

Use of School Facilities

Policy statement

School boards have the right to control the use of school district facilities, but must be cautious in the exercise of that right to avoid liability and to reduce the risk of unreimbursed or uninsured loss. The proper control of school facilities is a multifaceted problem that involves a blend of the school district's philosophy for the use of its facilities, statutory requirements and constitutional implications. Whatever the recipe chosen by the school board to mix these ingredients, it should be spelled out in written policy and only after review by the school board solicitor.

From a philosophical standpoint, school boards will have to decide how they want their facilities used. Questions that will have to be considered and answered include the following:

1. Will the school board allow noncurriculum-related student groups to meet on school premises during noninstructional time?
2. Will the school board allow nonstudent groups to meet on school premises at any time?
3. If noncurriculum student groups or nonschool-related groups are permitted to meet on school premises, what conditions will be imposed on the groups with regard to such issues as: (a) rental fees; (b) supervision or policing; (c) insurance; and (d) cleanup and/or repair of damage. Obviously, the more onerous the conditions that are imposed, the less likely the groups will be able to use the facilities.

From a legal standpoint, there are a variety of laws and constitutional provisions that come into play. Section 510 of the School Code provides that "[t]he board of school directors of any district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of its school affairs" 24 P.S. 5-510. More specifically, Section 775 of the School Code provides that "[t]he board of school directors of any district may permit the use of its school grounds and buildings for social, recreation, and other proper purposes, under such rules and regulations as the board may adopt. *** Any board of school directors may make such arrangements as it may see proper with any officials or individuals for the temporary use of school property for school, playgrounds, social, recreation or other proper educational purposes. . . . The use thereof shall not interfere with school programs and shall be subject to reasonable rules and regulations adopted by the board of school directors." 24 P.S. 7-775. In view of these statutory provisions, it is clear that school boards have discretion to determine what use will be made of its facilities beyond the school program and to adopt reasonable rules and regulations governing that use.

However, other statutes and constitutional principles place certain limitations on the authority of school boards. The Equal Access Act, Pub.L. 98-377, 802, 20 U.S.C.A. 4071 et seq., provides that if a school district allows one or more noncurriculum-related student group to meet at its secondary schools during noninstructional time, it is unlawful for the secondary school to deny equal access or a fair opportunity to other students on the basis of the religious, political, philosophical or other content of the speech at the meeting. Where noncurriculum

student meetings are required to be allowed by virtue of the Equal Access Act, the school district can enforce the following conditions:

1. The meeting must be voluntary and student-initiated.
2. The meeting may not be sponsored by the school, the government, or its agents or employees in the case of religious meetings.
3. Employees or agents of the school district may be present at religious meetings only in a nonparticipatory capacity.
4. The meeting may not materially and substantially interfere with the orderly conduct of educational activities within the school.
5. Nonschool persons may not direct, conduct, control or regularly attend the activities of the student groups.

The motivation of those supporting adoption of the Equal Access Act was to require school districts to allow students to meet on school district premises for the purposes of conducting voluntary prayer in those situations where the schools allow other student groups to meet during noninstructional time for noncurricular-related matters. If school boards violate the provisions of the Equal Access Act, they may be subject to legal liability, including the payment of attorney fees to the group who may have sued.

The free speech clause of the First Amendment also has its mark limiting the authority of school boards to control the use of their facilities. Under the First Amendment, school boards are not required to open school district facilities to others or to allow their facilities and premises to be used by others for nonschool-related activities, but if they do, they must do so for all in ways which are not violative of the First Amendment. Permission to use school facilities may not be granted or denied on the basis of the content of speech or the viewpoints of those seeking to use school district facilities. Where access is allowed for other purposes, access may be required for certain religious uses. However, even where a school board is required to permit a use of its facilities in a manner that it may not desire, boards continue to be allowed to impose reasonable restrictions with respect to the time, place and manner of the use. Some of the restrictions that have been upheld by the courts include the following:

- Limitations on hours or number of people.
- Preregistration requirements.
- Traffic regulations.
- Payment of reasonable fees.
- Prohibition of uses that pose a clear and present danger of violence or disorder.

- Prohibitions against sales and fund raising.
- Uses which interfere with the usage of the property for school purposes.

Because of the First Amendment, school boards sometimes find that they are being required to permit uses that they find offensive or which are contrary to their beliefs as to what constitutes suitable use of publicly supported facilities. One way of dealing with this issue is to place in school board policy a statement referencing the First Amendment rights enjoyed by citizens and an explanation that the school board's approval of a particular use shall not be construed to be an endorsement of the individual or group or the message conveyed by the individual or group. The policy may also require that a notice be posted in each building that the school board's grant of permission to use school facilities by an individual or group is not and shall not be construed as an endorsement of the individual or group, or of the message conveyed by the individual or group.

Practical issues to address

If it is determined that individuals or groups will be permitted to use school district facilities, it is recommended that the use be subject to either a written license to use the facilities under reasonable restrictions as to time, place and manner, or a written contract setting forth reasonable limitations as to time, place and manner.

The decision whether to use a license or a written contract would depend upon whether the school district is charging a fee or requiring the individual or group to provide any services or consideration for the use of the facilities. If the individual or group is not providing any promises to the school district, a license permitting the use would be acceptable. If the individual or group is making any commitments to the school district, a contract format would be preferable. The actual issues that would have to be addressed or considered are the following:

- Legal name of the group/individual.
- If a group, type of legal entity - i.e., corporation, unincorporated association, etc.
- Proposed use.
- Facility requested.
- Equipment/services requested from school district.
- Number of participants.
- Date and time facilities are to be used.
- Whether food/beverages, alcohol or smoking will be permitted.
- Whether fund raising or commercial activities will be permitted.

- Responsibility for cleanup and damage.
- Supervision/security.
- Indemnification and/or insurance.

Model policy and contract

Because of the multiplicity of issues that must be addressed and because the method of dealing with one issue may have impact on how other issues must be handled, it is impossible to propose a universal policy or contract form that would be applicable in all circumstances. Instead, the board must work closely with its solicitor to craft a policy that reflects the board's will, yet at the same time does not run afoul of the statutory and constitutional provisions that are implicated. Nonetheless, illustrations of policies and contracts follow.

POLICY
Use of School Facilities

Purpose: School facilities of this district should be made available for community purposes, provided that such use does not interfere with the educational activities and programs of the school district.

Policy: **1. First Amendment.** Individuals and groups using and seeking to use school facilities have certain rights under the First Amendment to the United States Constitution. Under the First Amendment, with some exception, the school district may not prohibit use of school facilities solely on the basis of the content or viewpoint of the speech or expressive activities of the user. Therefore, the school district's approval of any request to use school facilities is not and shall not be construed to be an endorsement of the individual or group or the message conveyed by the individual or group. The school district shall post in each school facility a notice that the school district's grant of permission to use school facilities by an individual or group is not and shall not be construed as an endorsement of the individual or the group, or of the message conveyed by the individual or group.

2. Free Speech. Except as stated hereinafter, decisions by the school district under this policy shall not be made in consideration of the content or viewpoint of the speech or expressive content of the individuals or groups seeking to use school district facilities. However, in view of the mission of the school district, the school district prohibits expressive conduct that:

- a. Is obscene or pornographic.
- b. Is libelous.
- c. Is indecent or vulgar.
- d. Invades the privacy of another person in violation of the other's legal rights.
- e. Constitutes fighting words.
- f. Materially and substantially interferes with the educational process or the requirements of appropriate discipline in the operation of the school district.

3. School-related organizations

- a. The following organizations shall be considered to be school-related organizations for purposes of this policy only:

1. PTA or PTO

2. Band parents
 3. Choir parents
 4. _____
- b. School-related organizations shall be permitted to use the school facilities described hereinafter when not in use for scheduled school activities. No rent shall be charged to such school-related organizations, but they shall be required to pay fees whenever school employees are required to be present or requested to be present by the organization. School personnel are required to be present in the following situations:
1. Whenever the cafeteria is to be used
 2. _____

The superintendent or his/her designee shall determine the amount of the fee, which shall equal the salary of the school personnel that is supplied by the school district.

