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NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY

Model Open Use Policy for School Districts



July 2015

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Support for this document was provided by a grant from the Robert Wood Johnson Foundation.

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Introduction

Over the past several years, shared use has emerged as a promising strategy for creating opportunities for physical activity. Shared use—also called joint use or community use—occurs when government entities, or sometimes private organizations, agree to open or broaden access to their facilities for community use. Too many cities and towns lack the resources residents need to be active, and finding safe, accessible, and affordable spaces to exercise and play is more challenging than it ought to be. Building new park and recreational facilities is expensive and takes a long time. A more efficient and cost-effective approach is to maximize the use of facilities that already exist. This is the essence of shared use.

Shared use can take many forms. Sometimes access is granted through a formal written agreement; other times, access is granted merely as a matter of historical practice. Regardless of how shared use occurs, the end goal is the same: opening access to facilities so community members can be physically active.

This model policy focuses on one particular shared use mechanism, the “Open Use Policy.” Open use refers to the practice of allowing free community access to school district property for individual play and physical activity without a partnership or agreement with another public entity or a third party. Open use is not a new idea. On the contrary, school districts across the country have been allowing open use informally for decades, and some school districts have formalized open use with policies and agreements.

An open use policy is one way—but not the only way—for school districts to provide free community access to recreational facilities. **The key distinction between an open use policy and other mechanisms for formalizing shared use is that the district is acting alone instead of in partnership with another entity.** This model provides an option for school districts that want to make open use official with a formal policy.

Why Shared Use?

Children and families want safe, accessible, and affordable places to exercise and play. However, too many communities are lacking the resources their residents need to be active.¹⁻³ Only a little more than half of the nation’s youth live in neighborhoods with parks, community centers, and sidewalks, and six out of every ten Americans do not live within a half-mile of a park.⁴ Not surprisingly, not everyone has the same opportunities to be active; some communities and neighborhoods have more access to recreational space than others.⁵ Low-income communities and communities of color consistently have the fewest resources for physical activity.^{1,6-14} In fact, non-white and lower-socioeconomic status (SES) neighborhoods are twice as likely as higher-SES white neighborhoods to have no facilities for physical activity.⁸

Research confirms that people with access to safe, high-quality space for play, exercise and recreation are more physically active.^{2,3,15–20} Adults who live within a half-mile of a park may be more likely to exercise regularly than those who live farther away.²⁰ Similarly, children who live near parks and recreational facilities are more active and less likely to be overweight or obese than those who live farther away.^{8,21} That said, proximity to recreational resources is not always enough. Children and adults are less active when they live in neighborhoods that are perceived as unsafe or have high levels of social disorder (like loitering and public drinking).⁵

Only about a quarter of children and youth (ages six to 15)²² and about half of adults²³ meet daily physical activity recommendations. The increasingly sedentary nature of our lives is one of the drivers of high obesity rates and associated medical conditions.²⁴ In the United States, more than two-thirds of adults²⁵ and nearly a third of children and adolescents aged two to 19 years²⁶ are overweight or obese. Over the last 30 years, obesity and overweight rates have soared in all age groups, particularly among children.^{27,28} After decades of steady increase, overall adult^{25,29} and childhood^{26,29–31} obesity rates appear to have leveled off. Nonetheless, existing obesity rates are still staggeringly high, especially for low-income people and people of color.^{25,26,32,33}

Obesity increases the risk for many health conditions, including diabetes, heart disease, and some cancers.³⁴ The rise in obesity rates has been mirrored by a sharp rise in diabetes rates for both adults³⁵ and children.³⁶ If current trends continue, experts predict that one in three American adults will be diagnosed with diabetes by 2050.^{35,37} More than half of all Latino adults and African-American women are expected to develop type 2 diabetes in their lifetimes.³⁸ Opening up more spaces for people to be active is a critical piece in combating the obesity and diabetes crises.

Shared Use as a Strategy to Maximize Recreational Opportunities

Shared use is a widely promoted strategy for increasing physical activity. The Centers for Disease Control and Prevention, the Institute of Medicine, the American Heart Association, and other public health advocates have all pointed to shared use as a key strategy in providing more access to recreational space.^{39–42} Because resources for physical activity are not equally accessible to all (which, in turn, exacerbates disparities in obesity and related chronic disease rates), shared use may be a way to create the only opportunities available for people in some communities to engage in physical activity.

