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 (X) Notice

PUBLIC USE OF SCHOOL FACILITIES

NOTE: This policy reflects New York Education Law 414, which is the main statute addressing public use of school facilities. It is offered to update, combine and expand the Board's current policies 3280 (Use of Facilities, Materials, and Equipment) and, 3281 (Use of Facilities by the Boy Scouts of America and Patriotic Youth Groups). We have incorporated provisions from the Board's current policies but recommend a more comprehensive guidance policy. We address the use of district's materials and equipment in new policy 8330. Please review the notes provided which explain why we offer this approach and see the additional bold text below.

While the district's school buildings and grounds are maintained primarily for the purpose of educating students within the district, the Board of Education recognizes that the buildings and grounds are a valuable community resource and believes that this resource should be available to the community for specific uses that will not interfere with educational activities. This policy is intended to identify the uses that community groups may make of those facilities.

Permitted Uses

NOTE: The Permitted Uses section of the policy should identify the specific uses authorized by the Board. In deciding what uses it wishes to permit, the Board has very broad discretion, so long as the uses are among those the State Legislature has permitted pursuant to Education Law 414. It is important that the Board understand that while it may permit its facilities to be utilized by outside groups for the purposes listed in 414, it is not required to open its facilities to any group for purposes that are not directly school related. As the Commissioner of Education has stated, [section 414] places no obligation on the Board to grant use of school buildings to anyone (Matter of Ellis, 77 St. Dept. Rep.32 (1956)). As a practical matter, it is highly unlikely that the Board would want to place a total ban on the use of district facilities by the public.

The list of permitted uses set forth in this sample policy reflects virtually the entire list contained in Education Law 414, and therefore is as broad as the law allows. The Board should be aware that the broader the list of permitted uses, the more likely it is that the district will face litigation if and when it decides to deny use. As such, the Board should give careful consideration to the issue of permitted uses.

District facilities may be used for the purposes listed below, subject to the conditions and restrictions set forth in this policy.

- A. Instruction in any branch of education, learning, or the arts.
- B. Public library purposes, subject to provisions of the Education Law, or as stations of public libraries.

NOTE: Item C below reflects Education Law 414, that civic meetings include meetings of parent associations and parent-teacher associations.

- C. Social, civic (including but not limited to meetings of parent associations and parent-teacher associations), and recreational meetings and entertainments, or other uses pertaining to the welfare of the community, so long as such uses are non-exclusive and open to the general public.
- D. Meetings, entertainment, and occasions where admission fees are charged, when the proceeds are to be spent for an educational or charitable purpose.
- E. Polling places for holding primaries and elections, and for the registration of voters.
- F. Civic forums and community centers.
- G. Recreation, physical training, and athletics, including competitive athletic contests of children attending a private, nonprofit school.
- H. Child-care programs when school is not in session, or when school is in session for the children of students attending schools of the district and, if there is additional space available, for children of employees of the district.

NOTE: Item I below reflects a permitted use under Education Law 414. However, as the district is not required to allow this use, please be sure to only include it if it is intended.

- I. Licensed school-based health, dental or mental health clinics as defined in Education Law 414, operated by an entity other than the school district.
- J. Graduation exercises held by not-for-profit elementary and secondary schools, provided that no religious service is performed.

NOTE: Item K below reflects a permitted use under Education Law 414. However, as the district is not required to allow this use, please be sure to only include it if it is intended.

- K. Classes of instruction for intellectually disabled minors operated by a private organization approved by the Commissioner of Education.

NOTE: The paragraph below reflects a provision of Education Law 2-a.

Additionally, as a condition of receiving state funding, the district permits access to military recruiters to school buildings, grounds and facilities to the same extent it provides access to those who inform students of educational, occupational, or career opportunities.

Prohibited Uses

NOTE: Although 414 does not include a provision related to the authority on the part of religious institutions to utilize school premises after school hours for religious purposes, the United States Supreme Court in previous decisions (Lamb's Chapel v. Center Moriches and Good News Club v. Milford) has determined that if other outside groups are permitted to utilize school facilities to express their positions on certain subject matters, religious organizations cannot be excluded from utilizing school premises for the purposes of expressing their religious viewpoint on such matters. In short, prior to any school district excluding a religious institution from utilizing school facilities after school hours, they would be wise to consult their school attorneys given the complexity of this constitutional area of law. In addition, interpretation of the First Amendment and Education Law 414 related to whether outside groups are entitled to utilize school premises after school for the purpose of holding religious worship services has been the subject of much litigation. In May of 2015, the U.S. Supreme Court left intact an April 2014 ruling by the U.S. Court of Appeals for the 2nd Circuit (with jurisdiction over New York State) that the New York City Department of Education may prohibit the use of school property for religious worship services, or otherwise using a school as a house of worship (Bronx Household of Faith v. Board of Education of the City of New York). Boards wishing to preclude religious groups from using their facilities for such purposes should proceed with caution and should consult with their school attorneys before taking action, since this is an area of law that is so complex.

