

A Legal Framework Supporting Joint Use

There is a long history in California of laws promoting community use of school facilities. Understanding the purposes and parameters of these laws can help local advocates and decision-makers determine the best way to proceed to open schools in their community.

- ▶ The **Community Recreation Act** focuses exclusively on recreation, authorizing school districts and local governments to enter into agreements to use school facilities to establish community recreation programs.
- ▶ The **School Facility Joint Use Program** provides grant funding to remodel or construct new joint use facilities on school sites.
- ▶ The **California Civic Center Act** and the **Community College Civic Center Act** focus more generally on community use of public schools, directing public schools and community colleges to make their facilities available for after-hours use for many different purposes, including recreation.
- ▶ The **After School Education and Safety Program** provides funding for schools to host before- and after-school and summer academic and enrichment programs for children.
- ▶ The **21st Century Community Learning Centers program**, part of the No Child Left Behind Act, provides funding for schools to host after-school academic and enrichment programs.

The Community Recreation Act¹

The Community Recreation Act is the primary law that authorizes school districts to establish community recreation programs. The Legislature passed the Act to “promote and preserve the health and general welfare of the people of the state,”² authorizing cities, counties, recreation districts, and school districts (“public authorities”) to organize community recreation programs, establish systems of playgrounds and recreation, and acquire (or construct) and maintain recreation centers.³

The Act explicitly authorizes public agencies to work together to promote community health and recreation, giving the governing entities the

authority to enter into agreements with each other and “do any and all things necessary or convenient to aid and cooperate in carrying out the purposes of this chapter.”⁴ In addition, two or more public authorities having jurisdiction over any of the same or adjoining territories may jointly establish a recreation system and may jointly undertake any action authorized under the Act.⁵

The Act allows the governing body of any school district to use the district’s buildings, grounds, and equipment to carry out the purposes of the Act. It also authorizes a school district to grant use of its property and facilities to any other public authority to conduct community recreation programs, whenever such use does not interfere with the other purposes of the public school system.⁶

In 1976, the Legislature amended the Act to allow a school district to charge fees to individuals, other than students or organizations, to use school recreation facilities.⁷

School Facility Joint Use Program⁸

In 2002, the California Legislature enacted legislation to provide schools with funds to construct new joint use facilities, including those used for recreation.⁹ The Joint Use Program of the School Facility Program provides grant funding, subject to local matching funds, to construct qualifying types of joint use projects on K-12 school sites.¹⁰ Generally, to qualify, a project must construct new or reconfigure existing school buildings to build or increase the size of a multipurpose room, gymnasium, child care facility, library, or teacher education facility.¹¹

In addition to other requirements, the district must have entered into a joint use agreement with a governmental agency, public community college, college or university, or a nonprofit organization approved by the State Allocation Board. The joint use agreement must specify the method of sharing capital and operating costs, the responsibilities for the operation and staffing of the facility, and the manner in which the safety of the pupils will be ensured. The agreement must also specify the amount the school district and joint use partner will contribute toward the 50 percent local share of eligible project costs.¹²

The California Civic Center Act¹³

The Civic Center Act also promotes the use of school facilities for community recreation, but it has a much broader focus than the Community Recreation Act. Its purpose is to establish at each public school a space for citizens and organizations to engage in activities, including supervised recreation.

When the California Legislature enacted the Civic Center Act in 1917, it declared:

[T]here is a civic center at each and every public school facility and grounds within the state where the citizens, parent teacher associations, Camp Fire girls, Boy Scout troops, veterans' organizations, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions that in their judgment pertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside.¹⁴

Under the Civic Center Act, the governing board of any school district may grant use of school facilities or grounds for a broad list of purposes, including “public, literary, scientific, recreational, educational, or public agency meetings” and “supervised recreational activities, including, but not limited to, sports league activities for youths that are arranged for and supervised by entities.”¹⁵

Community use is subject to the requirements set forth in the Act and the terms and conditions set by the board. The governing board must enact all rules and regulations necessary to encourage the activities authorized in the Act, to protect and preserve school grounds and facilities, and to ensure that the use of school facilities does not interfere with their use for school purposes.¹⁶