Public schools are usually the starting point for shared use in a community, and for good reason. Public schools have been characterized as a “public good”⁴³—they are taxpayer funded, located in most communities, and, in some states, even designated as “civic centers.”⁴⁴ They typically have recreational facilities—playgrounds, tracks, fields, basketball

and tennis courts, pools, locker rooms, multi-use rooms, and sometimes gardens and kitchens—that are appropriate for community use. In many communities, schools may be the *only* source of recreational facilities. Often these facilities are unused or underused during non-school times (after school, weekends, and holidays). Allowing public use of school facilities is also much more cost-effective than building entirely new facilities.

In many communities, the public already uses school recreational facilities on an informal basis; there may be no official policy or agreement, but long-standing tradition grants implicit permission for community use. Increasingly, school districts and public health advocates are looking for ways to formalize shared use of school facilities through written policies or agreements. Formal policies and agreements are not necessarily legally required, but can help the school district and community come to a shared understanding of their respective rights, roles, and responsibilities; formalize that shared understanding; and help provide continued access over time.⁴⁵ Written policies and agreements can also help create consistency and accountability throughout a school district.⁴⁴

Mechanisms for Formalizing Shared Use

School districts can use a number of mechanisms to formalize community access to district recreational facilities:

Community Use of Facilities Policies: A 2006 survey of school principals found that a median of nearly 90 percent of middle and high schools nationwide allow community-sponsored teams, classes, or lessons to use school physical activity facilities.⁴⁶ Most school districts have Community Use of Facilities Policies that govern this type of third party use. Under these policies, users are often required to sign an agreement or contract and pay a fee, and they may be required to provide proof of insurance.⁴⁷

Shared Use Agreements: A shared use agreement is a formal agreement between two separate entities—often a school district and a city or county—setting forth the terms and conditions for the shared use of property. Shared use agreements allow school districts to share with local governments or other organizations the costs and responsibilities incurred by opening their facilities. Subject to overriding state and local laws, the agreements can allocate some or all of the responsibility for costs, security, supervision, maintenance, repairs, and potential liability. Shared use agreements can provide access to facilities for use by groups for organized activities and/or by individuals for unstructured play and recreation. More information on shared use agreements, including model agreements and toolkits, is available at www.changelabsolutions.org/nuts-and-bolts.

Open Use Policies: A school board can adopt an official Open Use Policy that outlines the terms of free community access to district property for individual play and physical activity. An Open Use Policy is a promising strategy for school districts that want to provide free

community access beyond group programs hosted by third parties (which is often governed by a Community Use of Facilities Policy). An Open Use Policy can also help those districts that do not have partnerships or agreements with other parties to open their facilities to the public.

Community Use of Facilities Policies, Shared Use Agreements, and Open Use Policies are not mutually exclusive. School districts can use these strategies individually or together to allow shared use of facilities. For example, a district may rent its fields to a softball league under its Community Use of Facilities Policy; share access to and responsibility for its tennis courts with the Parks and Recreation Department under a Shared Use Agreement with the city; and allow free community access to elementary school playgrounds and basketball courts under an Open Use Policy. The challenge for school districts, local governments, and public health advocates is to come up with creative ways to satisfy unmet recreational needs through efficient use of public resources, including school district facilities.

This model focuses on Open Use Policies as a tool for increasing community recreational access. More information on other shared use strategies is available at www.changelabsolutions.org/shared-use.

Is Open Use Just for School Districts?

This model Open Use Policy is written specifically for school districts. However, other entities with physical activity facilities, including community- and faith-based organizations, can also implement open use. The broad topic areas covered in this model would likely apply to other entities, but many specifics will differ. In addition, private property owners may face significantly different insurance and liability issues than school districts.

For more information on liability and insurance issues for nonprofits, see ChangeLab Solutions' fact sheet, *Covering Your Bases: Basic Tips about Insurance for Nonprofit Organizations*, available at www.changelabsolutions.org/publications/basic-tips-about-insurance-nonprofit-organizations.

