

Guidelines for NLC Shared Use Agreements

It is recommended that each School District review any proposed Shared Use Agreement with their legal counsel and their risk consultant from the Schools Protection Program so that it may be adjusted and tailored to reflect the particular needs and unique qualities of the District.

A shared use agreement is a legally binding agreement between a school district and another organization or individual that details the conditions for sharing the use and potential development of facilities. Shared use agreements formalize the understanding between all parties involved in shared use. They specify the responsibilities of all parties and manage the risk associated with use of the facility.

Types of Agreements

There are four basic types of shared use agreements:

User agreement

A user agreement is designed to cover casual rentals, where a community group or member is accessing a part of the school for a specific purpose. This is the most straightforward agreement and is designed to support easy access to school facilities. Examples include:

- Local youth sports club hiring out a school hall for its annual awards night;
- Seniors club using the school gymnasium for exercise class 2 nights per week for a 6 month period;
- Local gardening club requiring space to hold a spring plant sale.

The risk to both the school/school district and individuals using the facilities is minimal. User agreements are not intended for use where the purpose of the rental is for an activity that carries a higher degree of risk, such as a sports tournament, with several hundred people attending over a number of days.

A sample User Agreement and a checklist of issues to consider when drafting a User Agreement are also available on this website.

We recommend that your legal counsel and your risk consultant from the Schools Protection program review any User Agreements before you initiate their use.

License agreement

License agreements are recommended for on-going use of a portion of a facility over a period of months or years, generally for a specific purpose. Examples include:

- Daycare operator using classroom and playground space on an ongoing basis;
- Local health authority using unused classroom space for a permanent public health nursing station for the local community.

Because the agreement covers a longer period of time and may provide exclusive use or access to parts of the facility, the risks to both the district and the Licensee can be greater. The Licensee may be bringing equipment and supplies on to the premise, and they may require some changes to the interior of the structure to suit their purposes.

A sample License Agreement (provided by the BC School Trustees Association specifically for childcare operators) and a checklist of issues to consider when drafting a license agreement is included at the end of this document.

Again, we strongly recommend that your legal counsel and your risk consultant from the Schools Protection Program review any License Agreement before you sign it.

Shared-use Agreement for Existing Facilities

We strongly recommend that you consult your legal counsel and your Schools Protection Program risk consultant before crafting any Shared Use Agreement due to the more complex nature of these types of shared use agreements. In this type of agreement, partners are sharing use of an existing facility. The facility may be owned by one of the partners, be under shared ownership, or more than one facility can be involved for reciprocal use. Examples include:

- An agreement between a school and community recreation centre for use of a school field by the community in non-school hours in exchange for upgrading and maintenance of the field;
- The school district and the recreation centre providing access to each others' facilities (e.g., recreation providing use of their pool in exchange for use of a school gymnasium).

Although there is no single way to develop a shared use agreement, there are a number of key steps to consider. Ultimately, the elements included in any shared use agreement must meet the administrative needs and goals of each partner. It is up to each school district to determine whether a shared use agreement is appropriate. It is the responsibility of all partners to determine how best to meet the interests and needs of all involved. Articulating shared goals is a good place to start.

Consider undertaking a risk assessment prior to drafting a shared use agreement. This will provide you with an opportunity to bring together the key stakeholders and to identify risks to the school district. Once the risks are identified, mitigation strategies can be developed and, where appropriate, included in the final agreement. Your risk consultant at the Schools Protection Program can provide you with assistance in the risk assessment process.

While many shared use agreements are between two parties, such as a school district and a municipality, they can include three or more partners. For example, you might form a partnership between the school district, the local government and a community organization.

There are a variety of partners who may be involved in the shared use agreement such as:

- Representatives from schools and the school community;
- School districts;
- Community recreation;
- Local or federal government;
- Other education and training providers such as universities and colleges.

A checklist of issues to consider when developing and implementing a shared use agreement for existing facilities is also available on this website. Because the nature of shared use agreements are so varied, it is difficult to provide a sample agreement that will work for most situations. The Schools Protection Program does have a collection of shared agreements previously negotiated and may be able to provide you with a sample that suits your situation. Please contact your risk consultant at the Schools Protection Program to discuss further.

