

nplan | NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY

**Ready, Set, Go:
Crafting Joint Use Agreements**

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5th Biennial Childhood Obesity Pre-Conference Session
Opening Up Our Schools with Joint Use Agreements
Practical and Legal Issues
June 9, 2009

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Creating Opportunities for Exercise and Play



Joint Use Agreements

- A formal contractual agreement between two separate government entities setting forth the terms and conditions for shared use of public property or facilities.

Where?



Successful Strategies

- Have a vision
- Be leaders
- Start small
- Cultivate relationships/trust
- Be detail-oriented
- Build in dispute resolution



Engage community residents, youth and other key stakeholders in a dialogue about access to places for physical activity – **have them share their priorities**

**What is a Joint Use Agreement?
A Fact Sheet for Parents, Students, and Community Members**

Many communities lack safe, adequate places for children and their families to exercise and play. Schools might have a variety of recreational facilities—gymnasiums, playgrounds, fields, courts, tracks—but many districts claim their property as public after school hours because of concerns about costs, vandalism, security, maintenance, and liability in the event of injury.

Most states currently have laws that encourage or even require schools to open their facilities to the community for recreation or other uses. Nevertheless, school officials may be reluctant to do so, cautious about the expense in terms of increasing night budgets.

The good news is that city, county, and state governments can partner with school districts through what are known as joint use agreements to address these concerns.

March 2008

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Removing the legal barriers





Legal Research

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Fifty-State Scan of Laws Addressing Community Use of Schools

STATE	EMPTYSITE	Use of School Property by Community	Liability	Fee	Insurance	Joint Use	Grade Schools or Universities/Colleges	EMAFY
		Recreation Recreation Recreation	Recreation Recreation Recreation	Recreation Recreation Recreation	Recreation Recreation Recreation	Recreation Recreation Recreation	Recreation Recreation Recreation	Recreation Recreation Recreation
AL	Code Title: 16A-02-01	Yes					Yes	No
AL	Code Title: 16A-02-01	No					Yes	No
AK	Alaska Stat. Title 09.05.010	Yes					Yes	No
AZ	A.R.S. Title 15, Chapter 15-1101	Yes	Yes	Yes	Yes	Yes	Yes	No
CA	A.S. Title 15, Chapter 15-1101	Yes		Yes			Yes	No

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Liability Risks for After-Hours Use of Public School Property: A 50-State Survey

School districts and local governments can help prevent childhood obesity by increasing opportunities for children to be physically active in their communities. One way to provide recreation opportunities is to open school buildings and facilities—such as gymnasiums, playgrounds, fields, courts, and tracks—to public use after school hours. School officials may be reluctant to do so, however, because of concerns about liability in the event of injuries.

To assist school and government attorneys in assessing liability risks, NPLAN commissioned a 50-state survey of the laws governing liability for after-hours recreational use of school facilities. Written by Professor Tom Baker, Professor of Law at the University of Pennsylvania Law School and one of the nation's preeminent scholars of tort and insurance law, the survey results consist of two parts that are designed to be read together.

The good news for local governments:

- All 50 states have some governmental immunity;
- Some states have recreational users statutes;
- In no state are rules for recreation use more onerous than rules that apply during school;
- In many states the rules are more lenient.

The first part is an [overview memo](#), which sets the analytical framework for assessing a school's liability risks:

- Basic elements of tort liability;
- Special legal rules that may limit public schools' legal obligations;
- Statutory limits on the damages that may be awarded; and
- Potential tools for shifting liability risks (liability waivers) and providing access through it.

The second part consists of individual state memos that summarize each state's legal framework for recreational use of school property. A state memo should always be read after the [overview memo](#).

- The elements of tort liability;

There are real problems



The collage consists of three photographs. The top-left photo shows a yellow and red playground structure. The top-right photo is a close-up of a blue spiral slide. The bottom photo shows a man in a dark suit walking on a playground path, looking at a red wheelbarrow.

Be aware of **MOLOS** and deal with it in the agreement

- ✓ Maintenance
- ✓ Operations
- ✓ Liability
- ✓ Ownership
- ✓ Scheduling



The photograph shows a playground with several children playing on the equipment. In the background, there is a large white building with a basketball court area.

Balancing competing needs

- Unmet recreation needs
- Accessibility
- Community engagement
- Sustainability



The photograph shows a young girl with dark hair, wearing a light blue shirt, looking through a chain-link fence. She appears to be outdoors, possibly at a park or school.

Cultivate and maintain relationships!

Pay attention to the “key” people in the process

- Custodian
- Principal
- Superintendent
- Coaches / Teachers



Checklist for Developing a Joint Use Agreement 3

Identify and Reach Agreement on Issues Involving Use

The parties need to agree on operational and management issues.

Priority of Uses	<ul style="list-style-type: none"> - Rank the priority of types of users to allocate facility use accordingly
Scheduling	<ul style="list-style-type: none"> - Determine which entity will be responsible for scheduling use - Determine how to accommodate schedule changes/ cancellations
Access and Security	<ul style="list-style-type: none"> - Determine security needs - Identify employees who will need access to properties and facilities - Develop security protocol
Materials and Equipment	<ul style="list-style-type: none"> - Allocate responsibility for providing equipment/materials - Determine the need for storage - If storage is needed determine location, access, and security
Supervision	<ul style="list-style-type: none"> - Determine the type of supervision required - Identify which party will be responsible for providing supervision
Custodial Services	<ul style="list-style-type: none"> - Determine the type of custodial services/equipment needed - Allocate responsibility for providing custodial services/trash containers
Toilet Facilities	<ul style="list-style-type: none"> - Determine access to existing facilities - Determine need for portable/temporary facilities - Allocate responsibility for providing and servicing portable toilets
Parking	<ul style="list-style-type: none"> - Determine access to parking facilities
Maintenance	<ul style="list-style-type: none"> - Allocate responsibility for regular property maintenance - Determine whether additional maintenance is needed, and

Unlock the gates (outdoor facilities)



(School) (City)

Partnership with the City
(indoor and outdoor facilities)



(School) (City)

Partnership with Non-Profit Organizations
(indoor and outdoor facilities)



(School) (Non-Profit)

Partnership with Non-Profit Organizations
(reciprocal access)



(City) (School)



Current Model Policies

- ✓ Joint use agreements
- ✓ Healthy beverage vending
- ✓ Menu labeling
- ✓ Community gardens
- ✓ Farmers markets
- ✓ School district advertising policies
- ✓ Child care physical activity standards



phlp public health law & policy

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Breakout Session Instructions

See handouts

- ✓ Make It Work: Joint Use Agreement Problem Solving (blue)
- ✓ Activity instructions (yellow)

Each table break into three groups

- ✓ School district
- ✓ City parks and recreation
- ✓ Non-profit organization

Breakout Session Goals

Provide recommendations for following issues

- ✓ Scope of joint use agreement
- ✓ Liability
- ✓ Maintenance
- ✓ Scheduling
- ✓ Staffing

Report back to group
