

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

November 15, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Policy 8:20-Community Use of School Facilities

Our policy has been amended to remove the phrase "non-school hours" and to add a sentence stating "If a request is made to rent the building during school hours, the Board of Education shall be informed and shall approve any such rentals."

Legal references and updates are also amended. This can be a first reading and if it is fine, we will put on the consent agenda for December.

## Community Relations

### Community Use of School Facilities <sup>1</sup>

School facilities are available to community organizations during non-school hours when such use does not: (1) interfere with any school function or the safety of students or employees, or (2) affect the property or liability of the School District. The use of school facilities for school purposes has precedence over all other uses. Persons on school premises must abide by the District's conduct rules at all times. <sup>2</sup>

Student groups and school-related organizations and local governments are granted the use of school facilities at no cost. <sup>3</sup> Other organizations granted use of facilities shall pay fees and costs.

The Superintendent shall develop procedures to manage community use of school facilities. Use of school facilities requires the Superintendent's approval and is subject to the procedures. <sup>4</sup>

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**The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.**

<sup>1</sup> State or federal law controls this policy's content. If a board wants to allow community organizations to use school facilities, it must adopt a policy (105 ILCS 5/10-20.40, added by P.A. 95-308). The policy must "prohibit such use if it interferes with any school functions or the safety of students or school personnel or affects the property or liability of the school district." A board should discuss the implications of any access to school facilities policy with its attorney.

This policy concerns an area that is frequently litigated because of its many complex legal and practical issues. The Constitution's Free Speech and Equal Protection Clauses, as well as the Equal Access Act, are triggered. As a general rule, school officials can avoid constitutional problems and still open facilities to community groups by treating requests to use school facilities according to uniform rules that do not discriminate against a group on the basis of its viewpoint.

Of course, a board may avoid constitutional controversy over community use of its facilities by refusing to permit such use by all non-school groups (thereby creating a closed forum). A board may also avoid triggering the constitutional clauses and the Equal Access Act by allowing all non-school groups to use of its facilities (thereby creating an open forum). If the board creates an open forum, it may still impose reasonable time, place, and manner restrictions on the use as long as the restrictions are the same for all groups. However, practically speaking, it is difficult for a board to either completely close its facilities to non-school groups or to open its facilities to all non-school groups. Most boards decide to create a limited open forum.

This policy creates a limited open public forum by allowing public use of school facilities provided the use is consistent with the public interest. See Widmar v. Vincent, 454 U.S. 263 (1981). A public school district may not discriminate on the basis of a group's purpose, message, or goal. Thus, any restrictions on the use by non-school groups must not discriminate against speech on the basis of viewpoint. Lamb's Chapel v. Center Moriches Union Free School District, 113 S.Ct. 2141 (1993); Good News Club v. Milford Central School, 121 S.Ct. 2093 (2001). A board must show neutrality to all viewpoints.

A board runs afoul of showing viewpoint neutrality if it prohibits single sex youth organizations, even those that discriminate against homosexuals, to use school facilities. Note the U.S. Supreme Court refused to apply the N.J.'s public accommodation law to the Boy Scouts because forcing the Scouts to accept a homosexual as a member would violate the Scout's freedom of expressive association. Boy Scouts of America v. Dale, 120 S.Ct. 2446 (2000).

This constitutional jurisprudence was codified as §9525 of the No Child Left Behind Act of 2001 (20 U.S.C. §7905). Schools are prohibited from denying equal access to school facilities to the Boy Scouts or any other youth group "for reasons based on membership or leadership criteria or oath of allegiance to God and country."

See sample policy 7:330, *Student Use of Buildings-Equal Access*, for a discussion of the Equal Access Act, 20 U.S.C. §4071 *et seq.*

<sup>2</sup> See policy 8:30, *Visitors to and Conduct on School Property*.

<sup>3</sup> The decisions concerning facility-use fees are at the local board's discretion. However, the general rule applies: school officials can avoid constitutional problems by treating requests to use school facilities according to uniform rules that do not discriminate against a group on the basis of its viewpoint.

LEGAL REF.: 20 U.S.C. §7905.  
10 ILCS 5/19-2.2.  
105 ILCS 5/10-20.40, 5/10-22.10, and 5/29-3.5.  
Good News Club v. Milford Central School, 121 S.Ct. 2093 (2001).  
Lamb's Chapel v. Center Moriches Union Free School District, 113 S.Ct. 2141  
(1993).  
Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819 (1995).

CROSS REF.: 7:330 (Student Use of Building - Equal Access), 8:25 (Advertising and  
Distributing Materials in Schools Provided by Non-School Related Entities), 8:30  
(Visitors to and Conduct on School Property)

ADMIN. PROC.: 8:20-AP (Community Use of School Facilities)

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<sup>4</sup> However, at the request of election officers, any publicly owned building must be made available for use as a polling place (10 ILCS 5/19-2.2). Election officers must place markers 100 horizontal feet from a polling room's voter entrance and, if the 100 feet ends within the building's interior, the markers must be placed outside of the building at each entrance used by voters. The area within where the markers are placed is a campaign free zone where electioneering is prohibited. The area on polling place property beyond the campaign free zone is a public forum for the time that the polls are open on an election day and may be used for campaigning and to place temporary signs (Id.). A child sex offender is permitted to vote early or by absentee ballot when his or her polling place is a school (10 ILCS 5/11-4.1, as amended by P.A. 95- 440).

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- ADMIN. PROC.: 8:20-AP (Community Use of School Facilities)
- ADOPTED: December 14, 2010

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ADOPTED: May 20, 2002