright © 2018 by United Educators Insurance, a Reciprocal Risk Retention Group. All rights reserved. Permission to post this document electronically or to reprint must be obtained from United Educators.

02/18