For more information about shared use by faith-based organizations, including a Model Open Use Policy for faith-based organizations, see ChangeLab Solutions' fact sheet, *Congregation to Community: Shared Use by North Carolina Faith-Based Organizations*, available at www.changelabsolutions.org/publications/congregation-community. (Although this resource focuses on North Carolina congregations, it is applicable for faith-based organizations nationwide.)

Legal Issues

As with any policy it adopts, a school district considering an Open Use Policy must determine whether it has the authority to allow open use and what liability risks, if any, are associated with open use.

Legal Authority to Allow Open Use

Whether a school district can adopt an open use policy depends primarily on the authority granted to it under state law. School districts and their governing boards are agencies of the state and may exercise only those powers that are expressly granted by, or necessarily implied from, state law.⁴⁸ Most states authorize school districts to allow community use of school facilities, under some conditions, provided that such use does not interfere with the educational mission of schools.⁴⁷ Many states, such as California⁴⁹ and Utah,⁵⁰ have historically recognized that because taxpayers pay for schools, schools are “civic centers” that are available for community use. At least one state, North Carolina, expressly allows open use of outdoor school district facilities.⁵¹ Even where state law does not expressly state that school districts may open their facilities to the community, that authority may be implied from the general power a school district has to operate its property.⁴⁸

While many states’ laws authorize school districts to allow some community use of school facilities after school hours, these laws most often address use by groups for organized activities. For example, some states explicitly authorize use of school property by school-related groups or other organizations.^{52,53} Others require school districts to enter into agreements or leases with the individuals or group users of the property.^{52,53} Still others may require users to carry insurance to protect the school district from liability.^{49,52} In states that restrict or otherwise set conditions for use of school property, a school board must carefully evaluate the law to determine whether it can adopt an Open Use Policy.

Finally, even where state law allows a school board to adopt an Open Use Policy, generally, the district must carefully consider which recreational facilities are safe and appropriate for the public to use without supervision. Other state laws may place restrictions on unsupervised use of certain facilities; for example, a state law may prohibit a school district from allowing access to a school swimming pool without a lifeguard in attendance.⁵⁴⁻⁵⁶

Before embarking on developing an Open Use Policy, school boards should consult with the district’s legal counsel to determine their authority to allow open use.

Liability

Open use may give rise to concerns similar to those raised in more traditional shared use efforts, namely the potential liability that a school district or its personnel may face in case of an injury or property damage.⁵⁷⁻⁵⁹ All 50 states have their own laws governing liability, and all offer some legal protections for public entities (like schools) in the event of an injury or property damage that occurs on public property. These legal protections vary by state, but are usually found in state law in the form of governmental immunity, recreational user immunity, or both.

Before developing an Open Use Policy, school boards will need to work with the district's legal counsel to understand the liability laws in their state. ChangeLab Solutions has created a variety of tools to help communities to assess, understand, and manage liability. For more information, visit www.changelabsolutions.org/common-barrier-liability.

Risk Management

In addition to the liability protections provided by state law, school districts can protect themselves through insurance and prudent risk management.^{57,58} While state laws may or may not impose specific insurance requirements on school districts, most districts insure themselves against liability. Most school districts have a risk manager (or someone who fills that function), and many have formal risk management programs in place to analyze exposure to risk and determine the best way to handle it. All districts can engage in risk management by complying with health and safety laws designed to protect students, employees, and visitors at the school; ensuring that school buildings and grounds are maintained in a safe condition; and carefully supervising and protecting school grounds, facilities, and equipment.

School districts that are considering adopting an Open Use Policy should work with risk management staff to review existing insurance policies. This can help the district determine whether it would be adequately covered if it adopted an Open Use Policy.

Checklist for Developing an Open Use Policy

School boards are encouraged to work with staff and officials from individual schools (particularly principals, physical education teachers and coaches, after-school program staff, and maintenance staff) as well as parents, students, and other interested community members and groups to develop an Open Use Policy. Some municipal agencies, including public health and parks and recreation departments, and/or community groups may already be working on active living strategies, so districts are encouraged to partner with those groups to ensure coordination across strategies and policies.

