

**To:** Campus Risk Managers

**From:** Charlene Minnick, Assistant Vice Chancellor, Systemwide Risk Management & Public Safety

**C:** Campus Presidents  
Gail Brooks, Vice Chancellor, Human Resources  
Chris Helwick, General Counsel  
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**Date:** January 06, 2011

**Subject:** Technical Letter re: Liability Waivers Handbook

**Code:** RM 2011-01

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**Overview:** A recommendation was made in the Off-Campus Activities Systemwide Audit (09-54) to “Establish a systemwide policy requiring use of the *Release of Liability, Promise Not To Sue, Assumption of Risk and Agreement to Pay Claims* form for off-campus activities.”, and “Finalize a systemwide digital signature policy and specifically clarify whether electronic acknowledgments of the *Release of Liability, Promise Not To Sue, Assumption of Risk and Agreement to Pay Claims* forms through student portals are acceptable.”

**Audience:** Campus Risk Managers and/or those designees responsible for administering CSU policy and procedures related to the use of liability waivers.

**Action Item:** Pursuant to the Off-Campus Activities audit 09-54 this letter, with attachments, addresses the recommendation related to the development of guidelines regarding the use of electronic signatures on liability waivers.

### **Summary**

Executive Order 1051 established the attached waiver (attachment A) to facilitate a uniform and consistent application of risk control on all campuses in the California State University system. This waiver was developed for use in all campus planned or sponsored events.

Off-Campus Activities Systemwide Audit 09-54 identified the need to establish guidelines as to the use of electronic signatures on liability waivers.

In order to provide a single document resource related to the use of liability waivers for campuses to reference the attached “Release of Liability Handbook” (attached) was created. Said handbook addresses the use of electronic signatures.

**RELEASE OF LIABILITY, PROMISE NOT TO SUE, ASSUMPTION OF RISK AND  
AGREEMENT TO PAY CLAIMS**

Activity: \_\_\_\_\_

\_\_\_\_\_

Activity Date(s) and Time(s): \_\_\_\_\_

Activity Location(s): \_\_\_\_\_

In consideration for being allowed to participate in this Activity, on behalf of myself and my next of kin, heirs and representatives, I **release from all liability and promise not to sue** the State of California, the Trustees of The California State University, California State University, [campus name] and their employees, officers, directors, volunteers and agents (collectively "University") from any and all claims, **including claims of the University's negligence**, resulting in any physical or psychological injury (including paralysis and death), illness, damages, or economic or emotional loss I may suffer because of my participation in this Activity, including travel to, from and during the Activity.

I am voluntarily participating in this Activity. I am aware of the risks associated with traveling to/from and participating in this Activity, which include but are not limited to physical or psychological injury, pain, suffering, illness, disfigurement, temporary or permanent disability (including paralysis), economic or emotional loss, and/or death. I understand that these injuries or outcomes may arise from my own or other's actions, inaction, or negligence; conditions related to travel; or the condition of the Activity location(s). **Nonetheless, I assume all related risks, both known or unknown to me, of my participation in this Activity, including travel to, from and during the Activity.**

I agree to **hold** the University **harmless** from any and all claims, including attorney's fees or damage to my personal property, that may occur as a result of my participation in this Activity, including travel to, from and during the Activity. If the University incurs any of these types of expenses, I agree to reimburse the University. If I need medical treatment, I agree to be financially responsible for any costs incurred as a result of such treatment. I am aware and understand that I should carry my own health insurance.

I am 18 years or older. **I understand the legal consequences of signing this document, including (a) releasing the University from all liability, (b) promising not to sue the University, (c) and assuming all risks of participating in this Activity, including travel to, from and during the Activity.**

I understand that this document is written to be as broad and inclusive as legally permitted by the State of California. I agree that if any portion is held invalid or unenforceable, I will continue to be bound by the remaining terms.

