Simplifying Community Use of School Property in Missouri
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Any legal information provided in this presentation does not constitute legal advice or legal representation.
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Roadmap for Today

- Overview of the Project
- Why Community Use
- Missouri Survey Results
- Recommendations
- Liability/Insurance
- Role of MSBA
- Questions
Overview of the Project

Committee members

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What is Community Use?

Practice of allowing use of school facilities by community members for recreation or another purpose of importance to the community.

- Formal or informal agreement between a school district or school and a government or non-governmental entity
- Policy enacted by a school or a higher governing body that opens school facilities for use by government or non-governmental entities or the public
What’s in a name?

- Community Use
- Shared Use
- Facility Use
- Open Use
- Public Access
- Joint Use
Community Use

Keep Calm
And
Come to the Open Gym

YOUTH LOCKin
Don’t Miss Out On The Fun
Why Community Use?

- Maximize school facilities
- Address health needs of students and the community
- Build support for schools, i.e. bond measures
- Provide recreation spaces where opportunities limited (rural/low-income)
- Increase students academic achievement with active play
Studies have shown that children and adults are more active in areas with recreational opportunities.
Common barriers to recreational use

- Costs
- Physical design
- Operations
- Decision-making processes/scheduling
- Lack of community requests
- Lack of programming
- Liability and risk management
Missouri Community Use of School Property

School Administrator and End User Survey Report

JULY 2015

What’s up in Missouri?
School Administrators

- Collected 81 responses
- Dec 2014-Jan 2015
- Variety of positions
  - Superintendents (50%)
  - Facilities Manager (5%)
  - Others
    - Principal
    - Assistant Superintendent
    - Activities director
    - Registered nurse
- Range of time in position 0-20 years (average 5.8)
Responses by Region

- Central: 19%
- NW: 9%
- NE: 8%
- St Louis: 12%
- SW: 17%
- SE: 19%
- Kansas City: 17%
How would you best categorize your district’s community?

- Isolated (nonmetro county with an urban pop. Less than 2,500) 26.6%
- Large Rural (nonmetro county with urban pop. 20,000 or more) 0%
- Small Rural (nonmetro county with urban pop. 2,500-19,999) 48.1%
- Metropolitan County/Urban Core 16.5%
- Metropolitan County/Suburban 8.9%
Community use is already happening, so the goal is to help support more use by community members.

Figure 1: Facilities for community use

Response in School Administrator Survey when asked the question, “What types of facilities are included for community use of school facilities in your district? Check all that apply.” The most common responses were gymnasium (93% of school have this as a part of their facilities), sports field (72%), and cafeteria (62%).
How important are the factors below in influencing a decision TO ALLOW the use of sport and recreational school property, facilities and equipment by the community during non-school hours? Select the top three factors, ranking them 1-3 with number one being top priority.
How important are the factors below in influencing a decision NOT TO ALLOW the use of sport and recreational school property, facilities and equipment by the community for use during non-school hours? Select the top three factors, ranking them 1-3 with number one being top priority.
How would you rate your school district’s current liability protection for injuries or damage to property during SCHEDULED/FORMAL community use of school facilities during non-school hours?
How would you rate your school district’s current liability protection for injuries or damage to property during UNSCHEDULED/INFORMAL community use of school facilities during non-school hours?
KEY TAKEAWAY: Missouri offers strong liability protection for schools allowing community use of school property during non-school hours. Furthermore, insurance coverage often fills the gap of that liability coverage. Therefore, training and resources on liability protection and insurance coverage may help eliminate barriers to increased community use of school property.
Does your school require users to have a certificate of insurance?

- Yes: 73.4%
- No: 26.6%

- 43 Missouri United School Insurance Council
- 10 self-insured
- 4 unsure
- 2 MPR/MOPERM
Please rank the following in terms of the liability protection it offers your district should someone be injured during community use of school facilities during non-school hours. Let 1 be the most protection, and 5 be the least protection.
KEY TAKEAWAY:
Identification of creative funding streams or shared revenue options for schools could positively impact community use. Even small investments, such as hallway gates, could increase community use of school property.
What form of written guidance does your school district have on community use of sport and recreational school property, facilities and equipment during non-school hours? Select all that apply.

- School Board Policy
- Facility and Equipment... (long bar)
- Joint Use Agreement/Lease... (long bar)
- Waiver form
- Directive of Principal
- Student Handbook
- Website content
- School Wellness Policy
- Protocol/procedure...
- I don't know
- Parent Handbook
- Contract (list types)
- Intergovernmental...
- None. We do not have...
KEY TAKEAWAY: Written policies and procedures are guiding school administrator action relating to community use, so updating those policies and procedures to incorporate best practices could increase community use of school property.
End Users

- Collected 169 responses
- Feb 2015 - April 2015

Which group do you participate in programming through or represent? Select all that apply.