The Civic Center Act allows schools to recover costs and, in certain circumstances, charge fair market value for use of its facilities.¹⁷ The governing body may charge no more than its direct costs to any entity that arranges for and supervises sports league activities for youth,^{18, 19} defining *direct costs* as “those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees necessitated by the organization's use of the school facilities.”²⁰ Before charging for the use of its facilities, the governing body must adopt a policy specifying which activities qualify for fees limited to direct costs.²¹

The Act also offers some protections to school districts in the event of property damage or injury suffered by a community member. First, it provides that if any group activity results in the destruction of school property, the district may charge the group an amount necessary to repay the damages, and it may deny the group further use of the facilities.²² Second, it establishes responsibility for injuries resulting from the property use: the district is liable for any injuries resulting from the its negligence in

the ownership and maintenance of those facilities or grounds. The group using the facilities is liable for any injuries resulting from its negligence during the use of the facilities. The district and the group each bear the cost of insuring against its respective risks and of defending itself against claims arising from those risks.²³ The Act does not permit the parties to waive these protections.²⁴

The California Community College Civic Center Act²⁵

The California Community College Civic Center Act is very similar to the Civic Center Act, but it provides that there is a civic center at each and every community college within the state, and that “[g]overning boards of the community college districts may authorize the use, by citizens and organizations, of any other properties under their control for supervised recreation activities.”²⁶

The governing body may grant use upon the terms and conditions it deems proper and subject to the requirements set forth in the Act. The governing board must enact all rules and regulations necessary to encourage the activities authorized in the Act and to ensure that the use of college facilities does not interfere with the college’s educational purposes.²⁷

The Act allows the governing board to charge fees for use in certain situations.²⁸ The governing board must grant use of school facilities without charge “when an alternative location is not available to nonprofit organizations and clubs and associations organized for general character or welfare purposes.”²⁹ The board may charge groups the costs of (1) opening and closing the facilities, (2) a community college employee’s presence, and (3) required janitorial services, but only if these services are not otherwise performed as part of the community college employees’ normal duties.³⁰ The college also may charge the cost of utilities directly attributed to the groups’ use of the facilities.³¹

Finally, the governing body may require any person or group granted the use of community college property for athletics to obtain a certificate of insurance and to submit it to the district for approval prior to using any district property. The certificate must demonstrate a minimum coverage of \$300,000 for any liability for injury or damage to property, but the governing body may require additional coverage.³²

The After School Education and Safety Program^{33, 34}

In 2002, California voters approved Proposition 49, the After School Education and Safety (ASES) Program, designed to create incentives for establishing local before- and after-school programs (during school days

as well as summer, intersession, or vacation days) “that partner public schools and communities to provide academic and literacy support and safe, constructive alternatives for youth.”³⁵

The ASES program serves students in kindergarten through ninth grade from participating public schools.³⁶ Applicants apply to the California Department of Education for grant funds to establish before- or after-school programs.³⁷ A local educational agency – including a charter school, or a city, county, or nonprofit organization partnering with a local educational agency – may apply for the grant funding.³⁸ A program may be conducted on a school site or, if approved by the State Department of Education, at a community park, recreational facility, or other site, provided that safe transportation is provided to students in the program.³⁹

To qualify for a grant, a program must contain two elements: (1) an educational and literacy element in which tutoring or homework assistance is provided in specified subject areas, and (2) an educational enrichment element that may include fine arts, career technical education, recreation, physical fitness, and prevention activities.⁴⁰ In addition, the program must be planned through a collaborative process that includes parents, youth, and representatives of participating public schools, governmental agencies, and the private sector.⁴¹

Priority for funding is given to schools where at least half of the pupils in elementary and middle or junior high school are eligible for free or reduced-cost meals through the U.S. Department of Agriculture’s school lunch program.⁴² All students attending a school operating a program are eligible to participate in the program, subject to program capacity.⁴³