I have read this document, and I am signing it freely. **No other representations concerning the legal effect of this document have been made to me.**

Participant Signature: \_\_\_\_\_

Participant Name (print): \_\_\_\_\_

Date: \_\_\_\_\_

*If Participant is under 18 years of age:*

I am the parent or legal guardian of the Participant. **I understand the legal consequences of signing this document, including (a) releasing the University from all liability on my and the Participant's behalf, (b) promising not to sue on my and the Participant's behalf, (c) and assuming all risks of the Participant's participation in this Activity, including travel to, from and during the Activity.** I allow Participant to participate in this Activity. I understand that I am responsible for the obligations and acts of Participant as described in this document. I agree to be bound by the terms of this document.

I have read this two-page document, and I am signing it freely. **No other representations concerning the legal effect of this document have been made to me.**

\_\_\_\_\_  
Signature of Minor Participant's Parent/Guardian

\_\_\_\_\_  
Name of Minor Participant's Parent/Guardian (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Minor Participant's Name

# Releases of Liability - Handbook

## I. Introduction

Releases of liability (“release”) are legal forms designed to transfer responsibility for injuries and property damage from one party to another. A properly administered release can protect the California State University and its employees from liability for injuries that occur to students or other individuals who participate in university activities on and off campus. A release is a valid and reliable legal tool under California law and should be used to provide a level of protection from liability for accidents, activities carrying certain inherent risks, and in certain circumstances the negligence of CSU employees.

CSU faculty and staff are responsible for conducting campus programs and activities in a manner that does not impose an unreasonable risk of loss or injury. If a department or program sponsors activities which involve risks of injury or damage to property and does not obtain a signed release, the department may be unnecessarily exposing the CSU, the campus and yourself to costly claims or lawsuits. The department would also be missing an opportunity to inform participants about the risks associated with an activity or event. Although these agreements are primarily legal tools, they also serve an educational purpose by making participants aware of potential risks. Often providing participants with this information is all that is necessary to avoid preventable accidents.

## II. Release of Liability, Promise Not To Sue, Assumption Of Risk & Agreement To Pay Claims

### A. Purpose

The *Release of Liability, Promise Not To Sue, Assumption Of Risk & Agreement To Pay Claims* signed prior to participation is considered a contract in which the participant agrees to excuse the CSU and its employees from fault or liability for losses associated with the activity in exchange for the opportunity to participate. If the participant agrees in advance that the CSU and its employees owe him/her no duty, then recovery from losses (medical expenses, property damage, etc.) may be barred.

### B. Elements

The Office of General Counsel has developed the *Release of Liability, Promise Not To Sue, Assumption Of Risk & Agreement To Pay Claims* that contains the following elements:

- A *release of liability and promise not to sue* if any loss results from participation in the activity.
- An *express assumption of risk* where the participant acknowledges understanding the nature of the activity and the risks involved, and chooses voluntarily to accept those risks.

- A *hold harmless agreement* where the participant agrees not to hold the CSU responsible for any loss that may result from participation in the activity.
- An *indemnification* where the participant agrees to pay the CSU for any losses it may suffer as a result of the participant's participation in the activity.

### III. Permission Slips

A permission slip requires a parent or guardian to give consent for a minor child to participate in an activity. Although permission slips provide a defense against claims that the CSU infringed upon the parent or guardian's authority over their child, permission slips do not absolve the CSU of liability if a loss occurs during the activity. Due to the limitations noted above, the use of a permission slip in lieu of the *Release of Liability, Promise Not To Sue, Assumption Of Risk & Agreement To Pay Claims* should be reviewed first by the campus University Counsel or risk manager.

### IV. Informed Consent

The *Release of Liability, Promise Not To Sue, Assumption Of Risk & Agreement To Pay Claims* developed by the Office of General Counsel contains the elements found in an informed consent. An informed consent transfers liability from the CSU for risks identified in the consent. The participant, parent or guardian who signs the consent acknowledges that he or she has read and understood the risks and agrees not to hold the CSU responsible for any harm that results from the risks listed. However, because the CSU may not be protected if a loss occurs due to a risk not listed on the consent, it should not be used in lieu of the approved waiver.