- Other (please specify)
- Youth Sports Leagues
- Public Recreational Department/District
- YMCA
- Other K-12 School
- Adult Sports Leagues
- 4-H
- Boys & Girls Club
- Child Care/Pre-School
- Boys/Girls Scouts
- All Other Responses
Responses by Region

- Central 19%
- NW 13%
- NE 7%
- SW 11%
- SE 10%
- Kansas City 17%
- St Louis 22%
How would you best categorize your district’s community?

- Metropolitan County/Urban Core: 18%
- Large Rural (nonmetro county with urban pop. 20,000 or more): 14%
- Isolated (nonmetro county with an urban pop. Less than 2,500): 10%
- Small Rural (nonmetro county with urban pop. 2,500-19,999): 36%
- Metropolitan County/Suburban: 22%
What facilities do you use?
Figure 3: Increased access to facilities

Response in End User Survey when respondents were asked the question, “If you had increased access to facilities, would you increase the amount of physical activity programming you provide?” Of the 155 responses for this question, 78% answered yes.
KEY TAKEAWAY: Figuring out ways to increase availability of school property for community use would directly relate to increasing physical activity in the community.
Have you ever been denied use for physical activity programming?

Why denied?

- No space/not available
- School has first priority
- Liability/Insurance
KEY TAKEAWAY: Identification of additional ways to use school property (such as hallways, weight rooms and classrooms) and maximize scheduling of more groups could increase community use of school property.
Figure 2: Barriers to incorporating physical activity

Response in the End User Survey when respondents were asked, “Do you have any of the following barriers to incorporating some or more physical activity into your programming? Check all that apply.” The top barriers were cost, access to facilities, and that participants did not want it. Some of the other options specified in the “other” category were limits to space and staffing, distance and transportation to/from the locations, and lack of knowledge around programs.
Describe your experience

- Many expressing very positive support and interactions with the school district
- Written agreements that defined use and responsibilities helpful
- Space/ availability continued to be the main issue, especially in winter
- Last-minute cancelations a big problem
- Cost of rent/school staff costs and program staff
Making the process easier for community groups could result in more requests and more use of school property

A few takeaways include:

- Scheduling
- Transportation, especially in rural areas
- Limited hours
- Cost of rent and staff time
- Past bad experiences/do not want to work with school administrators
**KEY TAKEAWAY:** Barriers like scheduling difficulty, lack of transportation, cost, and limited hours kept some groups from accessing the school property; some end users had past negative experiences that prevented them from returning with their programming.
Successful partnerships have good communication, including written agreements, sharing of spaces, and a group to oversee the process

The respondents reported that good communication is key, and several highlighted the importance of a cooperative use agreement or shared usage agreements as useful ways to share space and have clear duties, roles and responsibilities. Other respondents identified having a group that works on community use issues as a helpful strategy to coordinating use of school property.
KEY TAKEAWAY: Developing tools for schools and community groups to use that build off the successes within Missouri could increase community use in other areas.
Do you provide food for participants of your physical activity programming?
If yes, do you have healthy food and beverage nutritional standards?
If no, what is the barrier to having healthy food and beverage standards?
KEY TAKEAWAY:
Community use of school property policies and procedures should account for programming striving to serve healthy food to participants.
Recommendations

- Update the community use policies and procedures
- Demystifying liability and insurance for school administrators
- Creating tools to support community use
- Identify best practices for scheduling
- Investigate funding streams
Recommendation: Liability/Insurance

Demystifying Missouri Liability & Insurance

Missouri law permits school boards to allow members of the general public to use the school facilities, as long as the public use of the building does not interfere with the primary purpose of the school. Yet many school administrators are concerned about being sued if a member of the public is injured while using school property. Missouri law provides schools some protections from liability and insurance coverage and risk management tools can go a long way at minimizing financial risk of the schools. This resource was developed as a broad overview to outline these general concepts as it relates to Missouri schools, but should not take the place of discussions with the individual school district’s attorney and insurance provider.

What is Liability in Missouri?

For purposes of this publication, liability can be defined as legal responsibility for another person’s injury or damages. In Missouri, courts have defined when a person or entity may be liable for the injuries of another person. In any action for negligence, the plaintiff must establish that (1) the defendant had a duty to the plaintiff (2) the defendant breached that duty, (3) the breach caused the plaintiff’s injuries, and (4) the plaintiff suffered actual damages.

