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### Workshop #14

## Alternatives to the Sale of Surplus Property

*Moderator:*

***Lindsay Thorson***

Atkinson Andelson Loya Ruud & Romo  
(562) 653-3200  
lthorson@aalrr.com

*Panelist:*

***David Ostermann***

Ramona Unified School District  
(760) 787-2023  
dostermann@ramonausd.net



# **ALTERNATIVES TO THE SALE OF SURPLUS PROPERTY: MAKING THE MOST OF SCHOOL DISTRICT ASSETS**

Presented by:

David Ostermann, Ramona Unified School District, and  
Lindsay Thorson, Atkinson, Andelson, Loya, Ruud & Romo

## **INTRODUCTION**

The significant decline in student enrollment among some school districts in recent years, combined with an awareness that student enrollment is prone to fluctuation, has resulted in greater interest in the available options for utilizing surplus sites or facilities. Many school districts prefer alternatives to the sale of surplus sites in order to retain the ability to reuse them for school purposes if the school district later experiences an increase in student enrollment. Accordingly, the purpose of this presentation is to provide ideas for utilizing those unused assets and the appropriate procedures. Although we are discussing alternatives to the *sale* of surplus property, these alternatives do not necessarily avoid the surplus property requirements found in the Education Code starting with section 17455. In addition, many of the options below will require compliance with applicable zoning and land use regulations, and all will require appropriate steps to comply with the California Environmental Quality Act (“CEQA”) by completing an environmental impact report, a negative declaration, or a notice of exemption.

The alternatives under discussion today are leases, joint use leases, joint use grant projects, joint occupancy, exchange, license agreements, and shared use agreements.

## **LEASES**

Leases are a common method used by school districts to retain unused property in a manner that is economically beneficial to the school district. However, the leasing of a school district’s real property is a highly regulated activity. The Education Code contains specific procedures for leasing property that apply depending on the property type and/or its intended use. In general, we will differentiate between the following property types: classroom space, recreational or Naylor Act property, vacant land, improved property not containing classrooms, and property intended for use for child care.

In order to lease school district property, regardless of the type of use, surplus property procedures must be followed, including the formation of an advisory committee pursuant to Education Code section 17387 *et seq.*, that makes recommendations to the school district governing board.

### **Establish Advisory Committee; Advisory Committee Meets and Makes Recommendations**

Pursuant to Education Code section 17388, before surplus real property is leased, the governing board of a school district must appoint an advisory committee to advise the governing board on the disposition of such property. Education Code section 17389 requires that the advisory committee be composed of not less than seven (7) nor more than eleven (11) members and must

be representative of specific groups within the community. Sometimes this committee is called a “7-11 Committee.”

Education Code section 17389 states that an Advisory Committee must be represented by each of the following:

- (A) The ethnic, age group, and socioeconomic composition of the school district.
- (B) The business community, such as store owners, managers, or supervisors.
- (C) Landowners or renters, with preference to be given to representatives of neighborhood associations.
- (D) Teachers.
- (E) Administrators.
- (F) Parents of students.
- (G) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to knowledge of the zoning and other land use restrictions of the cities or cities and counties in which the surplus space and real property is located.

The committee's task is to review data to determine the amount of surplus space or real property available, establish a priority list for its use, provide community input on acceptable uses, and forward its recommendations to the governing board. Education Code section 17390 specifically states that an Advisory Committee must do all of the following:

- (A) Review the projected school enrollment and other data as provided by the school district to determine the amount of surplus space and real property.
- (B) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
- (C) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings for community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for childcare development purposes pursuant to Education Code section 17458.
- (D) Make a final determination of limits of tolerance of use of space and real property.
- (E) Forward to the school district’s governing board a report recommending uses of surplus space and real property.

The provisions for an Advisory Committee do not set forth a minimum time period in which these duties must be completed. Furthermore, as an extension of a legislative body (the school district governing board), the Advisory Committee must follow all Brown Act requirements.

### Board Meeting to Declare Intent to Lease Real Property

Regardless of the type of property or the use intended for that property, the lease process requires that, upon receipt of the advisory committee's recommendations, the governing board make a determination as to the disposition of the property at issue. The board must declare its intent to lease the property by a resolution that is adopted at a regular open meeting by a two-thirds vote of all the board members. (Education Code section 17466.) The resolution must describe the property proposed to be leased, specify the minimum rental amount and terms upon which it will be leased (and commission if a broker is involved), and fix a time not less than three weeks thereafter for a public meeting of the governing board at which sealed proposals to lease the property will be received and considered. The stated terms will then be used to determine if a bidder is responsive to the governing board's requirements. The wording of the resolution is critical to ensuring that the school district receives proposals that meet its needs.

After the governing board adopts the resolution of its intent to lease the property, then the board's desired course of action must be implemented under the procedural requirements of the Education Code as discussed below. It is at this point that the type or use of the property for lease becomes relevant, and results in variations to the lease process concerning the notice required and the priorities for leasing.

### Notice Procedures Based on Type of Property: Variations to the Lease Process Subsequent to Adoption of Intent to Lease

#### *Classroom Space*

If a school district intends to lease classroom space, it must first offer to lease the property for special education programs to school districts that are part of the school district's special education local plan area or the county office of education with jurisdiction over the school district. (Education Code section 17465.) Under Education Code section 17465(c), the school district must notify, in writing, the school districts and county office of its intent to lease the vacant classrooms for special education programs that they provide. The notice must specify that the lease shall not exceed a term of 99 years and that the lease payment and other terms of the lease are subject to negotiation. The notice shall also state that the offer to lease is not valid for more than 60 days after receipt. (Education Code section 17465(c).) If a school district or county office of education is interested in leasing the property, the lease terms shall be negotiated between the parties and the lease payments "shall not exceed the school district's actual costs for maintenance, operations, and custodial services for the leased classrooms." (Education Code sections 17465(f)(1) and (2).) However, if the area school districts and the county office of education are not interested in leasing the property, the school district may then make the property available to the public through a formal notice and bidding process in accordance with Education Code section 17455 *et seq.*, as described below.

### *Recreation Site--Naylor Act Property*

If the property to be leased contains land that was used as a playground, playing field or recreational property for at least eight years immediately preceding the date of the governing board's decision to lease the property, then Education Code section 17485 *et seq.*, impose certain requirements including making the land available first to specific public agencies according to a given priority.

The purpose of the Naylor Act is to ensure that school playgrounds, playing fields, and recreational real property will not be lost for those uses by the surrounding communities, and to ensure that school districts recover their investment in surplus property while making it possible for other public agencies to keep the property available for playground, playing field, or other outdoor recreational use. (Education Code section 17485.) Property meeting the following characteristics is subject to the requirements of the Naylor Act:

- (A) The property consists of land which is used for school playground, playing field, or other outdoor recreational purposes or open-space land particularly suited for recreational purposes.
- (B) The property must have been used for one or more of the purposes set forth in the preceding paragraph for at least eight years immediately preceding the date of the governing board's determination to lease the property.
- (C) No other available publicly-owned land in the vicinity is adequate to meet the existing and foreseeable need of the community for playground, playing field, or other outdoor recreational and open-space purposes.

There are some exceptions and limitations to the Naylor Act which are summarized as follows:

- (A) If a school building is already erected on the site, the governing board can retain a portion of the property and the surrounding property which must be retained to avoid reducing the value of that part of the school site containing the structures to less than 50 percent of the fair market value. (Education Code section 17490.)
- (B) The school district can exempt the property from the Naylor Act if it is purchasing a school site at another location or is expanding another school site by 50 percent or more. (Education Code section 17497.)
- (C) A public agency can acquire only so much of the property so as not to exceed 30 percent of the total surplus land owned by the school district. (Education Code section 17499.)
- (D) The acquiring agency must maintain the property's use as recreational or open-space property. (Education Code section 17494.)

If it is determined that the property is subject to the Naylor Act (Education Code section 17489), the school district must notify the following governmental agencies regarding the availability of the property for lease:

- (A) To any city within which the land is situated.
- (B) To any park or recreation district within which the land is situated.
- (C) To any regional park authority having jurisdiction within the area in which the land is situated.
- (D) To any county within which the land is situated.

The notified agencies have 60 days to respond to the school district in writing. If a particular agency is interested in leasing the property, Education Code section 17491(c) sets forth the method for calculating the lease rate. If none of the notified agencies are interested in leasing the property pursuant to Naylor Act, then the school district may proceed with the public bidding process under Education Code section 17455 *et seq.*

#### *Lease of Vacant Land*

If a school district is considering leasing vacant land, as a preliminary matter, the school district should confirm that the proposed leasing arrangement would comply with any applicable zoning requirements. If the land is vacant and has not been or is not now used for playground, playing field, or recreation purposes, the property would not be considered subject to the Naylor Act. Accordingly there would be no requirement to offer the property to any entity prior to the public bidding process under Education Code section 17455 *et seq.*, as described below.

#### *Lease of Site with Improvements that do not Include Classrooms*

If a school district wishes to lease improved property that does not include vacant classrooms, such as property containing only administrative buildings, there is no requirement to offer the property to any entity prior to the public bidding process under Education Code section 17455 *et seq.*

#### *Lease of Property to be Used for Child Care and Development Services*

If a school district wishes to lease property specifically for use for child care and development services, as permitted under Education Code section 17458, then the property may be offered first to any contracting agency, which includes school districts, community college districts, colleges or universities, county superintendents of schools, counties, cities, public agencies, private nontax-exempt agencies, private tax-exempt agencies, as well as licensed private agencies and parent cooperatives. The term for such a lease must be no less than five years from the date upon which the property is first offered to the agency or until the school district retakes possession of the property, whichever occurs first. Failure by the leasing agency to comply with this requirement would constitute a breach of contract entitling the school district to immediate possession of the property as well as any damages under the lease agreement.

If none of the contracting agencies are interested in leasing the property for childcare purposes, the school district must comply with the other requirements for leasing the property, depending on the type of property at issue.

## Offer to Lease to General Public and Other Public Entities through Formal Notice and Bidding Process under Education Code Section 17455

If the property is not leased to any of the specified entities enjoying priority as described above, then the school district must offer the property to the general public, including public entities not specifically addressed above, under the following Education Code procedures:

### Public Notice of Resolution of Intention to Lease and Receive Sealed Proposals

The school district must provide public notice of the resolution of intention to lease the property and the time and place of holding the meeting to receive proposals. (Education Code section 17469.) The school district must: 1) post copies of the signed resolution in three public places in the school district, not less than 15 days before the meeting; and 2) publish notice not less than once per week for three successive weeks before the meeting in a newspaper published in the county. Education Code section 17471 provides abbreviated notice provisions in the event that the governing board determines in its resolution that the “value” of the lease does not exceed \$50 per month based on the market property rental rates.

### Board Meeting to Receive Sealed Proposals

At the time and place fixed in the resolution for the meeting of the governing board, “all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board.” (Education Code section 17472.) The highest proposal made by a responsible bidder that conforms to all terms and conditions specified in the resolution of intention to lease must be accepted unless a higher oral bid is accepted or the governing board rejects all bids. (Id.) Because the governing board must award the lease based on the highest proposal, the wording of the resolution containing the terms upon which proposals will be accepted is critical so that the governing board can carefully control the terms of the deal and reject proposals that do not comply with all specified terms.

Prior to accepting any written proposals, the governing board must call for oral bids under the terms and conditions specified in the resolution. (Education Code section 17473.) A responsible oral bid that exceeds the rental price set forth in the resolution by at least 5 percent shall be accepted when reduced to writing unless the governing board decides to reject all bids and withdraw the property from sale or lease. (Education Code section 17476.) The final acceptance of prevailing bid may be made at either the same session or at any adjourned session of the same meeting held within the following 10 days. (Education Code section 17475.)

The procedures discussed above require the award to the highest responsible bidder unless all proposals are rejected. These procedures do not lend themselves to flexibility in the award of proposals based on non-monetary consideration. As a result, the possibility exists that a bid could be received from one entity that contains a rental amount that is greater than the monthly rental amount stated in a competing proposal, but that is less than the total consideration provided in the competing proposal. The selection of the highest bidder becomes a challenge in that case.

To solve this problem, the governing board resolution must be carefully crafted to allow for the evaluation of the various forms of consideration in addition to the monthly rental fee. For

example, improvements to the land proposed by the tenant, and the value of any services provided to the school district by the tenant under the lease agreement should be included in the calculation of the total value of the lease. Additionally, the terms stated in the governing board resolution must be crafted in a manner that allows the governing board to accept only those proposals that meet school district purposes.

### **JOINT USE LEASES**

If a school district decides that its surplus property is best used jointly with another entity, the parties may enter into a lease arrangement. (Education Code section 17527 *et seq.*) It is important to note that the school district will still be required to follow surplus property procedures for leases. (Education Code section 17530.)

Education Code section 17527 *et seq.*, authorizes the lease of vacant classrooms on a joint use basis to various agencies under conditions that will allow the school district to continue to use most of the school facility for school district classroom purposes. The joint use of the property is permitted to take place even during school operating hours. A joint use lease may be entered into with the following types of entities: other school districts, educational entities, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals. Education Code section 17527 specifically excludes private educational institutions which maintain kindergarten or grades 1 to 12. The following requirements for joint use leases must be satisfied:

1. Education Code section 17527 contains a priority system for offering vacant classrooms for lease. The first priority is to be given to “educational agencies for conducting special education programs.” Under the first priority, the school district must make the classrooms available to special education programs provided to school district pupils by either other school districts that comprise part of the school district’s special education local plan area or by the county office of education having jurisdiction over the leasing school district. These entities have sixty (60) days from receipt of the notification to inform the school district governing board of their intent to lease or not to lease the classrooms. (Education Code section 17465(d).) The lease payments may not exceed the school district’s actual costs for maintenance, operation, and custodial service for the leased classrooms. (Education Code section 17465(f)(2).) If no interest is expressed or if the parties are not able to agree on terms of the lease, then the school district may proceed to the second tier of priority. Second priority is given to “other educational agencies.” (Education Code section 17527.)
2. Prior to entering into a lease or rental agreement, the school district must determine that the proposed joint occupancy and use of school district property or buildings will not (a) interfere with the educational program or activities of any school or class conducted upon the real property or in any building, (b) unduly disrupt the residents in the surrounding neighborhood, and (c) jeopardize the safety of the children of the school. (Education Code section 17529.)
3. Applicable provisions of the “Sale or Lease of Real Property” article commencing with Education Code section 17455 must be followed. (Education Code section 17530.) Such

provisions include the procedures for offering the classrooms for special education programs in Education Code section 17465, a governing board resolution, and notice requirements and procedures for public bidding, as discussed above, in the event the property is not leased to entities with leasing priority. (Education Code section 17455 *et seq.*)

4. Education Code section 17531 limits the amount of space a school district may lease during normal school hours to 45 percent of the total classroom space of the specific school and 30 percent of the school district's total classroom space in operating schools. (Education Code section 17531.) Provided that the 30 percent limit is not exceeded, the governing board may, upon a two-thirds vote, exceed the 45 percent limit per school upon making a finding that the leases are compatible with the educational purpose of the school. Moreover, the school district may lease vacant classroom space exceeding the 30 percent limit if the lease is for any day care center, nursery school, or special education class. (Education Code section 17532.)
5. The tenant(s) must comply with applicable zoning ordinances, use permits, and construction and safety codes. (Education Code section 17533.) The term of the lease agreement must not exceed five (5) years, except that the limit does not apply to agreements including capital outlay improvements made on school property for park and recreation purposes by public entities and nonprofit corporations. (Education Code section 17534.) The rent or lease of vacant classrooms must be for at least fair market value unless the tenant is a public entity. (Education Code section 17535.) However, a less than fair market value rental amount for the public entity is not mandatory.

### **JOINT USE GRANT PROJECTS**

Joint use grant projects are governed by Education Code section 17077.40 *et seq.*, and do not require a school district to follow surplus property procedures.

#### **Funding of Joint Use Projects**

Education Code section 17077.40 *et seq.*, provides that school districts may seek grants for joint use projects for the construction of the following types of school facilities from the State Allocation Board ("SAB"):

1. Multipurpose rooms;
2. Libraries;
3. Gymnasiums;
4. Child care facilities; or
5. Teacher education facilities.

Under Education Code section 17077.42, several conditions must be satisfied in order for the grant to be approved. The school district and joint use partner must have a joint use agreement addressing topics such as apportionment of costs for maintenance of the facility. Also, the school district and joint use partner must contribute a total of 50% of the cost of construction for the joint use facility. Of the 50% local contribution, the joint use partner must contribute at least half (25% of the total cost), unless the school district has passed a local bond which specifies that

the bond funds are to be used for the joint use project, in which case the school district may provide up to the full 50% local contribution.

### Eligibility

A school district may apply to the State Allocation Board (“SAB”) for funding under Education Code section 17077.40 *et seq.*, for a joint use project that meets any of the following criteria:

1. The joint use project is part of an application for new construction funding under this chapter, and will increase the size or extra cost associated with the joint use of the proposed multipurpose room, gymnasium, childcare facility, library, or teacher education facility beyond that necessary for school use.
2. The joint use project proposes to either reconfigure existing school buildings or construct new school buildings, or both, to provide for a multipurpose room, a gymnasium, a library, a child care facility, or a teacher education facility, and the project will be located at a school that does not have the type of facility for which funds are requested or the existing facility is inadequate.
3. The joint use project proposes to either reconfigure existing school buildings or construct new school buildings, or both, to provide for facilities to improve pupil academic achievement, and the plans for the facility were accepted for review and approval by the department prior to January 1, 2004.

### Compliance with Application Requirements

In order to be approved for a grant under the School Facility Program, the school district must demonstrate that it has complied with all of the following:

1. The school district has entered into a joint use agreement with a governmental agency, public community college, public college or public university, or a nonprofit organization approved by the governing board.
2. The joint use agreement specifies the method of sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of the pupils will be ensured.
3. The joint use agreement specifies the amount of the contribution to be made by the school district and the joint use partner toward the 50% local share of eligible project costs. The contribution made by a joint use partner must be no less than 25% of eligible project costs, unless the school district has passed a local bond that specifies that bond funds are to be used for the joint use project, in which case the school district may opt to provide up to the full 50% local share of eligible costs.
4. The school district demonstrates that the facility will be used to the maximum extent possible for both school and community purposes.

5. The project qualifies for funding under Education Code section 17077.40 and the school district has completed preliminary plans for the project and has received California Department of Education approval of the plans.

### Submission of Application

Once the eligibility and qualifying criteria have been met, the school district must adopt a resolution supporting the submission of the application for joint use funding to the Office of Public School Construction. In addition to the requirements set forth above, the school district must also certify that it has and/or will comply with the requirements set out in Section 14 of the Application for Joint Use Funding (i.e., proper accounting, compliance with all Education Code provisions regarding school construction, etc.).

### **JOINT OCCUPANCY**

A joint occupancy agreement allows the school district to maintain ownership of the surplus property. A school district may enter into leases and agreements relating to real property and buildings to be used jointly by the school district and any private person, firm, or corporation pursuant to Education Code section 17515 *et seq.* Joint occupancy does not require the school district to follow surplus property procedures, although it does require construction of facilities.

With regard to construction, the joint use lease or agreement must require the private entity either to construct or provide for the construction of a building on the property for the joint use of the school district and the private entity. (Education Code section 17518). The private entity may, however, designate the school district as its agent to construct the facilities.

### Procedure for Undertaking a Joint Occupancy Project

Before a joint occupancy lease or agreement is executed, the school district must follow specific procedures. First, the governing board must adopt a resolution declaring its intention to consider proposals. The resolution must describe the proposed site and specify the intended use of that portion of the building to be occupied by the school district. The resolution must also fix a time, not less than 90 days thereafter, for a public meeting of the governing board to be held at its regular place of meeting. (Education Code section 17521.) The school district must publish the resolution of intention at least once a week for three weeks in a newspaper of general circulation. (Education Code section 17522.) At the public meeting, the governing board must consider all of the proposals. (Education Code section 17523.)

Before the school district's governing board can approve any proposal or enter into an agreement regarding the joint occupancy, the school district must submit the proposal to the State Board of Education for approval. The State Board must notify the governing board of its approval or disapproval within 45 days of submission. (Education Code section 17524.)

Pursuant to the joint occupancy provisions of the Education Code, the private entity must file either a bond for the performance of the lease or agreement, or an irrevocable letter of credit issued by a state or national bank for the performance of its obligations under the lease or agreement. (Education Code section 17524.)

If the school district will receive money from the current state school facilities program for the project, the school district must hold title to the portion of the property that will be funded with state money. Accordingly, this means that the school district and its partner must carefully apportion title among themselves so that the school district will hold title to the percentage of the property proportional to the percentage of state funding.

Although the agreement will apportion title to a certain percentage of the building to each party, the document can further provide that each party will have a license to use the other party's portion of the building upon whatever terms and conditions the parties agree to in the document.

A significant difference between solely and jointly occupied property is the availability of zoning protection. Government Code section 53094, by which school districts may render zoning ordinances inapplicable to school property, does not apply to property developed pursuant to the joint occupancy sections. Any building that is to be used by a private party is subject to the zoning and building code requirements of the local jurisdiction. (Education Code section 17515.)

## **EXCHANGE**

A school district may exchange one or more of the properties rather than selling or leasing them pursuant to Education Code section 17536 *et seq.*, which provides as follows:

The governing board of a school district may exchange any of its real property for real property of another person or private business firm. Any exchange shall be upon such terms and conditions as the parties thereto may agree and may be entered into without complying with any of the provisions in this code [including surplus property procedures applicable to the selling and leasing of surplus property] except as provided in this article.

Education Code section 17536 (emphasis added).

Before ordering any exchange of real property the board shall adopt, by a two-thirds vote of its members, a resolution declaring its intention to exchange the property. The resolution shall describe the properties to be exchanged in a manner to identify them, and the terms and conditions, not including the price, upon which they will be exchanged.

Education Code section 17537 (emphasis added).

Therefore, if a school district desires to dispose of surplus property to a private organization, it may do so by following this streamlined procedure if it can: 1) locate a property for which it is willing to exchange its surplus property, and 2) negotiate for the acquisition of the located property by a private organization which will in turn exchange the located property with the school district's surplus property pursuant to an Exchange Agreement.

A decision to exchange its real property allows school districts to forgo following the relatively burdensome surplus property procedures. Specifically, the school district would not be required to appoint an advisory committee pursuant to Education Code section 17387 *et seq.*, offer the

property to enumerated public agencies through notices and negotiations, nor offer the property through a public bid process should no public agency acquire the property from the school district.

## **LICENSE AGREEMENTS**

A license is a grant of permission to another party to use school district property for some defined purpose. It is, in many respects, similar to an easement or a lease. However, the granting of a license does not require the same cumbersome procedures as the dedication of an easement or the surplus property procedures necessary for a lease.

An increasingly prevalent example of private use of school district property is wireless communications facilities. Wireless carriers must install towers throughout the state to relay signals for wireless phones. School sites often prove ideal locations for these facilities.

A school district governing board may approve a license agreement for a wireless communications facility as a standard board meeting agenda item. A license agreement with a wireless carrier should address all significant terms of the agreement, including the following:

- License fee;
- Term of the agreement and renewal provisions;
- Precise identification of the location and dimensions of the facility;
- Language obligating the carrier to obtain any necessary permits and approvals and pay for utilities and taxes for the subject property;
- Insurance and indemnification requirements;
- Termination provisions;
- Language addressing interference to or caused by existing and future communications facilities;
- Profit sharing for assignment and subletting of tower space;
- Fingerprinting of employees and coordination requirements; and
- Exhibits detailing the planned facility and the work to be done on school property.

It is worth noting that some practitioners recommend utilizing a lease instead of a license because the Education Code does not specifically authorize the licensing of school district property for such purposes. However, Education Code section 35160 (“Permissive Education Code”) allows a school district to undertake any activity which is not in conflict with, inconsistent with, or preempted by any law, and which does not conflict with the purposes for which school districts are enacted. We therefore believe a school district may grant a license without complying with the surplus property statutes because those statutes, by their express terms, do not apply to “licenses.”

## **SHARED USE AGREEMENT**

Shared use agreements present an alternative arrangement that does not involve entering into a lease; therefore, surplus property procedures are not triggered. However, the circumstances for

using such agreements are limited and we advise school districts to proceed carefully when utilizing shared use agreements.

The following statutes provide legal authority allowing a school district to enter into an agreement for shared use:

1) Education Code section 38130 *et seq.* (Civic Center Act)

The Civic Center Act permits school districts to grant use of facilities for purposes which include educational purposes. (See Education Code section 38130(b).) The terms of such use are set by the school district but are subject to certain limitations, which include the charging of fees. Education Code section 38134 limits the fees charged under the Civic Center Act to direct costs except for certain situations or users.

2) Education Code section 10900 *et seq.* (Community Recreation Programs)

These provisions allow a school district to grant the use of any school district facility to any other public authority to promote and preserve health and general welfare through programs of community recreation. (Education Code section 10910.) “Recreation” is broadly defined to include activities that contribute to the mental development of an individual or group including, but not limited to, activities in the fields of science and literature. (Education Code section 10901.) “Recreation Center” is also broadly defined as a place, structure, or area under the jurisdiction of the public entity even if the primary use is for something other than recreation. Education Code section 10912 allows the school district to set the fees for use of the facilities.

3) Government Code section 6500 *et seq.*, (Joint Exercise of Powers Act)

This Act provides general authorization for public agencies to enter into agreements to jointly exercise any powers common to them. (Government Code section 6502.) The Act requires that the agreement state the purpose of the agreement and the power to be exercised, as well as the method by which the power will be exercised.

Please note that while the sources listed above provide authorization for school districts to enter into various shared use agreements, there are many circumstances under which none of the legal authorities are applicable. In such cases, we recommend that the school district utilize one of the other approaches discussed above.

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