

1<sup>ST</sup> READING: 8/17/2017  
2<sup>ND</sup> READING: 9/21/2017  
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## **COMMUNITY USE OF SCHOOL FACILITIES**

While the primary purpose of the school facilities is to educate students within this district, the school board recognizes that the facilities are a valuable community resource. Accordingly, the Superintendent may make school facilities available to individuals and community groups<sup>i</sup> without discrimination in accordance with this policy, provided the facilities are preserved for regular school activities.<sup>ii</sup>

Individuals and groups may use school facilities for the following purposes:<sup>iii</sup>

- A. Meetings by parent-teacher organizations and school booster organizations whose purpose is to support the operations of the schools and the school district;
- B. Meetings by employees' professional organizations comprised of school district employees;<sup>iv</sup>
- C. Instruction in any branch of education, learning, and the arts;
- D. Social, civic and recreational meetings, and entertainment, provided the events are open to the public;<sup>v</sup>
- E. Civic forums and community centers, provided the events are open to the public;
- F. Recreation, physical training and athletics, including competitive athletic contests for children and adults;
- G. Private academic tutoring or music lessons;<sup>vi</sup>
- H. Child care programs;
- I. Meetings, entertainment and occasions where admission fees are charged, when the proceeds are to be spent for an educational or charitable purpose, and the events are open to the public.<sup>vii</sup>

The superintendent may deny an application for use of facilities or terminate an individual or group's use for:

- A. Uses that are likely to cause a material and substantial disruption to school operations;
- B. Events and meetings promoting or sponsored by a political party;<sup>viii</sup>
- C. Political campaign events by someone running for office;
- D. Uses that interfere with school district maintenance and repair of facilities;
- E. Uses that could damage special equipment in the facilities;
- F. Uses that could reasonably be expected to or actually do give rise to a riot or public disturbance;
- G. Events or meetings of private for-profit entities;
- H. Events at which fees are charged for profit;
- I. Uses where alcoholic beverages or unlawful drugs are sold, distributed, consumed, promoted or possessed; and
- J. Uses prohibited by law.

The Boy Scouts of America, Big Sisters of America, Boys and Girls Clubs of America, Future Farmers of America, Girl Scouts of America, Little League Baseball, Inc. and any other group intended to serve youth under the age of 21 listed in Title 36 of the U.S. Code may use school facilities upon payment of suitable fees and costs according to the district fee schedule.<sup>ix</sup>

The superintendent may place reasonable time, place, and manner restrictions on the use of facilities.<sup>x</sup>

The superintendent shall set a fee schedule and shall administer it in a manner that does not discriminate based on viewpoint.<sup>xi</sup> All users shall be required to demonstrate adequate insurance coverage and shall agree to hold the district harmless from any and all liability resulting from their use of the facilities. All users shall be required to make clear in all announcements and publicity that their events and activities are not sponsored by the school district.

The superintendent may allow individuals and groups to use special equipment, such as audiovisual equipment, provided that the group uses an operator of the equipment who is approved by the superintendent.<sup>xii</sup>

Legal references: 16 V.S.A. §563 (3), (5) (Powers of school boards)

Boy Scouts of America Equal Access Act, 20 U.S.C. 7905

Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384 (1993)

Good News Club v. Milford Central Schools, 533 U.S. 98 (2001)

Travis v. Owego-Apalachin School Dist., 927 F.2d 688 (2d Cir. 1991)

Bronx Household of Faith v. Board of Education, 331 F.3d 342 (2d Cir. 2003)

Bronx Household of Faith v. Board of Education, \_\_\_ F.3d \_\_\_ (2d Cir. July 2, 2007)

Child Evangelism Fellowship of South Carolina v. Anderson, 47 F.3d 1062 (4<sup>th</sup> Cir. 2006)

Hickock v. Orange County Comm. College, 472 F. Supp. 2d 469 (S.D.N.Y. 2006)

Cross-reference: Student Clubs and Activities (Secondary)

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<sup>i</sup> This policy does not govern school-sponsored activities that are related to the curriculum, or student-run activities that are not related to the curriculum. The use of school facilities for those two purposes is governed by Policy F33.

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<sup>ii</sup> A district has the legal right to preserve its facilities exclusively for the purpose of conducting its educational programs. It could do that by prohibiting all community use of its facilities. However, once a district allows any community use of its facilities, then it has created either a public forum or a limited public forum. A totally public forum is one where all uses are permitted on a first come first serve basis. A limited public forum is one where certain categories of use are allowed. *Travis v. Owego-Apalachin School Dist.*, 927 F.2d 688 (2d Cir. 1991) (good overview of differences between types of public forums). This is the most common approach for school districts.

