

Administrative Regulation

Community Relations

AR 1330

Use of School Facilities

Application for Use of Facilities

Any persons applying for the use of any school facility or ground on behalf of any society, group or organization shall present written authorization from the group or organization to make the application.

***Note: The California Supreme Court has determined that the requirements of Education Code 38135 and 38136 are unconstitutional. (ACLU v. Board of Education of City of Los Angeles) Although these statutes have not been repealed, districts are advised not to require any oath affirming that the group does not intend to take actions leading to the overthrow of the government. ***

***Note: Other types of oaths have been held constitutionally acceptable. The California Supreme Court upheld the use of an oath that the individual or group does not intend to use school premises to commit unlawful acts (ACLU v. Board of Education), and the U.S. Supreme Court has upheld affirmative loyalty oaths for public employees, expressing a promise to support the federal and state constitutions (Connell v. Higgenbotham; Cole v. Richardson). If the district wishes, it may use all or part of Exhibit 1330, which offers a "Statement of Information." The following paragraph is optional. ***

Persons or organizations applying for the use of school facilities or grounds shall submit a statement of information indicating that the organization upholds the state and federal constitutions and does not intend to use school premises to commit unlawful acts.

Civic Center Use

Subject to district policies and regulations, school facilities and grounds shall be available to citizens and community groups as a civic center for the following purposes: (Education Code 32282, 38131)

1. Public, literary, scientific, recreational, educational or public agency meetings
2. The discussion of matters of general or public interest

***Note: An Attorney General Opinion (79 Ops.Cal.Atty.Gen. 248 (1996)) has found unconstitutional the section of Education Code 38131 which provides that a Board may grant the use of school facilities to a religious group to conduct services only when the religious group has no other suitable meeting place. Although Attorney General opinions do not carry the force of law, they are given deference by the courts in the case of legal challenge. Therefore, a district should consult legal counsel before requiring a religious organization to establish that it lacks another suitable meeting place for the conduct of its services in order to rent a school facility. In that same opinion, the Attorney General also determined that Education Code 38131 does not limit the renewability of the temporary use permit for a school facility by a religious organization. Thus, legal counsel should also be consulted before a district refuses to renew a temporary permit. Item #3 below is consistent with the Attorney General's interpretation of Education Code 38131. ***

3. The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization
4. Child care programs to provide supervision and activities for children of preschool and elementary school age
(cf. 5148 - Child Care and Development)

5. The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies
6. Supervised recreational activities including, but not limited to, sports league activities that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination
7. A community youth center
(cf. 1020 - Youth Services)
8. Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare
(cf. 3516 - Emergencies and Disaster Preparedness Plan)

***Note: Education Code 38131 allows Boards to grant use of school facilities for other purposes as deemed appropriate. Districts may add any other purposes approved by the Board. ***

9. Other purposes deemed appropriate by the Governing Board

Restrictions

School facilities or grounds shall not be used for any of the following activities:

1. Any use by an individual or group for the commission of any crime or any act prohibited by law
2. Any use which is inconsistent with the use of the school facility for school purposes or which interferes with the regular conduct of school or school work
3. Any use which involves the possession, consumption or sale of alcoholic beverages or any restricted substances, including tobacco use
(cf. 3513.3 - Tobacco-Free Schools)
(cf. 5131.6 - Alcohol and Other Drugs)

***Note: 20 USC 7905 of the No Child Left Behind Act prohibits districts from denying equal access to school facilities to the Boy Scouts based on the Scouts' leadership criteria (i.e. denying leadership positions to homosexuals and atheists). Districts in California have long been required to provide equal access to Boy Scouts since Education Code 38134 specifically authorizes the use of school facilities to youth-oriented groups such as the Boy Scouts, Girl Scouts and Camp Fire. In addition, U.S. Supreme Court cases have held that districts cannot prohibit after-school religious clubs from meeting on school grounds if they allow other community groups, like the 4-H Club, to use the facilities. ***

***Note: Because federal and state constitutional free speech issues are involved, a district's denial of the use of facilities is a complex issue. Generally, court decisions have held that districts may not discriminate on the basis of a group's viewpoint, and thus the use of facilities should usually be granted on a neutral basis. However, in some instances, districts may wish to retain limited authority to prohibit the use of facilities to groups that are discriminatory in a legal sense. Before denying use to such groups, it is strongly recommended that districts consult with legal counsel. ***

***Note: Districts may exclude certain facilities from community use for safety or security reasons. Such facilities might include (1) offices or computer rooms containing records and confidential information and (2) science rooms and other rooms containing hazardous chemicals or equipment that cannot be used safely without special knowledge or skills. If desired, those restrictions should be included here. The following paragraph is optional. ***

The district may exclude certain school facilities from non-school use for safety or security reasons.

Damage and Liability

Groups, organizations or persons using school facilities or grounds shall be liable for any property damages caused by the activity. The Board may charge the amount necessary to repair the damages and may deny the group further use of school facilities or grounds.

***Note: Education Code 38134 distinguishes the liability and insurance obligations of nonprofit groups that promote youth and school activities from those of the district. The district is liable for any injuries resulting from the district's negligence in the ownership and maintenance of its facilities and grounds and must bear the cost of insuring against these risks and defending itself from related claims. ***

Any group or organization using school facilities or grounds shall be liable for any injuries resulting from its negligence during the use of district facilities or grounds. The group shall bear the cost of insuring against this risk and defending itself against claims arising from this risk. (Education Code 38134)

***Note: In its legal advisory 1101.89, the California Department of Education opined that a district could require a group to provide evidence of insurance against claims arising out of the sole negligence of the group itself. The district may also require the group to name the district as an additional insured against such claims (i.e. claims relating to the groups' negligence but not claims relating to the district's negligence). The following paragraph is optional and should be revised to reflect district practice. ***

Groups or organizations shall provide the district with evidence of insurance against claims arising out of the group's own negligence. Groups or organizations shall also be required to include the district as an additional insured on their liability policies for claims arising out of the negligence of the group.

***Note: Pursuant to Education Code 38134, groups that promote youth and school activities cannot be required to sign hold harmless and indemnification agreements agreeing to defend and indemnify the district against liability arising during the group's use of school facilities to the extent that the agreement requires the group to assume liability for the district's negligence. The statute is unclear as to whether the district can require "non-youth related groups" to indemnify the district from any and all injuries resulting from the use of the facility. Districts wishing to create such an agreement should consult legal counsel. ***

***Note: Because hold harmless agreements are only as strong as the groups' credit, districts should generally require proof of insurance in addition to such agreements. When a hold harmless and indemnification agreement appears necessary for an individual facility or a specific event, district legal counsel should tailor it to the situation. ***

As permitted, the Superintendent or designee may require a hold harmless agreement and indemnification when warranted by the type of activity or the specific facility being used.

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GRAVENSTEIN UNION SCHOOL DISTRICT
Sebastopol, California