Any use not permitted by this policy is prohibited. In addition, the following uses are specifically prohibited.

NOTE: Pursuant to Education Law 414, district facilities may be used for political meetings if the use is authorized by the voters or, in city school districts, authorized by the Board.

- A. Meetings sponsored by political organizations.

NOTE: The use cited in item B below reflects the specific prohibition under by Education Law 414.

- B. Meetings, entertainments and occasions, where admission fees are charged, that are under the exclusive control of and the proceeds are to be applied for the benefit of a society, association or organization of a religious sect or denomination or of a fraternal, secret or exclusive society or organization, other than veterans organizations or volunteer fire fighters or volunteer ambulance workers.

Conditions of Use for District Facilities

NOTE: Adoption of this section of the policy will require the district to establish a fee schedule. The fee schedule need not but may be attached to the policy as an exhibit.

- A. Use of district facilities may be permitted unless such facilities are in use for school purposes, or during educational programs. The district reserves exclusive and nonreviewable judgment to determine if a requested use would interfere with or disturb the district's educational programs.
- B. To ensure that district facilities are preserved for the benefit of the greater district community, only community based groups and organizations (that is, groups which are located within the geographic area covered by the district) may be granted access to district facilities.
- C. Use of district facilities will be permitted only where the applicant agrees to pay the district a user fee according to a schedule adopted by the district to cover the costs of heat, electricity, maintenance, custodial services and any other expenses associated with the requested use. Use is further conditioned upon the applicant's agreement to pay additional fees associated with the use of any additional services or equipment. The district retains the right to condition use upon an applicant depositing with the district a sum equaling the estimated costs and fees associated with the proposed use 10 days in advance of the requested use. The district retains the further right to waive user fees for groups that are associated with or sponsored by the district.
- D. Where, in the judgment of the district, the requested use of district facilities requires special equipment or supervision, the district reserves the right to deny such use, or in the alternative, to condition such use upon the applicant's payment of additional fees in accordance with paragraph C above. Only authorized personnel will operate district equipment.
- E. Use of district facilities will only be permitted where the organization provides the district timely evidence of adequate insurance coverage (\$1,000,000 minimum) to save the district harmless from all liability, property damage, personal injuries and/or medical expenses. The district will exercise complete and unreviewable discretion regarding what constitutes adequate insurance coverage for each proposed use.
- F. The Board reserves the discretion to deny use of district facilities described above, or to terminate use of district facilities:
 1. By an applicant who has previously misused or abused district facilities or property or who has violated this policy;
 2. For any use which could have the effect of violating the Establishment Clause of the United States Constitution or other provisions of the United States or New York State Constitutions;
 3. For any use which, in the estimation of the Board, could reasonably be expected to or actually does give rise to a riot or public disturbance;
 4. For any use which the Board deems inconsistent with this policy;
 5. For any use by a private for-profit entity that has the direct or indirect effect of promoting the products or services of such entity;
 6. In any instance where alcoholic beverages or unlawful drugs are sold, distributed, consumed, promoted or possessed;
 7. For any use prohibited by law.

Application Procedure for Use of District Facilities

NOTE: Adoption of this section of the policy will require the district to establish a use permit application. Among other things, the district may wish to use the application form to notify applicants of a variety of additional conditions governing use of district facilities such as:

- a. The number of persons admitted for a function must not exceed room capacity limits.
- b. Whenever inclement weather or an emergency situation cause the closing of district schools, all after-school functions scheduled for that day will be canceled.
- c. The person in charge of a function must notify persons in attendance, at the beginning of the function, of the procedures to be followed in the case of an emergency.
- d. In the case of an accident resulting in injury to any person or damage to personal property, the incident must be reported in writing to the Superintendent within a specified after the function.

- A. All applications for use of school facilities will be made in writing and submitted to the Superintendent of Schools at least 30 days prior to the date of the requested use. A use permit application is available in the Superintendent's office.

- B. The applicant must clearly and completely describe the intended use of the district facility in the application.
- C. All applicants must review this policy prior to submitting the application. All applications must be signed by an authorized agent of the group or organization requesting use. The applicant's signature on the application will attest to the group or organization's intent to comply with all Board policies and regulations and to use district facilities strictly in accordance with the use described in the application.
- D. All applicants must agree to assume responsibility for all damages resulting from its use of district facilities. Proof of adequate insurance must be provided by the applicant at least 10 days before the date of the requested use.
- E. Permits will be valid only for the facility, use, dates and time specified in the permit. No adjustment to the permit is allowed except with the prior written approval of the Superintendent. Permits will not be transferable.
- F. The Superintendent is authorized to alter or cancel any permit if it becomes necessary to use the facility for school purposes or for other justifiable reason.
- G. With regard to scheduling activities, the district retains the right to give preference to groups and organizations which are associated with or sponsored by the district.
- H. Issuance of a permit will not limit the right of access to the facility by district staff.

Ref:

Education Law 2-a; 414

Adoption date: