

Toolkit: Shared Use



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Introduction

This toolkit aims to provide City of Dover and Kent County policy makers with information about shared use and how to develop and implement shared use initiatives. While shared use initiatives may be pursued by private and nonprofit organizations, this toolkit focuses on shared use initiatives from the perspective of local government.

While shared use may apply to a variety of resources or facilities, this toolkit focuses on shared use of recreational facilities for physical activity – like opening a local school playground during non-school hours for community use. In many low-income, low-resourced communities, recreational facilities at schools may be the only safe and affordable facilities of their kind. By improving access to existing facilities for physical activity shared use helps to address health equity. Health equity is achieved when everyone has the opportunity to attain their full health potential.

What is shared use?

The term “shared use”, also called “joint use” or “community use” (referred to interchangeably in this toolkit), refers to when governmental entities, or private or nonprofit organizations, agree to open or broaden access to their facilities for community use.

Shared use increases community access to recreational facilities, including open space, playgrounds, fields, courts, tracks and gymnasiums, where people can engage in physical activity. Such recreational facilities, including those at schools, are often inaccessible to the public due to maintenance, security and liability concerns- all of which shared use policies can help address.

Shared use policies provide a formal (written, legal document) or informal (historical practice) basis for opening up facilities, extending public-use hours or otherwise broadening public access.

Health benefits of shared use

The Benefits of Shared Use Infographic (page 4) developed by ChangeLab Solutions presents many of the benefits of shared use, including for community health, equity, community, education and economy. The below summarizes key benefits of shared use for Dover/Kent County.

Promotes health equity: Shared use offers more opportunities for physical activity, particularly in low-income, low-resourced communities and communities of color. Increased access to recreational facilities may lead to increased physical activity, and reduced prevalence/incidence of chronic disease.

Drives economic efficiency and opportunity: Shared use is a more cost-effective strategy for improving community access to recreational facilities than developing new resources or facilities. Investment in facilities owned/operated by private or nonprofit organizations supports local businesses and organizations, and stimulates the local economy.

Invests in neighborhoods: New shared use policies often include public or private investment in facility improvements and maintenance. Well-maintained and well-used facilities are associated with decreased crime, vandalism and violence on or near their premises. Such facilities are neighborhood assets and may catalyze other neighborhood improvements and may increase local property values and neighborhood vitality.

Benefits of Shared Use

People everywhere want access to safe and affordable recreational spaces. With shared use, public and private property owners can open underutilized facilities for community use. Though often used as a strategy to increase opportunities for physical activity, shared use has many wide-ranging benefits.



Health

INCREASED PHYSICAL ACTIVITY among people who live near recreational spaces

REDUCED RISK OF CHRONIC DISEASE associated with more physical activity

BETTER ACCESS TO HEALTHY FOODS through community gardens and kitchens

IMPROVED MENTAL WELL-BEING for those who live near parks or recreational facilities

REDUCED STRESS for people who spend more time outside

Equity

MORE OPPORTUNITIES FOR PHYSICAL ACTIVITY in low-income communities and communities of color, which are less likely to have access to recreational spaces

REDUCED HEALTH INEQUITIES by creating more spaces for play and exercise in the communities that need them most

Community

DECREASED CRIME, VANDALISM, AND VIOLENCE in recreational spaces that residents use regularly

STRONGER COMMUNITY TIES through informal interaction, organized activities, and volunteering

Education

IMPROVED ACADEMIC PERFORMANCE among kids who are more physically active

BETTER CLASSROOM BEHAVIOR when students can play and be active

Economy

MORE COST-EFFECTIVE than building new resources or facilities

INCREASED ECONOMIC OPPORTUNITY when shared use supports small business incubation

HIGHER PROPERTY VALUES for properties closer to parks, open spaces, and recreational facilities



Learn more at www.changelabsolutions.org/shared-use

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Support for shared use in City of Dover and Kent County

In 2014, the Centers for Disease Control and Prevention (CDC) published the *State Indicators Report on Physical Activity, 2014* which is accompanied by an action guide for each state. The Delaware Action Guide promulgates strategies and potential actions based on Delaware's indicator scores. Under "Strategy 1: Create or Enhance Access to Safe Places for Physical Activity," the Guide stipulates two "Potential Actions" related to shared use: (a) "Provide model joint-use agreement language to school districts or the state Department of Education"; and (b) "Work with school districts to clearly define the potential users of physical activity facilities before establishing joint-use agreements." According to the 2014 report 20 states provided guidance on policies for school districts or schools on joint-use agreements for physical activity facilities; notably, the State of Delaware did not. Should the City of Dover and Kent County pursue shared use, they will take an important step to addressing this CDC-identified facilitator for physical activity, and they may help to catalyze or support State action with regard to shared use.