### V. Procedures/Strategies for Risk Management

While a release is an important risk management tool, it should not be relied upon solely to reduce the exposure to risk. The CSU bears responsibility for conducting its activities and events in a manner that reasonably protects the health and safety of students or other participants. For this reason, the following risk control measures should be utilized in addition to the use of a release:

- Conduct a risk assessment of the program/activity prior to the commencement of the activity.
- Inspect facilities and equipment for safety hazards frequently and take action to correct. Document actions taken.
- Train staff in emergency response procedures such as first aid and CPR.
- Train staff and participants on how to properly use facilities and equipment.
- Develop and enforce policies and procedures that minimize risk.
- Design programs that reflect the relevant safety standards of the given activity.
- Consider purchasing or requiring others to purchase appropriate insurance coverage as applicable.

Please refer to the attached "Use Grid" for information on what type of activities and events require the use of a release. The "use grid" is not all-inclusive and all activities may not be

addressed, as such the campus must use its discretion in determining what activities should require the use of the waiver.

## **A. Instructions**

Those responsible for organizing a campus-sponsored activity for which the *Release of Liability, Promise Not To Sue, Assumption Of Risk & Agreement To Pay Claims* is required should provide participants with the release sufficiently in advance of the activity to give each prospective participant a chance to read and consider the document. They should also inform participants if an alternative assignment is available and what steps to take to participate in the alternative assignment. Use a separate release for each participant.

Before distributing the release, insert the time, location and description of the activity. Be very detailed. For example, if the activity involves two or more locations, write down each location such as “the Getty Museum in Los Angeles and Angel Stadium in Anaheim.” If the event consists of two or more activities, include each activity such as “swimming, biking and mountain climbing.” Providing more details allows participants to better understand the risks involved and provides additional protection to a campus. Although the preference is that releases should be signed on an event-by-event basis, participants may sign for multiple events over a period of time so long as each event is mentioned and described in the release and the risks presented by each event are similar.

Do not change the format of the release in any way. Releases cannot be included as the “fine print” in a larger publication such as a brochure. They must be printed and viewed as a separate document. This separation makes it harder for participants to claim that they did not know what they were signing. If the campus believes a change is necessary, contact the campus counsel or risk manager prior to making the change.

General language has been provided to inform the participant of the types of losses that may occur. Any additional information the department wishes to furnish about an activity such as expected weather conditions or any specific risks in addition to bodily injury, damage to property, liability to others, and/or damage to property of others associated with the activity should be presented separately from the release. However, do not make any representations to those signing the release concerning the legal effect of signing the document.

Anyone who refuses to sign a release shall not be allowed to participate in the activity. The opportunity to participate is exchanged for the agreement to release the university from liability for injury or property damage that may result from participation. Occasionally someone signs the release after crossing out certain portions that they do not like or adding words to modify the release. The campus cannot accept an altered release.

## **B. Electronic Signatures**

Electronic signatures and acknowledgements can only be used if Government Code §16.5 and California Code of Regulations §22000 are adhered to and the student’s signature and acknowledgement can be authenticated and a copy of the authentication and process can be

produced upon request. It is recommended that campuses utilize existing security applications and access protocol when establishing an electronic signature process.

Electronic signatures and acknowledgements cannot be used for minors. Waivers signed by parent/guardians, must be a hard copy with “wet” signatures.

The electronic signature or acknowledgement must be stronger than simply clicking “I Agree”. It should require the full name of the participant that is signing along with an acknowledgement by the participant that by clicking/checking the subject electronic signature button, that they have read, understood and are accepting the waiver.

If these additional electronic safeguards can’t be initiated, then the use of a paper waiver / release with a “wet” signature must be used.

Waivers sent with an electronic signature or acknowledgement should be stored in electronic form. It is sensible to regularly backup or store waivers that are in electronic form on other media (i.e. burning to a CD) in case of hard drive failure.

### **C. Minors and Language**

There is no legal requirement to provide releases in languages other than English. In general, California courts have held that releases written in English signed by adults who cannot read English are valid. Please consult with the campus counsel or risk manager before translating the release into another language.

Participants under 18 years of age must obtain their parent/guardian’s signature prior to participating in an activity. Because the participant’s parent or guardian signs the release, there is no requirement to also have the participant sign the agreement, however a good practice would be to have the minor read and sign the waiver as well.