Shared use agreement-new facilities

In a shared use agreement for a new facility, partners are sharing a new facility that they developed in partnership. An example of this would be shared development of a new track or tennis bubble next to a school, for use by students and the community at-large.

A shared use agreements for the development of a new facility in partnership with another organization can be complex and require a significant amount of detail related to the capital costs. Many of the considerations discussed for the shared use agreement in an existing facility are applicable to shared use agreements for new facilities but need to be considered in light of the shared capital venture. For this reason, shared use agreements for new facilities should be developed in consultation with a team of experts well-versed in legal, risk management, and capital ventures and are beyond the scope of this document.

School districts considering shared capital development should contact the Ministry of Education's Capital Planning Branch, legal counsel and their risk management consultant at the Schools Protection Program.

Considerations for development and use

Working Together

Working together and sharing facilities makes good sense but takes a bit of work. There are a number of things that need to be thought through to make sure the arrangement meets everyone's needs. A shared use agreement formalizes these arrangements between schools and community groups and/or other organizations. The process does not have to be long and complicated - it should be scaled to the complexity of the arrangement that you are putting in place. For example, making an agreement for a sports league to use a school gym on Monday evenings should be relatively quick and easy; one for a private daycare centre to operate in the school would take more time; and one for reciprocal shared use of all school district and community recreation facilities perhaps even more time.

Selecting partners

When becoming a Neighbourhood Learning Centre (NLC), it is important that activities fit within your concept for the NLC, that is, they meet both the school/district and community needs. For every idea considered as part of a NLC, the Board and its NLC working team should consider:

- How does this fit with the education mandate for our students?
- How will this benefit our community?
- What link/synergy will this opportunity create to enhance student learning and the community?
- Does the opportunity physically 'fit' in the space?
- What modifications/changes to building structure might be needed?
- Does the space have a dual, or more purpose – for example a community meeting room?
- Are gaps or service needs being addressed?

Not every potential partnership may be pursued. Is a prospective partner going to bring support and services that are important to the school and community? By using effective decision making to develop a coherent program, a NLC can bring together the most appropriate partners while building a comprehensive set of services and supports.

Include key groups in the shared use planning process. Take some time to consider what groups, organizations, and individuals have an interest in and will be affected by the shared use agreement. Invite them to the table to gather their insight and thoughts. Being inclusive and developing a trusting relationship with partners will provide a solid foundation from which to move forward.

Getting Started

Defining the scope of the shared use agreement is critical. While in some instances agreeing on the scope of the shared use agreement may be a straightforward task, it can also be complicated. When you meet as a group, make a list of the various facilities that will be made available for shared use. Get out a pen and paper and use a visual diagram to exemplify this point. This diagram can be included in the completed agreement.

Identify any facilities which will be excluded from shared use. Schools are not likely to permit their facilities to be used for activities that interfere with student learning or are against the ethos of the school. There may also be facilities, for example, grass sports pitches, that will not sustain community use without significant deterioration to the field.

Consider the requirements for using the facility and what it will take to meet these requirements. The extent of alterations or improvements which are necessary to facilitate the shared use agreements must be determined, as well as deciding who will complete the work and at whose cost.

Identify and Reach Agreement on Key Issues

One of the most important steps to developing a shared use agreement is identify and reaching agreement on key issues. The considerations in this area can be organized by operational and legal considerations.

Operational Considerations

Articulation of common operational issues impacting shared use is well worth the effort. The common operational considerations to think about are:

Scheduling

Many of the concerns surrounding the shared use of facilities revolve around the development of schedules and how user groups go about booking facilities.

The Shared Use Agreement should include detail which parties will be responsible for booking the facility and the priority order in which the facility can be booked. It is recommended that your Shared use Agreement establishes a timeline for scheduling as well. Often shared use agreement partners schedule according to the school calendar year. For example, requests for bookings are to be made by May 31, by July 31, the schedule is confirmed, and after August 15th, any space that is not booked becomes available for other purposes.

Determine how changes /cancellations will be accommodated and which group will be responsible for handling cancellations.

Staffing

Staffing the shared use of a facility can be complex, particularly if the shared use is outside of regular operational hours. However, well thought-out, honest discussions can go a long way to minimizing the challenge.

