

RISK SIMPLIFIED

RESOURCES

[CDPH COVID-19 Industry
Guidance: Schools and School
Based Programs](#)

[Insurance Requirements in
Contracts](#)

[PRISM General Counsel](#)

[The Civic Center Act, Education
Code Section 38130](#)

QUESTIONS:

[Email PRISM Risk Control](#)
or call 916.850.7300

Civic Center Act & Pandemic Events

by Scarlett Sadler

The California Civic Center Act (Education Code Section 38130 et seq.) requires that every public-school structure and facility built with public dollars is accessible to the public for uses beyond schooling. This means that school districts must allow the use of their facilities by nonprofit organizations that are organized to promote youth and school activities such as the Girl Scouts or the Boy Scouts. Additionally, school districts may allow the use of their facilities for other organizations such as religious organizations.

The management, direction, and control over the use of school facilities lies with the governing board of a school district. They are responsible for ensuring the use of school facilities is consistent with the use of the school facilities for school purposes and does not interfere with the regular conduct of school work. Each school district should have a Use of Facilities policy that aligns with their governing board's direction.

During a pandemic, many school districts may be forced to temporarily suspend the use of their facilities. Before school districts decide to allow the use of their facilities during a pandemic, there are several items they should consider, including:



RISK SIMPLIFIED

1. Does the school district's current facility use agreement address pandemic health and safety protocols required for permit holders when using facilities?
 - Consider adding language to the facility use agreement that will outline the school district's expectations of the permit holder. This should include requiring the permit holder and any participants to adhere to local health and safety guidelines to prevent the spread of illness including, but not limited to:
 - i. facility sanitation;
 - ii. limiting group size;
 - iii. requirements for PPE; and
 - iv. physical distancing.
 - School districts should also consider including a provision in their facility use agreement that requires permit holders to submit a written plan for preventing the spread of illness amongst event participants.
2. Does the school district use a third-party to manage requests for the use of school facilities? If so, has the school district communicated district health and safety protocols for the use of facilities?
 - School districts using a third-party to manage the use of school district facilities should communicate their current plan for facility usage during a pandemic to their third-party facility managers.
 - If any new requirements or modifications have been made to the facility use agreement, school districts should also communicate these terms to the third-party facility managers.
 - If access to facilities has been temporarily revoked, school districts should inform their third-party facility managers to ensure that the school district is not obligated to any agreements that cannot be fulfilled due to local public health orders or the governing board's direction.
3. Has the school district identified and reviewed facility use agreements for future events to determine if they require cancellation?
 - Any future facility use agreements should be reviewed to determine if cancellation is required due to direction from the school district's governing board.
 - If cancellation is required, school district staff should communicate its school closures to all permit holders and try to reach a resolution should there be any disputes.
4. Has the school district updated its use of facilities fee schedule to accommodate the potential cost increase for cleaning and disinfection of facilities due to a pandemic?
 - School districts are permitted to charge permit holders fees for the use of facilities. The fees may vary based on the type of organization requesting to use the school district's facilities. For

RISK SIMPLIFIED

example, if the school district facility is being used by either nonprofit groups not organized to promote youth and school activities or for-profit groups, the school district would charge an amount at least equal to the school district's direct costs. Whereas on the other hand, if a nonprofit organization that promotes youth and school activities uses the facilities, they may not be charged any fees.

- School district staff should review board policies and administrative regulations to determine if they need to create new or revised fee schedules to use facilities under pandemic conditions.



5. Who is responsible for facility set-up and clean-up duties?

- The school district should consider whether it is appropriate for the permit holder to perform cleaning activities or if school district janitorial staff or a third-party cleaning service should complete those tasks.
- The responsibility for facility set-up and clean-up should be specified in the facility use agreement.

6. Does the school district's facility use agreement include insurance requirements and indemnification language to reduce the school district's liability?

- When school district facilities are used by groups for which Education Code Section 38134(a) applies, districts are liable for injury resulting from the district's negligence in the ownership and maintenance of the school facilities or grounds. Similarly, these groups that are using school facilities or grounds are liable for injury resulting from the negligence of that group during the use of the school facilities. The school district and the group using the school facilities or grounds under Education Code Section 38134(a) shall each bear the cost of insuring against its respective risks and shall each bear the costs of defending itself against claims arising from those risks. With this in mind, school districts should take precautions to ensure facilities are free from hazards including, but not limited to:
 - i. Conducting routine safety inspections
 - ii. Immediately abating hazards
 - iii. Adhering to a facility maintenance schedule
- School districts can protect themselves against the risk of loss, damage, or liability by ensuring they have the proper insurance in place. School districts should also require user groups for which Education Code Section 38134(a) does not apply to provide liability insurance and, where appropriate, workers' compensation insurance. School districts may also require an additional insured endorsement, naming the school district as an additional insured. In the event alcohol service is being considered, liquor liability insurance should also be required.
- School districts should also include an indemnity clause in their facility use agreements by which one party agrees to be responsible for part or all of the liability the other party might incur.

7. Does the school district's facility use agreement allow for cancelation or termination of permits for convenience?

- If the school district's current use of facilities agreement does not include a section on termination, consider adding a termination section that allows the school district to terminate any use of facility agreement to include circumstances affecting the health and safety of anticipated participants.
- A general termination clause should also include termination due to the school districts need to use the facilities to carry out required educational activities and modifications or repairs to the facilities.

During and after a pandemic event, California school districts will likely be presented with requests from organizations that frequently use school facilities. It is essential to be prepared for these requests. School districts should consider how these requests will be handled while considering the health and safety requirements necessitated by a pandemic. Ultimately the governing board of a school district has the power to determine if and when facilities will open. School districts should consult with their governing board, the local public health department, state and federal guidelines, and district risk management before permitting any use of facilities.

For questions, please contact [PRISM Risk Control](#).