The following checklist outlines a number of key steps and considerations in developing an Open Use Policy:

- Identify community needs for recreational space and areas with the most need.
 - Work with local community groups and health care providers to identify needs.
 - Work with the local health and planning departments to create maps and datasets.
 - Prioritize areas that have the greatest need for recreational space.
- Inventory school district facilities to identify sites that best serve unmet needs and assess their suitability for open use.
 - Consider factors such as the condition of the property, ease of access to the property, and buy-in from school personnel and families.
- Form a committee or task force to develop the Open Use Policy and be responsible for implementation, monitoring, and revision.
 - Invite different community members to participate, including district staff and officials, school staff and officials, parents, students, and interested community members and groups.
- Identify and review existing school board policies and agreements that address public access to school district facilities.
- Determine the scope and details of open use and other operational issues, including
 - which facilities to include in the policy;
 - the hours of open use;
 - access and security (particularly important for indoor facilities);
 - maintenance and custodial services;
 - parking and restroom access; and
 - permitted and prohibited uses.
- Develop an implementation plan to ensure that school sites comply with the policy.
- Develop a community engagement plan to promote the policy.

- Engage allies and potential partners, including municipal agencies (including health and parks and recreation departments) as well as community groups working on active living strategies.
- Determine methods of policy evaluation, including what data to collect and the nature and timing of the evaluation.
- Try to include an assessment of both school district and community experiences with the Open Use Policy.

Adopting this Model Policy

Below is a model Open Use Policy that can be adopted by school districts that would like to open school facilities for community recreational use. There is no one-size-fits-all solution when it comes to school district policy. Some school districts may choose to insert portions of the model into accompanying Administrative Rules. Others may decide to incorporate relevant language into their existing Community Use of Facilities Policy. In either case, we recommend clearly delineating between use by *groups* that may be subject to a *fee* and *free* use by *individuals*.

Once a school district has determined where and how to incorporate open use into their suite of board policies, it will need to make other changes for consistency and follow the appropriate procedures for amending their policies. In the model, language written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the policy. “Comments” describe the provisions in more detail or provide additional information.

Board Policy XX: Open Use of District Recreational Facilities

The [*insert name of school board*] (“Board”) acknowledges that district facilities are a public resource funded by taxpayers in this community. Board further acknowledges that children and families in [*insert name of town or city located in*] desire greater access to recreational space for play and exercise. [*Insert name of state and cite to state statute*] state law allows school buildings and grounds, when not in use for school purposes, to be used for public educational and recreational activities. It is the policy of [*insert name of school district*] (“District”) to allow community members to use Open Use Facilities, as defined below, for recreational purposes when such use does not interfere with school programs and activities.

Open Use Facilities

This policy shall apply to (1) the outdoor portions of all District facilities and grounds, including [*tracks and fields, playgrounds, and outdoor sports facilities*] (“Outdoor Open Use Facilities”) and (2) indoor school facilities suitable for recreational use, including [*gymnasiums, hallways, multi-purpose rooms, and locker rooms*] (“Indoor Open Use Facilities”). Outdoor Open Use Facilities and Indoor Open Use Facilities are collectively referred to as “Open Use Facilities.”

COMMENT on defining “Open Use Facilities”

The definition of Open Use Facilities included here is fairly broad and includes both indoor and outdoor facilities. Defining and clarifying which district facilities will be open and accessible to the community is a key step in developing an Open Use Policy.

Outdoor facilities may include playgrounds; basketball courts; tennis courts; multi-use black top areas; tracks; baseball fields; football fields; soccer fields; multi-use playing fields; and school gardens. Indoor facilities may include gymnasiums; weight rooms; locker rooms; multi-purpose rooms; and even swimming pools. The logistics of providing access to indoor facilities can be complicated, requiring access, activation of heating or air conditioning systems, and management of equipment usage. An Open Use Policy that includes indoor facilities will require more detailed information on how community members will access those facilities.

School districts can choose to provide access to all facilities that fit into a certain category (e.g., all elementary school playgrounds and basketball courts) or only to certain named facilities (e.g., playgrounds at ABC Elementary School and basketball courts at XYZ Middle School). Regardless of its approach, a school district should ensure that the Open Use Policy and communications to the community (including signage) about the policy clearly identify which facilities are accessible.