Kent County and City of Dover charrette participants identified shared use as a preferred strategy for addressing physical activity and health equity locally. Community members and stakeholders noted that Lake Forest High School already opens its aquatic facility and gymnasium to the public for a fee. Lake Forest High School's existing program can serve as a model that other schools in the area can replicate.

Involved parties

This section describes different parties involved with shared use initiatives. While not an exhaustive list, the following describes parties' assets and involvement with a local government-led shared use initiative.

Local government: Local governments increasingly recognize the benefits of shared use and pursuing shared use policy action locally. Local policymakers can promote shared use by providing funding and policy support. Policy support for shared use may be promulgated in comprehensive plans or executive orders. Funding support for shared use initiatives may come from a number of sources which include allocation of general funds or dedicated tax revenues, grant monies, and fee-based revenues. Additional support may take many forms, including maintenance agreements, development agreements, technical assistance and public-private partnerships. Further, local government entities may own facilities for which community access may be opened or broadened through shared use.

State government: State governments around the country increasingly recognize the benefits of shared use and support shared use state-wide by providing funding and policy support. State agencies can develop grant programs to fund local shared use policy development, develop resources for local governments and school-districts, and participate in state-level planning efforts. Further, State government entities may own facilities for which community access may be opened or broadened through shared use.

Schools and school districts: K-12 schools often have indoor and outdoor recreational facilities for which community access may be opened or broadened. Local government can encourage school districts to pursue shared use, and coordinate with school districts and local schools on their shared use policies. Local government can further support schools' efforts by outreaching, and providing financial and resource support.

Faith-based, and civic organizations: Faith-based and civic organizations may have recreational facilities for which community access may be opened or broadened. Local government can encourage such organizations to pursue shared use and support their efforts by outreaching, and providing financial and resource support.

Facility owners: The term “Owner” refers to the owner of the recreational facilities to be opened to the community. Owners may include private businesses, including hotels, and citizens, faith-based and nonprofit organizations, school districts, municipal governments and other public entities.

Shared use policy approaches

The below describes common shared use policy approaches, including Open Use Policies, Facility Use Policies and Shared Use Agreements. These approaches can be used on their own or in combination to enhance access to recreational facilities and resources.

Policy Approaches	Definition	Role of local governments
<i>Open Use Policy</i>	Owner adopts individual policy to provide free community-access to recreational facilities without formal agreement, or public or third-party partnership	Local government can encourage and support schools, and faith-based and civic organizations in developing their individual Open Use Policies. Local government may also pursue Open Use Policies for their facilities.
<i>Facility Use Policy (and Agreement)</i>	Owner adopts individual policy to provide access to third-party or public user groups. Users generally sign a contract (i.e. “Agreement”) with Owner and pay a fee.	Local government can encourage and support schools, and faith-based and civic organizations in developing Facility Use Policies. Local government may also pursue Facility Use Policies for their facilities.
<i>Shared Use Agreement¹</i>	Owner provides access to facilities per terms and conditions of shared use stipulated in a legally-enforceable contract between two or more entities. Allows for expectations, shared costs and responsibility for opening facilities.	Local government can encourage schools, and faith-based and civic organizations to enter into MOUs and/or contracts that enable opening up or broadening access to their facilities. Local government then shares costs and responsibilities for those facilities as stipulated in the MOU or contract.

Tradeoffs: Open Use Policies that lack formal agreements may be difficult or impossible to enforce, and, over time, the loss of key personnel and budgetary changes may affect continuity of facility access. As such, informal arrangements are more likely to be abandoned, leading to loss of community access to facilities over time. Shared Use Agreements provide each party with enforceable rights, so each party is held accountable for their stipulated responsibilities. The process of signing Shared Use Agreements enables parties to learn about each other’s expectations and concerns and address them formally to prevent conflicts from arising.

¹ Alternatively or in addition to a Shared Use Agreement, parties may develop a Memorandum of Understanding (MOU) that establishes expectations and responsibilities of each party that need not contain legally enforceable promises.

Developing shared use strategy for City of Dover and Kent County

The following suggests a process for developing a shared use strategy for City of Dover and Kent County.

Create a Task Force: A local Shared Use Task Force can be created to ensure coordination and ongoing communication among local agencies, community groups and other stakeholders as shared use policy is developed and implemented. When creating a Task Force it is useful to tap existing advocate networks. Consider reaching out to the potential allies listed in the box below as organizing begins. As Task Force work moves forward, it will also be necessary to engage local residents and other stakeholders around community assets and needs as they pertain to shared use of recreational facilities.

Adopt local policy: Many communities address shared use in their comprehensive plans which articulate policies and priorities for development. For Dover and Kent County, a shared use policy should be added as part of future comprehensive plan updates. Example shared use policy language is included in Guidance Documents for both Dover and Kent County. Executive orders and local legislative-body resolutions are other options for adopting local shared use policies. A Model Joint Use Resolution developed by Change Lab Solutions is included as Appendix A.

