

Developing Facility Use Agreements

Manage the risk associated with lending school facilities to community groups through facility use agreements

Like the relationship with your neighbors at home, public schools are deeply intertwined with their communities. Community members often think of the local school as partly theirs – after all, it is public property. Residents access its resources, large green spaces, play structures and athletic fields, and they volunteer and improve it.

School districts have fostered this relationship over time, and the buildings serve as both learning and community centers. Groups of all types meet for work and play. What's the best way to proactively manage the risk associated with lending facilities to the community at large? The answer lies with using facility use agreements.

■ The Basics

First and foremost, every school district should have a written policy and procedure for allowing outside groups and people to use district facilities. The policy should address the use of facilities by for-profit and non-profit groups, groups of people which are not legal entities, and noncurriculum-related student groups, etc.

Your district will likely receive requests for both long- and short-term time periods. Will the group be meeting every other week for six months, or is a school building being

leased for five years?

Care should be taken to ensure that use is allowed on a consistently uniform basis in order to avoid situations in which disapprovals are perceived by the requestors as discriminatory.

Prepare for requests that involve potentially controversial groups or topics. There are a myriad of state and federal laws and rulings, (the citation of which is beyond the scope of this article) guiding the process of deciding the purposes for which the facilities can be used.

Determine what fee, if any, the users will be charged. Many districts limit the charge to the actual cost of use as determined by the school board.

■ Facility Use Agreements

Every district should have a facility use agreement template noting the terms and conditions applicable to using a facility by outside groups or persons.

Among other things, the facility use agreement specifies what the district expects in the event of damage, what is or is not allowed, who is allowed onto the premises, at what hours, where in the building and what insurance, if any, is required.

As Tom Wohlleber, business manager for the Middleton-Cross

Plains Area School District, says “Employing facility use agreements makes my job, as the district’s risk manager, easier.”

■ Recreational Agreements

A Wisconsin statute (§895.523) enacted two years ago, intends to encourage and support public schools’ efforts to make their facilities available to promote indoor and outdoor physical activities. Schools and their employees, etc., receive limited immunity against claims arising out of the recreational use of school facilities, so long as the recreational use is “held pursuant to a recreational agreement.”

■ Insurance from Outside Users

Theoretically, all outside groups or persons using school facilities should be required to carry liability insurance, provide a certificate of insurance substantiating its existence, and name the school as an additional insured on the user’s general liability policy.

According to Crawford Craft, area executive vice president of Arthur J. Gallagher’s Public Entity practice, “A facility use agreement is the most efficient way to transfer risk to the responsible party ... and when combined with a certificate of insurance naming the owner as an additional insured, is the single most

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useful risk management technique available to facility owners. And the best part — there's little or no cost to either party."

However, not all outside users of public schools carry general liability insurance; either because they are "just a group of people" coming together and have no legal identity, or they don't have the financial wherewithal to buy it.

All districts wrestle with the practical challenges of requesting outside groups to provide proof of insurance before using school buildings or equipment.

"It's a balancing act between encouraging the community's use of facilities, the size and nature of the outside group, the risks associated with the proposed use, and knowing that mandating proof of insurance might make the difference between the outside group being able to use, or not use, the facility," says Wohlleber.

Here are some guidelines for

when to require proof of insurance from the outside group:

- Is the group a chapter of a larger organization, such as the Girl or Boy Scouts or the Red Cross? If so, they should be required to provide proof of insurance.
- Does the outside group have a legal identity? Is it incorporated? Is it a 501(c)(3) recognized organization?
- What are the district's guidelines for charging a usage fee? Like requiring proof of insurance, some groups are unable to fund the board-determined, at-cost charge. Does the district waive the fee for some groups? If so, does it make sense to waive the insurance requirement for those same groups?
- Is the group affiliated in some form or fashion with the district, *i.e.*, PTA, booster club, etc.? Does the district waive the

insurance requirement for these groups?

■ How to Begin

Review your district's current facility use agreement template, policies and procedures. Have they been amended to address recreational agreements?

The WASB, in concert with two other organizations, have created an extensive checklist for helping districts with recreational agreement templates, policies and procedures. The document can be found in the online WASB Insurance Plan library at wasb.org under the Insurance Plan tab.

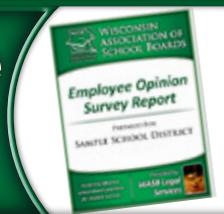
For further information, consult the February 2004 issue of *The FOCUS*, WASB's subscription policy publication, on "Community Use of School Facilities." To access this publication, visit wasb.org and select "Policy Publications."

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