



CODE E20

COMMUNITY USE OF SCHOOL FACILITIES

Statement of Policy

Windham Northeast Supervisory Union and its member districts recognizes that although the primary purpose of the school facilities is to educate students within the district, school facilities are a valuable community resource. It is the policy of the (SU/SD) to make school facilities available to individuals and community groups without discrimination in accordance with this policy, provided the facilities are preserved for regular school activities.¹

Administrative Responsibilities

1. The superintendent may authorize the use of school facilities by community members for the following purposes, provided all relevant procedures are followed²:
 - 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;³
 - 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;⁴
 - 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;⁵
 - h. Child care programs;

¹ 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 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 uses 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 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.

² 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

³ 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.

⁴ 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.

⁵ This is an example of a viewpoint neutral exception to the prohibition on for-profit activities



- 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.⁶
 - j. The Boy Scouts of America, Big Sisters of America and Girls Club of America, Future Farmers of America, Girls 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 use of school facilities upon payment of suitable fees and costs according to the district fee schedule.⁷
2. The superintendent shall establish procedures for the use of school facilities by community members, which, at minimum,
- a. may include reasonable time, place, and manner restrictions on the use of the facilities;⁸
 - b. shall not discriminate based on viewpoint;
 - c. shall include a fee schedule for facilities use⁹;
 - d. shall require all users to demonstrate adequate insurance coverage;
 - e. shall require all users to agree to hold the district harmless from any and all liability resulting from their use of the facilities;
 - f. shall require all users to make clear in announcements and publicity that their events and activities are not sponsored by the school district; and
 - g. *[OPTION: choose one of the following and delete the other choice once your board decides whether/not to permit possession or use:]* shall prohibit possession or use of a firearm or a dangerous or deadly weapon.

OR

shall permit possession or use of a firearm or a dangerous or deadly weapon for instructional or other specific purposes, e.g. gun safety courses or gun shows.¹⁰

3. The superintendent may deny an application for use of facilities or terminate an individual or group's use for the following reasons:

⁶ 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.

⁷ Boy Scouts of America Equal Access Act, 20 U.S.C. 7905 allows youth groups of certain designated patriotic societies access to schools.

⁸ 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.

⁹ 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 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 (4th Cir. 2006) held that it was unlawful to give school administrators discretion to waive fees for community groups' use of school facilities because it presents too great a risk of viewpoint discrimination, which runs afoul of the First Amendment. 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. Districts should proceed cautiously when waiving fees.

¹⁰ 13 VSA § 4004 prohibits any person from knowingly possessing a firearm or a dangerous or deadly weapon while within a school building or on a school bus. However, the board of school directors, or the superintendent or principal if delegated authority to do so by the board, may authorize possession or use for specific occasions or for instructional or other specific purposes. Similarly, 18 USC § 921, which prohibits the possession of firearms on school grounds, carves out an exception for use by an individual in a program approved by the school. We encourage you to seek legal advice should your district decide to permit community members to possess or use of firearms or dangerous or deadly weapons in your schools for instructional or other specific purposes.



- 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;¹¹
- 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. any other uses prohibited by law.

<i>VSBA Review Date</i>	October 3, 2023
<i>Date Warned</i>	December 18, 2024
<i>Date Adopted</i>	February 19, 2025
<i>Legal References</i>	<p>16 V.S.A. § (3), (5) (Powers of school boards)</p> <p>13. V.S.A. § 4004</p> <p>20 U.S.C. § 7905 (Boy Scouts of America Equal Access Act)</p> <p>18 U.S.C. § 921 (Gun Free School Zones Act of 1990)</p> <p><i>Travis v. Owego-Apalachin School Dist.</i>, 927 F.2d 688 (2d Cir. 1991)</p> <p><i>Lamb's Chapel v. Center Moriches Union Free School Dist.</i>, 508 U.S. 384 (1993)</p> <p><i>Good News Club v. Milford Central Schools</i>, 533 U.S. 98 (2001)</p> <p><i>Child Evangelism Fellowship of South Carolina v. Anderson</i>, 47 F.3d 1062 (4th Cir. 2006)</p> <p><i>Hickock v. Orange County Comm. College</i>, 472 F. Supp. 2d 469 (S.D.N.Y. 2006)</p>
<i>Cross References</i>	Student Athletics, Clubs and Activities

¹¹ In *Hickock v. Orange County Comm.College*, 472 F. Supp. 2d 469 (S.D.N.Y. 2006), the court held that the college's policy of excluding events that promote activities of political parties is an appropriate restriction for a limited public forum because it 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.