Early steps to implement: Even before local policy is officially adopted, local government actors, the Task Force and other stakeholders can collaborate to develop their implementation strategies and pilot shared use projects. Early steps to developing and implementing shared use strategies will involve addressing potential internal issues, including the following, and building stakeholder momentum and energy around shared use:

- (a) **Coordinate with schools and school districts:** School districts may need to modify or enact relevant policies and procedures addressing requirements for third-party use of facilities if such policies and procedures do not currently exist. School district representatives to the Task Force can lead efforts to evaluate the current school districts' policy landscapes and collaborate with district administrators on addressing current policy gaps. Representatives should also

Task Force Case Study

"In North Carolina, by joint resolutions, the City of Charlotte and Mecklenburg County created a joint use task force (JUTF), which provides a comprehensive and coordinated picture of the community's capital facilities. These resolutions endorsing joint facility planning and use were later adopted by the Charlotte-Mecklenburg Board of Education, the local community college board, and the county library board. Today, planning staff from more than two dozen government agencies, along with representatives from nonprofit organizations, meet monthly to develop collaborative joint use agreements and to coordinate long-term facility master plans" – from *Playing Smart*

Potential shared use allies

Public schools in the City of Dover
Smyrna School District
Capital School District
Lake Forest High School
United Way of Delaware
Delaware Council of Faith-Based Councils
Delaware Chapter of the American Planning Association
Delaware Academy of Medicine/Delaware Public Health Association
Nemours Children's Health System, Division of Health & Prevention Services
Delaware Office of State Planning Coordination
Dover/Kent Metropolitan Planning Organization
Delaware Division of Public Health
Delaware Department of Transportation
Delaware State Parks
Delaware State Housing Authority
YMCA of Delaware
University of Delaware, Institute for Public Administration
National Council on Agricultural Life and Labor Research Fund, Inc.
Delaware Community Foundation
Delaware Association of Nonprofit Agencies

identify and contact their district's risk manager who can help them to work within the existing insurance and liability protections framework. A Model Open Use Policy for School Districts is included as Appendix B. Another early step for educational partners could be adding shared use agreements to school wellness policies which all schools that participate in the National School Lunch Program are required to adopt. The policies address nutrition and physical activity, reflecting the essential role that schools play in promoting student health and physical activity, and preventing obesity. Appendix C provides model local school wellness language and more details about incorporating shared use into school wellness policies.

- (b) **Coordinate with faith-based and civic organizations:** Faith-based and civic organization representatives to the Task Force can lead efforts to gain necessary approvals or enact policies/procedures within their organizations to permit shared use. They can also network and connect other faith-based and civic organizations with the Shared Use Task Force.
- (c) **Formulate strategy for local government Owners:** City of Dover and Kent County representatives to the Task Force can lead efforts to identify and inventory publicly-held facilities suitable for shared use. They can then prioritize facilities to open or broaden access to, based on demographics and community needs. It will be useful to consult Dover/Kent County's health and equity assessment and engage local stakeholders and residents to maximize health equity outcomes of the shared use projects.

Piloting a project: The Task Force can learn from the existing shared use program at Lake Forest High School and use it as a model for indoor facilities. The Task Force may also pursue a pilot shared use project, for instance opening playgrounds for community use during non-school hours. The pilot shared use project would be a living experiment from which to garner information and lessons learned to support the ongoing work of the Task Force. It could also serve as a demonstration project that would engage the public and build support for shared use in Dover/Kent County. A local government-owned facility could serve as the pilot project, which may allow the pilot to move forward expeditiously even if non-governmental shared use Task Force partners are still working to address internal issues.

Develop shared use agreements: Once internal issues are resolved, local government can begin to develop shared use agreements and/or MOUs with governmental entities, schools/school districts and other interested partners. A Model Joint Use Agreement developed by Change Lab Solutions is included as Appendix D.

Overcoming potential obstacles

Safety, insurance, and liability are often key barriers for Owners pursuing shared use. Concerns about legal responsibility should injury or property damage occur are among the most common reasons that public Owners do not move forward with shared use. Fear of liability may be a very real issue, or an issue easily

Example: State Code Protects Schools from Liability

The North Carolina General Assembly passed NCGS § 115C-12(35) as an addition to the list of the powers and duties of the State Board of Education. The code protects schools from liability risk in order to address this common barrier to shared use. It reads as follows:

"The State Board of Education shall engage local boards of education to enter into agreements with local governments and other entities regarding the joint use of their facilities for physical activity. The agreements should delineate opportunities, guidelines, and the roles and responsibilities of the parties, including responsibilities for maintenance and liability."

addressed with the right tools. All states afford schools and public entities some degree of legal protection from liability; however, the protections vary state to state. Attorney consultation is necessary to determine government liability in various circumstances. Liability concerns may be addressed by changes to State law; however, that is clearly an involved process, and there are more feasible alternatives. For example, prudent risk management strategies, like regularly inspecting and maintaining property, carrying proper insurance and distributing legal risk through shared use agreements, may adequately address liability concerns.