The ASES program contains several provisions to ensure that the 21st Century Community Learning Centers program (see next section) complements the state program, and that the learning centers established under the federal law are eligible for the state funding.⁴⁴

21st Century Community Learning Centers⁴⁵

As part of the No Child Left Behind Act, Congress established a grant program to fund “community learning centers.” The purpose of this part of the Act was to provide opportunities for communities to establish or expand activities that (1) provide academic enrichment, including tutorial services to help students meet state and local standards; (2) offer services and activities, including recreation programs, to reinforce students’ regular academic program; and (3) offer families of students served by the centers opportunities for literacy and related educational development.⁴⁶ The grant funding is distributed to qualified states; the designated state educational

agency then distributes the funds to local entities based on an application process.^{47, 48}

Local educational agencies, community-based organizations, other public or private entities, or a consortium of two or more of such agencies may apply for funding for a community learning center that meets the criteria described above.⁴⁹

1 Cal. Educ. Code §§ 10900 – 10914.5.

2 Cal. Educ. Code § 10900.

3 Cal. Educ. Code § 10902.

4 Cal. Educ. Code § 10905.

5 *Id.*

6 Cal. Educ. Code § 10910.

7 Cal. Educ. Code § 10912.

8 Cal. Educ. Code §§ 17077.40 – 17077.45.

9 According to the State Allocation Board up to 150 million dollars have been made available for joint use programs between July 2003 and July 2008. State Allocation Board, “School Facility Program Handbook.” May 2008, p. 51.

10 Cal. Educ. Code § 17077.40.

11 *Id.*

12 Cal. Educ. Code § 17077.42.

13 Cal. Educ. Code §§ 38130 -38138.

14 Cal. Educ. Code § 38131(a).

15 Cal. Educ. Code § 38131(b).

16 Cal. Educ. Code § 38133.

17 Cal. Educ. Code § 38134(b).

18 Cal. Educ. Code § 38134(c).

19 For other types of activities, the district may charge direct costs or fair rental value. *See* Cal. Educ. Code § 38134.

20 Cal. Educ. Code § 38134(g).

21 Cal. Educ. Code § 38134(b).

22 Cal. Educ. Code § 38134(f).

23 Cal. Educ. Code § 38134(i).

24 Cal. Educ. Code § 38134.

25 Cal. Educ. Code §§ 82537 – 82548.

26 Cal. Educ. Code § 82537(a).

27 Cal. Educ. Code § 82537(b),(d),(f).

28 Cal. Educ. Code § 82542.

29 Cal. Educ. Code § 82542(a). The statute does not provide guidance in making the determination that there are no alternate locations available.

30 Cal. Educ. Code § 82542(b).

31 Cal. Educ. Code § 82542. (Other types of groups using the college facilities may be charged either direct costs or the fair rental value.)

32 Cal. Educ. Code § 82548.

33 Cal. Educ. Code §§ 8482 – 8484.9.

34 The state law also describes the mechanisms for determining the total funding for the Program and the amounts of individual grants, restrictions and requirements for expenditure of the grant funds, and additional criteria for selecting grant recipients.

35 Cal. Educ. Code § 8482.

36 Cal. Educ. Code § 8482.3.

37 Cal. Educ. Code § 8482.4.

38 Cal. Educ. Code § 8482.3(e).

39 Cal. Educ. Code § 8484.6.

40 Cal. Educ. Code § 8482.3(c).

41 Cal. Educ. Code § 8482.5(b).

42 Cal. Educ. Code § 8482.5(a).

43 Cal. Educ. Code § 8482.6.

44 Cal. Educ. Code §§ 8484.7 – 8484.8.

45 Title 20, United States Code Annotated §§ 7171 – 7575.

46 Title 20, United States Code Annotated § 7171.

47 Title 20, United States Code Annotated §§ 7172, 7174.

48 The federal law also describes the mechanisms for determining the total funding for the program and the amounts of individual grants to states, restrictions and requirements for expenditure of the grant funds, and additional criteria for selecting local grant recipients.

49 Title 20, United States Code Annotated § 7174.