The school board having charge of the schoolhouses, buildings and grounds appurtenant thereto may allow the free use of the houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for any other civic, social and educational purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted.
What is liability?
Elements of liability

- Duty of care
- Breach
- Damage
- Causation
Duty of care

Strict liability

Reasonable Person Standard

Legal Responsibility

Low

High

Willful
Wanton

Negligence

Gross
Negligence
What is the duty of the schools in Missouri?

Missouri law requires school boards to maintain school buildings in good repair. Therefore, Missouri schools are under an existing duty to keep the existing grounds safe for both students and the public.
Immunity: Why it matters?
Official Immunity: Discretionary vs Ministerial
School officials should **consult** with their legal **counsel** to ensure that they have a complete understanding of all of the legal and policy issues.
Risk Management Strategies
Risk Management Strategies

- Create clear policies
- Preserve a record of the decision-making process
- Train staff in regard to their roles in implementing policies
- Periodically review policies and procedures, revise when necessary
- Eliminate known dangers where possible
- Document all precautions taken to avoid harm or risk
- Develop safety rules and provide to all students and parents
- Require waivers to participate in recreational activities
- Use joint powers or facility use agreements when organizations use facilities
- Obtain liability insurance that covers lawsuits arising from injuries
Does MUSIC cover the activities of our Athletic Booster Club?

What is the recommended procedure for outside organizations or groups using school facilities?

What is considered a school sponsored event?
Coming Soon

Analysis of Missouri School Board Policies and Procedures
MSBA Policies

- Policy KG, *Community Use of District Facilities*
- Procedure KG-AP1, *Community Use of District Facilities*
- Form KG-AF1, *Community Use of District Facilities, Application for Permit to use District Facilities*
- All available at [www.msbanet.org](http://www.msbanet.org) for MSBA member districts.
- Often highly customized
COMUNITY USE OF DISTRICT FACILITIES

As a service to the community and in accordance with law, the Board of Education may allow community groups as defined in this policy to use district facilities for educational, recreational, social, civic, philanthropic and other similar purposes when the facilities are not being used by the district or district-sponsored groups. The superintendent or designee is directed to create and institute procedures addressing facility use and may approve or deny facility use requests in accordance with this policy.

Granting a request to use district facilities does not constitute district endorsement of the activity, organization, organization’s mission or any opinion expressed by the groups or members of the groups.

Definitions

Community Group - Governmental entities and nonprofit organizations operating in or located in the district.

District Equipment - Any property owned by the district that is not permanently affixed to the building including, but not limited to, athletic gear, furniture, appliances and equipment, electronic equipment, desks and chairs. District equipment includes property donated to the district or purchased with donated funds.

District Facility - Buildings, courts, gymnasiums, stadiums, athletic fields, courtyards or other spaces on district property an individual or group seeks to use.

District-Sponsored Activity - Any activity organized by the district as part of the district’s education programs or co-sponsored by the district with other organizations. District-sponsored activities may include, but are not limited to, clubs, athletic events and practices, tutoring, dance, musical performances and competitions. District-sponsored activities include activities sponsored by student organizations or student groups of the secondary level required in accordance with policy and law.

Eligible Users

Use of district facilities is a privilege, not a right. No community group will receive access without first obtaining the approval of the superintendent or designee. In some cases Board approval may also be required. The district reserves the right to maintain district facilities as safe public forums and reserves the right to exclude individuals or groups from its facilities or cancel or modify any permission granted, in the discretion of the superintendent.
Procedure
COMMUNITY USE OF DISTRICT FACILITIES
(Application for Permit to Use District Facilities)

Board policy permits the use of district facilities by governmental entities or nonprofit community groups. Other persons or organizations seeking to use district facilities must first receive permission from the Board.

Applicants must supply all information requested on this form before the application can be processed. The completed application must be submitted to the appropriate district personnel at least two weeks prior to the date requested for use. Fees, when applicable, must be paid two weeks prior to the date of requested use. The district will only accept checks or money orders.

Date of Application: __________

Group/Entity Information

Name of Group or Entity: __________________________

Group or Entity:  
☐ Governmental  
☐ Nonprofit  
☐ Other (Explain) __________________________

Board policy requires the group/entity to designate a representative who is at least 21 years old and has the legal authority to bind the group contractually. Please provide the representative's contact information below:

Names of Representative: __________________________

Address: __________________________

Phone Number: __________________________  Mobile Phone Number: __________________________

E-mail Address: __________________________

Use Request Information

Type of Property Needed:

☐ Classroom  ☐ Gymnasium
☐ Auditorium  ☐ Playground
☐ Stadium  ☐ Cafeteria
☐ Athletic Fields  ☐ Kitchen

Names of District Sites (if requesting a specific site) __________________________
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www.publichealthlawcenter.org

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