- c. The school facilities permitted to be used by school-related organizations rent-free are limited to the following:
1. Auditoriums
 2. Classrooms
 3. _____

School-related organizations are required to pay rent for the use of all other facilities in accordance with the rent schedule in effect at the time of the use.

d. License form. School-related organizations shall be granted a license in the form of the license attached hereto whenever they are permitted use of a facility rent-free under this policy. In the event that this policy requires the payment of rent for use of a facility, the contract attached to this policy shall be used. The group shall be subject to the terms and conditions of the license or contract, as may be applicable.

4. Nonschool Organizations

- a. The school district permits its facilities to be used by individuals or nonschool organizations when not otherwise in use.
- b. Any individual or nonschool organization desiring to use school facilities must apply for the use and, if the application is approved, enter into a contract with the school district setting forth

the terms and conditions of such use. All rent and fees must be paid at the time the application is submitted for consideration.

c. Rental rates. The rental rates for the various facilities that may be used by individuals or nonschool organizations are as follows:

1. Classrooms \$10 per use
2. Cafeteria \$200 per event
3. Senior high and junior high auditoriums \$250 per night
4. _____ \$ _____

d. Contract form. The contract to be used shall be as attached hereto.

Facility License Agreement

The _____ school district, (hereinafter referred to as the “school district”) gives _____ (hereinafter referred to as the “user”), permission to use _____. The school district shall retain possession of the premises at all times. This is a revocable license and user’s authority to use the facilities is subject to the following terms and conditions.

1. User shall have access only to the following: _____
2. User shall have access to the facilities described in paragraph 1 hereof only on the following dates and at the following times:
3. The school district, through its officers and agents, including police, may remove any objectionable person or persons from school district premises.
4. This license is automatically revoked if user brings or allows to be brought onto school premises any weapons, alcohol or any substance controlled by law.
5. User may use the facilities described in paragraph 1 hereof for the following purpose(s) only: _____
6. In consideration of this license, user shall pay the school district prior to use the following fees: _____
7. User may not cause or permit any damages to school district premises, property, furnishings, fixtures or equipment. and will not do or allow anything to be done which would damage or change the finish or appearance of the premises or its furnishings, fixtures, or equipment. User is liable for the cost of repairing damage, which may be done to school district property, including, by way of example and not limitation, furnishings, fixtures, or equipment. The school district shall determine the amount of the damage and the reasonable cost to repair any damage done. User shall pay this amount within 10 days of being notified of the amount. User may not bring or permit anyone to bring onto school premises anything that increases the risk of fire.
8. User holds the school district harmless from all claims for injury to or the death of any person, and for damage to or the loss of any property arising out of or attributed directly or indirectly to the operations or omissions of the school district. User indemnifies the school district for all damage to property belonging to the school district and for all injuries to or the deaths of any representative or employees of the school district resulting from all acts or omissions of user.
9. The school district is not responsible for user’s property. All protective services desired by user must be arranged by user. The school district is not liable for the acts or omissions of any protective services engaged by user.



- 10. This license may be revoked by the school district at any time and for any reason, with or without cause.
- 11. User shall provide the following insurance: _____
- 12. User shall comply with all applicable laws.
- 13. The school district may remove from its premises and facilities and dispose of or store, at its sole discretion, any personal property left behind by user or those participating in user's function or activity.
- 14. User may not obstruct the halls, ramps, entrances or lobby of the building. User shall keep the passageways clear at all times.
- 15. User agrees to pay all attorney fees incurred by the school district for actions arising from this license.
- 16. User agrees that no illegal, indecent, lewd, obscene or immoral conduct will take place.

