

The Risk Cooperative's Recommendation Concerning Open Gyms in Schools

Schools sometimes allow the unsupervised use of their gymnasiums by individuals for recreational basketball (or similar activities), which has been a cause of property damage and physical injury for which the school district may have to pay. This article will address how to better protect the district's resources while still allowing community members to use school facilities. Some background in the area of facility use is in order.

USE OF SCHOOL FACILITIES BY NON-SCHOOL GROUPS

The district's primary mission is educating students. The district also has duties to protect its property, which was provided by taxpayers, and to protect the district's financial assets, which are used to provide educational services to students. District facilities may be used for non-district activities when not required to provide for the education of its students. The district establishes criteria for the use of district facilities for non-district related activities in order to minimize the risk and potential for loss from such use.

The use of district facilities beyond the established educational programs of the district may be granted to responsible persons, groups or organizations as community, cultural or recreational centers for purposes of entertainment, personal development and civic welfare. The district, in granting an outside user permission to use district facilities, establishes reasonable, non-discriminatory criteria that will be met before granting district permission for the use of the facility in its building usage policy. Use will be in accordance with the policies, procedures and rules established by the district, and appropriate laws and regulatory agencies.

In no case should the district grant permission to persons under the age of

18 for use of its facilities for non-district related activities. Permission for the use of district facilities must be issued to a responsible adult. The user must be aware that they are responsible for adequate adult supervision, adequate participant, crowd and traffic control, and for the protection of district and private property.

FACILITY USE AGREEMENTS

When granting the use of district facilities to outside individuals and/or groups, the district should require the user to enter into a formal facilities use agreement that incorporates a hold harmless agreement. Individuals or groups will be required to hold harmless and indemnify (protect) the district from any and all claims, costs and liabilities arising out of or in connection with their use of district facilities, except to the extent such liabilities arise from the district's own negligence. Signing of the application and/or facilities use agreement form will constitute an acknowledgment by the individual, group or organization of its acceptance of responsibility for any bodily injuries or damage to the building or equipment resulting from such use.

To ensure financial support for the indemnification, the district establishes criteria concerning insurance requirements of individuals, groups and organizations applying for permission to use the district's facilities for non-district related activities. We recommend requiring a certificate of insurance from potential outside users evidencing comprehensive general liability coverage with minimum limits of \$1 million per occurrence.

Special events insurance is an option that outside users may be able to use to offer financial protection for the school district. (See the article on Special Events Insurance Coverage in this newsletter.)

The district may waive the insurance requirement where such requirement would represent an undue hardship on the individual, group or organization, or if the requirement is determined not to be in the best interests of the

district. In cases where the district elects to waive the insurance requirement, the district should undertake direct supervision of the activity.

OPEN GYMS

By definition, open gyms allow undirected recreational use of the school gymnasiums. Being unsupervised, damage to school property, personal injury of participants, and illegal activities are sometimes associated with open gyms.

Without a responsible party in charge of the open gym, with the financial backing of insurance should injury or damage occur, the district is often left financially responsible for losses from this activity. So, although the school district would like to be able to provide the use of its facilities for such recreational use, it may not be in the best interest of the school district to do so.

THEREFORE, IT IS THE RECOMMENDATION OF THE RISK COOPERATIVE THAT MEMBER SCHOOL DISTRICTS NOT ALLOW OPEN GYMS UNLESS SUPERVISED BY A SCHOOL DISTRICT EMPLOYEE.

TRAINED VOLUNTEERS TO SUPERVISE?

In lieu of having a paid school district employee supervise the open gym (or other non-school sponsored activities), a school district may choose to use trained volunteers. These volunteers need to clearly understand their role in representing the district's interests – to protect district property and address liability hazards (not directing the running of the activity itself).

District training, given by a knowledgeable district employee and properly documented, should include:

- Building opening and closing procedures, including locking/unlocking doors/windows and setting/disarming alarms
- What to do in an emergency (medical, fire, threat, etc.)

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- How to report building problems, including property damage
- Dealing with non-compliant participants
- School rules and related school district policies
- How to recognize and address hazards
- How to serve as the school district's agent and look out for the district's interests

KEY CONTROL

An issue related to open gyms is the providing of school building keys to non-school district employees for approved purposes so that the protection of the district's assets continues.

School staff may have provided keys to routine users to facilitate access without clearly specifying the terms of use. School supporters may have had keys issued to them years ago.

Some community members feel that school facilities are public buildings that should be available for their use when not used by the school, for activities such as lifting weights or playing basketball in the gym. School facilities may even be being used without the school's knowledge or consent! This arrangement offers no protection for the school district should injury or property damage occur.

Traditionally, districts are liable only for injury or damage caused by *facility hazards* during non-school use of district facilities. If the district allows unsupervised use of its facilities, or there is use without the district's knowledge or consent, the district may be held partially liable for any related injury or damage.

The Risk Cooperative urges its member districts to tightly control school building keys (including access cards). School building keys should be given to non-employees for a specified, approved purpose, and be returned to the school after the approved use.

For questions about facility use, open gyms or key control, please contact Peggy Sandberg, Loss Control Specialist, at (360) 750-7504.

Students Working Off Campus - Insurance & Safety Considerations

The Risk Cooperative is often asked to provide a "Certificates of Insurance" (or "Evidence of Coverage," for self-insurance) to sponsors who will host a student as part of a school-to-work program, senior project or other community-based learning opportunity. The host sponsor wants financial protection from the school district in case of injury or damage related to the student's work.

The Southwest Washington Risk Management Insurance Cooperative is a self-funded and self-administered program which provides property and liability coverage, and group-purchases excess insurance coverage for its member school districts. The school district's general liability coverage protects the school district, its employees and volunteers in the event of a claim for damages *alleging negligence* arising from a school's actions (subject to specific exclusions and limitations).

In order for the school district's liability coverage to respond to a claim for damages, *the school district* must be potentially liable for the injury or damage (the district has breached a duty that causes the injury or damage). The school district cannot make a gift of its liability insurance coverage to other organizations or individuals, even well intentioned ones.

Here's an example of a school-to-work accident. A student working in a hardware store is stacking gallon cans of paint as instructed by the employer. (The school is providing no direct supervision of this student.) The paint cans fall, injuring a customer. What action by the district caused this accident? What could the school have done to prevent it? What duty did the district breach?

When the employer/sponsor controls the student's training and supervision as well as the facilities and equipment, the sponsor assumes the duties that the school usually has. (This becomes even clearer when each party's responsibilities are spelled out contractually.) The school has little control over the student's sponsor, even though monitoring the student's placement is prudent.

Injury or damage caused by the student under the direction of the sponsor would most probably be covered by the *sponsor's* liability insurance. However, in case of student injury, the district may want to require students who participate in such a program to (1) carry student accident insurance or (2) be named under their parent's medical insurance coverage.

If the potential sponsor does not want to assume responsibility for the student, then this may not be a good placement for the student. As an alternative, the school may want to send a staff member to supervise the student(s).

For your information, following is a brief list of areas to address to help prevent losses in community-based learning opportunities:

- Screening students (placement suitability)
- Screening and preparing potential sponsors
- Supervising students (or ensuring appropriate supervision)
- Preparing students
- Having a contractual agreement between the school and the sponsor that outlines each party's responsibilities
- Obtaining parental permission and informed consent for student participation and transportation
- Monitoring student activities

The district also needs to check proposed activities against the "prohibited and

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