In a limited public forum, once the district allows a community group to use its facility for one purpose then it and must open the facilities to all other community groups wishing to use the facilities for the same genre of activity. Access to facilities may not be restricted based on the group's viewpoint. *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001). In these cases, the Supreme Court specifically held that religious groups' use of school facilities must be permitted when other groups seeking to teach morals have been permitted to use facilities. Furthermore, religious groups must be permitted to use school facilities for worship services that involve teaching morality if the district allows other groups who teach morals and character to use the facilities. *Bronx Household of Faith v. Board of Education*, 331 F.3d 342 (2d Cir. 2003). However, it is unclear at this writing whether schools may adopt a rule that prohibits use of facilities for religious worship services. See *Bronx Household of Faith v. Board of Education*, \_\_\_ F.3d \_\_\_ (2d Cir. July 2, 2007). A cautious approach, based on recent Supreme Court decisions, would suggest that even purely religious worship services must be permitted in school facilities.

<sup>iii</sup> This list is merely an example. An individual school district could decide to make this list broader or narrower. However, when designating categories of permissible uses, a district must remain viewpoint neutral. For example, if the district allows groups to meet to discuss anti-war activities, it must also allow groups to meet in support of the military.

<sup>iv</sup> As illustrated by the first two entries on this list, a district may allow certain types of groups, such as parent-teacher organizations or employee organizations to use school facilities. Such designations are constitutionally permissible because they do not specify the group by viewpoint. Similarly, a school district may adopt a policy that limits community use to groups whose members are mostly children or young adults, or that limits use of facilities to groups that are comprised predominantly of residents of the school district.

<sup>v</sup> There is no constitutional requirement that events be open to the public. However, many school districts have this requirement in order to prevent the use of school facilities for exclusive, private functions.

<sup>vi</sup> This is an example of a viewpoint neutral exception to the prohibition on for-profit activities.

<sup>vii</sup> Again, the requirement that the proceeds from admission-charging events be used for educational or charitable purposes is not a constitutional one. Rather it is a preference that many school districts might wish to make.

<sup>viii</sup> In *Hickock v. Orange County Comm. College*, 472 F. Supp. 2d 469 (S.D.N.Y. 2006), the court permitted school with a limited public forum to adopt a policy of excluding events that promote the activities of political parties, since this is viewpoint neutral. If a school district adopts a policy that permits political events, then it must permit all political groups to hold events regardless of their viewpoint.

<sup>ix</sup> Boy Scouts of America Equal Access Act, 20 U.S.C. 7905 allows youth groups of certain designated patriotic societies access to schools.

<sup>x</sup> Examples of a "time" restriction are that all groups conclude their meetings by 9 p.m. or that they limit the frequency with which they use facilities. A "place" restriction might be that the new gym not be used. A "manner" restriction might require all groups to leave the facility in the condition in which it was when they arrived. Such restrictions must be applied evenly to all groups and must not be designed to preclude particular groups from access.

<sup>xi</sup> As a matter of fiscal responsibility, fee schedules should take into account the actual cost to the district of the use of the facilities. Fees for different facilities may be tailored to the unique size or quality of the facility. Fees for

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one category of use may not be set differently depending on the type of group using the facility. It is permissible, however, for a district to set a schedule that charges no fees for parent-teacher organizations and employee professional organizations.

*Child Evangelism Fellowship of South Carolina v. Anderson*, 47 F.3d 1062 (4<sup>th</sup> Cir. 2006) held that it was unlawful to give school administrators discretion to waive fees for community groups' use of school facilities. The court left open the possibility that a set of narrow, objective, and definite standards that ensure viewpoint neutrality for fee waivers might be permissible. The district's policy of allowing free use for three types of school organizations and when in the best interest of the district, without defining the groups, was improper. While it is unclear to what extent this decision will be followed by other courts, districts should proceed cautiously when waiving fees.

<sup>xii</sup> As with the use of facilities themselves, if any groups are allowed to use special equipment, then all groups who meet the same objective criteria regarding skilled operators of the equipment must be allowed to use it, regardless of their viewpoint. Requiring a skilled approved operator is reasonable in order to preserve the equipment for its primary purpose of aiding the education of the district's children.