Is liability risk high?

Research shows that liability risk is not as high as often believed. Most people who are injured through another's fault (with exception of auto collisions and workers' compensation) never bring a claim². The legal system does a reasonably good job of weeding out claims without merit³, and even when plaintiffs win at trial they rarely receive the full amount of the verdict⁴. In the case of schools, liability risk is often greater, in some states, for the use of school facilities during the day when children and staff are at school than after hours.

What are the legal protections for government agencies?

Legal protections vary among states. States may employ several remedies to protect schools and other public agencies from liability. These include Sovereign or Governmental Immunity, and Recreational Use Immunity. Sovereign or Governmental Immunity are legal rules that limit the extent to which school districts and other public agencies can be found liable for harm. Recreational Use Immunity applies to public and/or private landowners who open their property to the public for recreational use. "Good Samaritan Laws" are also used to protect citizens from liability if they attempt to help or rescue someone in imminent or serious danger in good faith. States may also offer limits on damages which protect agencies from large claims by limiting the amount of damages that public agencies can pay.

Will insurance protect against liability?

In the case of schools, most school districts insure themselves to protect against liability. State laws vary on the type of insurance that school districts may or must carry. In addition to liability protection during school hours, insurance policies may also protect after school hours. School districts often employ risk managers who will know whether current insurance policies will or could be extended to cover after-school use.

Are there options if adequate insurance policies are not in place?

In some cases, partners can be added as an "additional insured" to a primary party's insurance. For instance, should a nonprofit organization and city wish to engage in shared use, the city may be able to add the nonprofit organization as an additional insured to their policy. If both parties have coverage, they may select the party whose insurance is best positioned to cover costs associated with proposed shared use activities.

How does risk management protect against liability?

Many public agencies, including school districts, have risk management programs to analyze and mitigate their exposures to risk. Parties can engage in risk management by complying with health and safety laws; ensuring maintenance of facilities; supervising grounds and equipment; and, ensuring staff are trained and supervised. Responsibilities for costs, staff, maintenance, etc. should be clarified in a Shared Use Agreement which must then be enforced.

² Hensler et al. Compensation for Accidental Injuries in the United States (1991); Carroll S and Abrahamse A. "The Frequency of Excess Auto Personal Injury Claims." *American Law and Economics Review*, 3(228): 2001.

³ See, e.g., Baker T. "Reconsidering the Harvard Medical Practice Study Conclusions about the Validity of Medical Malpractice Claims." *Journal of Law, Medicine & Ethics*, 33(501): 2005.

⁴ See, e.g., Hyman et al. "Do Defendants Pay What Juries Award? Post-verdict Haircuts in Texas Medical Malpractice Cases, 1988-2003." *Journal of Empirical Legal Studies*, 4(3): 2007.

References and Resources

Centers for Disease Control and Prevention. Delaware Action Guide:

https://www.cdc.gov/physicalactivity/downloads/state_pdfs/14_248165_de_tag508.pdf

ChangeLab Solutions. Benefits of Shared Use: <http://www.changelabsolutions.org/publications/benefits-shared-use>

ChangeLab Solutions. Congregation to Community: Shared Use by North Carolina Faith-Based Organizations: <http://www.changelabsolutions.org/publications/congregation-community>

ChangeLab Solutions. Contracts and MOUs: <http://www.changelabsolutions.org/publications/MOU-contracts>

ChangeLab Solutions. Fair Play: Advancing Health Equity through Shared Use: <http://www.changelabsolutions.org/publications/fair-play>

ChangeLab Solutions. Opening School Property After Hours: A Primer on Liability: http://www.changelabsolutions.org/sites/default/files/Primer-on-Liability_FactSht_FINAL_20100820-rebranded-20131126.pdf

ChangeLab Solutions. Playing Smart: Maximizing the Potential of School and Community Property Through Joint Use Agreements: <http://www.changelabsolutions.org/publications/playing-smart>

ChangeLab Solutions. The Benefits of a Written Shared-Use Agreement: <http://www.changelabsolutions.org/publications/benefits-written-agreement>

Appendices

Appendix A: [Model Joint Use Resolution](#)

Appendix B: [Model Open Use Policy for School Districts](#)

Appendix C: [Incorporating Shared Use into Local School Wellness Programs](#)

Appendix D: [Model Joint Use Agreements](#)