Open Use Hours and Priority

The District shall be entitled to the exclusive use of all Open Use Facilities for school and school-related educational and recreational activities, including before- and after-school programs, summer school, and, at such other times as Open Use Facilities are being used by the District or its agents.

When not in use by the District, Open Use Facilities shall be made available to community members at no cost for play and exercise as follows: (a) Monday through Friday, between the hours of [6:30 am and 8:30 am] and [4:00 pm until dusk]; and, (b) Saturday, Sunday, and school holidays, between the hours of [6:30 am and dusk]. For the purposes of this policy, these times will be referred to as “Open Use Hours.”

COMMENT on “Open Use Hours and Priority”

The Open Use Hours provided here are extensive and include times both before and after school and on weekends and holidays. Determining the exact Open Use Hours will require a careful examination of when and how the District currently uses the Open Use Facilities. School districts can set different Open Use Hours for different Open Use Facilities. While Open Use Hours can be scheduled more easily for times when school is not in session, Districts and communities are also encouraged to consider strategies for allowing community members to access appropriate Open Use Facilities throughout the school day and week.

Parking

During Open Use Hours, the District shall make parking lots at Open Use Facilities available at no cost to community members using Open Use Facilities.

COMMENT on “Parking”

This provision on parking may not be appropriate for all school districts, particularly urban districts with limited parking availability and easy access for community members who are walking, biking, or taking public transportation to the facilities.

Restrooms

During Open Use Hours, the District shall make restrooms at Open Use Facilities available at no cost to community members using Open Use Facilities.

COMMENT on “Restrooms”

This provision on restrooms may not be appropriate for all school districts or all Open Use Facilities. Allowing access to restrooms is more likely to be feasible either for Indoor Open Use Facilities or when restrooms can be accessed by users directly from Outdoor Open Use Facilities without entering the school building.

Permitted Uses

Community members may utilize Open Use Facilities during Open Use Hours for play and exercise.

Prohibited Uses

The following are not permitted in Open Use Facilities:

- a. smoking or use of any tobacco-related products;

- b. alcoholic beverages;
- c. drugs or illegal substances;
- d. firearms or weapons; and
- e. other use or activity otherwise prohibited by law.

COMMENT on “Prohibited Uses”

The prohibited uses listed can be modified to meet each community’s needs. They could also include pets, except service animals; glass containers; entering closed areas; motorized vehicles, except wheelchairs; plant removal; or any other provisions that suit the needs of the district. If other policies or agreements address prohibited uses (including existing Community Use of Facilities Policies), school districts may want to duplicate those here (as appropriate) to help ensure understanding by community members of what is and is not allowed.

Signage

District shall post signs at each school with Open Use Facilities that shall provide public notice of the Open Use Hours and the rules pertaining to Open Use Facilities.

COMMENT on “Signage”

Posting signs at Open Use Facilities that clearly state Open Use Hours and pertinent rules is important for communicating rules and expectations to users. School districts may be able to partner with local health departments, grantmakers, or businesses to find funds to pay for new signage.

Limited Liability

[Insert name of state and cite to state statute] law limits the liability of school districts, school boards, and school officials. Access to Open Use Facilities is limited to the recreational use and enjoyment of community members.

COMMENT on “Limited Liability”

This provision provides sample language only; school districts should consult with their legal counsel to develop language that accurately reflects their state’s law on school district liability. It is important to note that including a provision on liability in an Open Use Policy does not change the district’s liability under state law, it merely serves as a statement of existing applicable law.

Evaluation

District shall develop criteria and components for an evaluation and assessment of this Policy, in particular, the level of utilization by community members and the impact on Open Use Facilities.

COMMENT on “Evaluation”

Districts are encouraged to formally assess and evaluate the success and impact of their Open Use Policy. Areas of evaluation could include level of utilization of Open Use Facilities; demographics of users of Open Use Facilities; common activities during Open Use Hours; any impact of Open Use on the maintenance of facilities; and school site support for Open Use. The evaluation and assessment can help districts plan and allocate resources as well as build support for Open Use.

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