_____ School district

By: _____

_____ User

By: _____

Title: _____

Date: _____

Application and agreement

Application is made to use school district property or facilities as follows:

1. Requesting organization/individual:
2. Full legal name:
3. Address:
4. Telephone number:
5. Contact person:

Name:

Address:
Telephone number:
6. Date of request:
7. Facility requested:
8. Equipment/services requested:
9. Dates and hours requested:

If granted permission to use the above property or facility and, if any, equipment or services, it is agreed by and between the school district and the requesting organization/individual as follows:

1. The requesting organization or individual granted use will abide by all policies, rules and regulations of the school district on the conduct and deportment of persons in or on school district premises or facilities, whether now or hereafter adopted.
2. The use of the property or facilities shall not, in any way, interfere with the operations of the school district or any of the programs or activities of the school district. If required for school district purposes, it is understood that the right is reserved to the school district to withdraw or rescind the grant of the use of the property or facilities on short notice.
3. Weapons, alcoholic beverages and controlled substances shall not be brought onto school district premises or into school district facilities. Smoking is prohibited in all school district buildings.
4. School district property, facilities and equipment will be used in a careful and prudent manner so as to prevent loss, defacement or damage. Good order and discipline

shall be maintained by the requesting group/individual.

5. The property or facilities will be vacated by the time set forth above and shall be left in as good a condition as when the use began. Unless payment is made for cleanup and cleanup is specifically requested, the property or facilities will be left in a thoroughly clean condition by the requesting group/individual. Performance of clean-up by the school district will not diminish or eliminate any liability for damages of the requesting group/individual.
6. The request organization (and the undersigned officer, agent or representative thereof individually and jointly and severally with the organization) or individual, agrees (a) to pay for and assume all and full liability for any loss or damages to persons or property or claims therefore resulting to or arising from the use of school district property or facilities by such organization or individual (and those granted access to the facility thereby) whether from an occurrence at the property or facility itself during such use, before or after such use, going to and from such use, in or about available parking areas, or otherwise; (b) to reimburse and/or hold harmless the school district, its board of directors, and the members, agents and employees thereof from any such loss, damage or claim, including, but not limited to, its or their attorneys' fees; and (c) to pay any attorneys' fees and costs paid or incurred by the school district to enforce any obligations imposed under this paragraph or otherwise herein.
7. The requesting organization/person shall provide to the school district, at least ten (10) days prior to the date of the first use, two copies of comprehensive public liability insurance policies for bodily injury or death in the minimum amount of \$ _____ for injury to one person, \$ _____ for one accident and property damage insurance worth _____ covering the use with a company licensed to do business in Pennsylvania. This policy must be taken out in the name of the requesting organization/person and the school district. In the event that an insurance policy is not obtained as required herein, the school district may arrange for insurance in accordance with this application and agreement, with all costs to be charged to the requesting organization/person. Failure by either the requesting organization/person or the school district to obtain insurance shall not diminish or eliminate any liability of the requesting organization/person.
8. The school district is not responsible for the property of the requesting organization/person or of any property brought on school premises or in school facilities in connection with the use of school property or facilities by the requesting organization/person. All protective services desired by the requesting organization/person must be arranged by the requesting organization/person subject to the approval of the school district. The requesting organization/person shall be liable for the acts or omissions of any protective services engaged. The school district is not liable for the acts or omissions of any protective services engaged.
9. The requesting organization/person shall comply with all applicable laws; all requirements of the police and fire departments and other municipal authorities, and shall obtain and pay for all necessary permits and licenses. The requesting organization/person shall pay all taxes required.



- 10. The school district may remove from its premises/facilities any personal property left behind by the requesting organization/person or by anyone using the facilities.
- 11. The requesting organization/person shall not obstruct the halls, ramps, entrances of lobby of any building nor permit any chairs or movable seats to be or remain in the passageways and will keep the passageways clear at all times.
- 12. The requesting organization/person assumes responsibility for the acts of all participants and/or spectators for liability, injury or property damage.
- 13. Alteration or relocation of items or components mechanical or otherwise is prohibited unless prior written approval has been granted by the school district.
- 14. A rental charge in the amount of \$ _____ , a service charge of \$ _____ and a clean-up charge of \$ _____ shall be paid at least ten (10) days in advance of the use of school district premises or facilities.
- 15. The requesting organization/person shall provide the following policing, traffic management and crowd control:

Date of request: _____

Signature _____

Printed name and title _____

The above application is approved denied, subject to the following additional conditions:

Date of Action: _____

_____ School District

By: _____ President

By: _____ Secretary