### **D. Retention and Storage**

Releases must be stored for at least three years after an activity ends. Documents signed by a parent or guardian on behalf of a minor must be retained for at least three years after an activity ends or until the minor turns twenty, whichever is longer. Departments or units who sponsor an activity requiring a release should store the release by activity date in alphabetical order by participant name. Doing so greatly expedites retrieval if a release is needed for a legal proceeding. If space becomes a problem, releases can be microfilmed or stored electronically in lieu of the signed original.

Executive Order 1031, *Systemwide Records/Information Retention and Disposition Schedules Implementation*, addresses the campuses responsibility to ensure compliance with legal and regulatory requirements while requiring implementation of appropriate operational best practices.

## VII. Frequently Asked Questions

*How long should I keep a release or an informed consent (collectively “release”)?*

Releases must be stored for at least three years after an activity ends. Releases signed by a parent or guardian on behalf of a minor must be retained for at least three years after the activity ends or until the minor turns 20, whichever is longer.

*How should I store the release?*

A release is not invalidated by the passage of time, but obviously the CSU must keep the document in order to assert it as evidence in a later claim or lawsuit. For this reason, organization and safe storage of releases are very important. Departments or units who sponsor an activity requiring a release should store the release by activity date in alphabetical order by name of participant. This greatly expedites retrieval if a release is needed for a legal proceeding. If space becomes a problem, releases can be stored electronically in lieu of the signed original.

*What happens if someone refuses to sign or attempts to modify the release?*

Anyone who refuses to sign a release must not be allowed to participate in the activity. Occasionally someone signs the release after crossing out certain portions that they do not like or adding words to modify the release. The campus must not accept an altered release.

*What if I want to change or add something to the release?*

Case law in California defines how releases should be printed, including their layout and font size. For this reason, do not change the format of the release in any way. Releases cannot be included as the “fine print” in a larger publication such as a brochure. They must be printed and viewed as a separate document. This separation makes it harder for participants to claim later on that they didn’t know what they were signing. If the campus believes a change is necessary, contact the campus counsel or risk manager prior to making the change.

*May a campus auxiliary be released from liability as well as the State, the CSU Board of Trustees and the campus?*

Many campus activities involve both the campus and one or more of its auxiliaries, which are separate legal entities. If the campus would like to add a campus auxiliary or any other organization to the list of entities being released from liability, contact the campus counsel or risk manager prior to making the change.

*What if the participant is a minor?*

A parent or guardian must sign the form if the participant is a minor. Because the participant’s parent or guardian signs the release, there is no need to also have the participant sign the release.

*What if the participant does not speak or read English?*

There is no legal requirement to provide releases in languages other than English. In general, California courts have held that English-language releases signed by adults who cannot read English are valid.

*May the release for a minor be consented to electronically?*

No.

*Does the release have to provide specific information about the types of risks associated with the activity?*

General language has been provided to inform the participant of the types of losses that may occur. If the campus would like to provide further information about the risks associated with the activity, it may do so as long as that information is presented separately from the release. However, do not make any representations to those signing the release concerning the legal effect of signing the document.

*Should a volunteer sign a release before volunteering?*

Individuals designated as campus volunteers are covered under the CSU's general liability and Workers' Compensation programs. For this reason, they do not sign releases prior to volunteering. For this same reason, employees acting within the course and scope of their employment do not sign releases. No release is necessary prior to a donor making a donation of money or property to the CSU.

*Should patients receiving medical treatment/physical rehabilitation or subjects participating in experiments be required to sign the model release?*

No. While patients receiving medical treatment/physical rehabilitation or subjects participating in experiments likely will sign a release or an informed consent, the department should contact the campus counsel or risk manager can provide information on the specific language that should be included based on the type of experiment or medical treatment/physical rehabilitation provided.

*What happens if a release is not used?*

By using a release the campus is demonstrating a commitment to exercising safe practices in conducting activities and being good stewards of the CSU's resources by providing a defense in the event of a claim or lawsuit. The chancellor has recommended the use of releases. Failure to use them may subject an individual campus or department to increased scrutiny or enhanced exposure to liability losses

## **VIII. Conclusion**

Releases of liability and informed consents represent a complex area of contract law. This handbook is general and is intended only to provide basic information. University Counsel assigned to each campus is available to respond to any questions or to assist in the use of releases and informed consents as part of the risk management process.