Document the staffing requirements that are needed to support the shared use. Generally staffing that is required in addition to regular staffing is related to custodial/engineering services and in some cases general supervision.

Determine which aspects of these staffing costs will be covered by the facility owner and which are additional costs. If the facility is jointly owned, the cost may be based on relative usage. Often costs are considered extra if staff members need to be present outside of regular staffing hours (e.g. when custodians/engineers need to be in the school beyond regular school operating hours).

If there is a need for staffing in addition to regular staffing, decide who is responsible for organizing the service and how associated costs will be covered.

Use and Maintenance of Materials, Equipment and Facilities

For expendable equipment and materials such as soccer balls and basketballs, use of materials and equipment can be pretty straightforward. However, larger pieces of equipment such as nets, goals or are often shared.

Make a list of equipment and materials that will be shared between the partner groups and then discuss how the shared equipment and materials will be maintained and replaced, both in terms of cost and taking responsibility for purchase of equipment and materials. Discuss how and where to store equipment and materials. Consider access, security and any related impact on privacy.

Develop a procedure for reporting damage to equipment and materials that occurs through normal wear and tear, through negligent use, or through theft or vandalism. If user groups are utilizing existing equipment, discuss the possibility of a yearly damage deposit system. If a damage deposit is necessary, determine the amount, and the equipment and materials it specifically covers.

By their nature, facilities experience regular wear and tear as a result of use. They may receive additional damage through unexpected events or mishaps. There are many factors to consider in the use of facilities and properties such as privacy, security protocols, and something as simple (but necessary) as toilet facilities.

Make a list of the facilities involved in shared use and discuss the maintenance requirements for each of the facilities. If there is a need for additional maintenance, discuss which party will be responsible for providing the maintenance. Also discuss the accepted standard for maintenance. If the facility is jointly owned, discuss who will be responsible for regular property maintenance and restitution/repair of the facility.

Determine and document the rules of conduct for the facility and make sure user groups are informed of these rules.

Legal Considerations

Legal considerations are often viewed as one of the major challenges to drafting shared use agreements. In most cases legal considerations are surmountable and can be addressed through careful thought and consideration. Once legal considerations have been settled, they are usually not an issue during implementation.

Indemnification and insurance are two key legal considerations during the development of a shared use agreement. The Schools Protection Program has developed suggested indemnity/insurance clauses for lease and shared use agreements. Information can be found on their website at www.bcspp.org or through contact with your Schools Protection Program risk consultant.

Indemnities are a common risk transfer mechanism between parties in an agreement, allocating who will pay for certain types or causes of loss. The intent of indemnification is that a party be returned to the financial position that it was in before the loss occurred, or “made whole”. A good indemnity is reasonable, fair, and places the risk of loss on the party most able to manage the risks.

Shared use agreements typically include insurance requirements to ensure that dedicated funds will be available to pay the costs in the event that a loss occurs and the indemnity obligations are called upon.

Establish Regular and Ongoing Communication with Stakeholder Groups

Fostering ongoing communication throughout the development and implementation of shared use agreements helps keep everyone focused and on task. Ongoing communication enables discussion around considerations and issues before they create larger problems for all involved.

Communication should occur among all stakeholders. Ensuring that the on-site staff has opportunities to communicate concerns that arise once the agreement is underway as they deal with the day-to-day operations and challenges, and are key to its success.

Establish how your shared use agreement will be managed. There are generally two options for managing shared use agreements:

- By committee: The school district and community organizations involved agree to establish a committee to manage the shared use agreement. The committee should have representation from all partners.
- By individual representatives: Identify one responsible partner from each stakeholder group to take responsibility for the agreement.

Discuss how often the partners will meet and document within the agreement itself to ensure compliance. Generally, committee members meet at least once annually to discuss administration of the agreement and to iron out any wrinkles and make necessary changes. Include a clause in the agreement about the agreed upon meeting schedule and frequency.

Develop Internal Policies for Shared Use

Each District must also develop internal policies which address shared use issues. The District should determine what types of activities are approvable, who has the authority to grant approval, the priority of access (if there are competing demands for space) and fees. Once policies are set, it is important that they are well communicated throughout the organization and that adherence to the policies is required.

Failing to develop internal policies leaves the District open to allegations of unfair or unequal allocation of access to facilities.