

Best Practices Tool Kit for Shared Use Agreements in Mississippi

Mississippi Department of Education's
Office of Healthy Schools

July 2012





MISSISSIPPI STATE DEPARTMENT OF HEALTH

September 18, 2012

Dear Superintendent:

Effective July 1, 2012, House Bill 540 mandates that, other than limited exceptions, school districts and school district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport. The full text of the bill may be found at this address:
<http://billstatus.ls.state.ms.us/2012/pdf/history/HB/HB0540.xml> .

The Mississippi State Department of Health, in collaboration with the Mississippi Department of Education, has implemented shared use agreements (joint use agreements) across the state of Mississippi. A shared use agreement is the formal or informal sharing of property between two entities. Frequently these entities consist of a school/district and a community. A shared use agreement is often the best solution for communities wanting to increase physical activity among their residents.

This **Best Practices Tool Kit for Shared Use Agreements in Mississippi** has been prepared by the Mississippi Department of Education in response to House Bill 540. It addresses a need to provide assistance to schools/districts and communities wanting to enter into shared use agreements. A copy of this tool kit can be found on the Mississippi Department of Education website at www.mde.k12.ms.us under Healthy Schools and on the Mississippi State Department of Health's website at www.msdh.ms.gov.

For technical assistance, contact Tonitrice Wicks at tonitrice.wicks@msdh.state.ms.us (601-576-7781) or Christine Philley at cphilley@mde.k12.ms.us (601) 359-1737.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victor Sutton".

Victor Sutton, Ph.D, MPPA
Office Director, Office of Preventive Health
Mississippi State Department of health

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Clements".

Scott Clements
Director, Office of Healthy Schools
Department of Education

Best Practices Tool Kit for Shared Use Agreements in Mississippi

About this Tool Kit:

This Best Practices Tool Kit for Shared Use Agreements in Mississippi is being prepared by the Mississippi Department of Education’s Office of Healthy Schools in response to House Bill 540. The Tool Kit is designed to be a guide to schools and communities who wish to enter into a shared use agreement. Within this tool kit you will find:

Letter of Support from the Mississippi Department of Education and the Mississippi State Department of Health

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II. Checklist - Technical Assistance Resource for Schools

The development of a shared use agreement is a process that requires a lot of thought, work and cooperation, and it may take some effort to come to an agreement on the range of issues involved. By defining the resources being governed and by clearly communicating each partner's roles and responsibilities, an effective agreement can minimize any potential conflict and ensure that the benefits of the partnership outweigh the challenges.

There is no one single path to developing a shared use agreement. The following checklist can serve to help guide the process. The steps outlined below, address a number of issues to consider, and will keep you on track as you build your agreement.

1. _____ Identify community and school needs.

The local school health council can assist in the identification of a need for a shared use agreement and what they agreement might involve.

2. _____ Identify potential properties and partner organizations.

Facilities in the target area need to be inventoried to determine which facilities may be available. The inventory should include an assessment of how suitable the properties are for shared use, taking into consideration the condition of the property, whether security is needed, the provision of equipment, type of supervision, custodial services, toilet facilities, property maintenance, inspection of property and method and responsibility for property repair.

3. _____ Work with risk management and legal counsel throughout the process of negotiating and drafting the agreement.

Allocation of liability risk and the determination of types and amounts of insurance to require is an important consideration. Ensure that the agreement is consistent with existing state and local law and regulations, existing permitting procedures and existing fee procedures or structure.

4. _____ Identify and resolve employment issues.

Extending a facilities hours of operation likely means that both the school district and the city will require some of their employees to work additional time. Consult with legal council to resolve any employment-related issues and check to see if some "overtime" duties could be handled by volunteers.

5. _____ Develop a communication protocol.

One of the most important elements of a successful shared use agreement is ensuring that all parties communicate effectively. Establish a way for identified employees to communicate regularly about the agreement, and set up a process for resolving disagreements regarding any aspect of it.

6. _____ Identify and reach agreement on issues involving "third-party" use.

If third parties (such as youth organizations or youth sports leagues) will be allowed to use the facilities, the district and the city will need to agree on various operational and management issues. The agreement will need to establish the priority of uses for third-party programs and agree on the protocol for scheduling properties. The district and city will also need to ensure that third-party permitting or lease procedures are adequate; this includes making sure

resources are allocated according to identified priorities, as well as addressing issues regarding access, fees, insurance and risk management and liability.

7. _____ Agree upon improvements and improvement protocol.

An agreement should be made by all parties on how and whether improvements should be made to properties. Determine how to allocate the costs associated with making improvements, and who “owns” the improvements.

8. _____ Agree upon how to determine and allocate costs.

Calculate the costs of sharing the facilities, and determine how to allocate the costs equitably. It is important to identify which components of costs to measure, and the methodology to use to determine costs. For example, an agreement might identify the square footage of the area affected by the agreement and spell out the share of costs for maintenance, operations and utilities each partner will bear.

9. _____ Determine the term of agreement, methods of evaluation, and the renewal process.

When determining the length or duration of the agreement, also include acceptable reasons for cancelling or terminating the agreement before the term ends. Identify exactly how and when the agreement will be evaluated, and the data to collect. Establish the process and conditions for renewing the agreement.

10. _____ Identify training needs and develop a training plan.

Decide if agency personnel need to be trained to carry out the agreement, including instruction on any new procedures or duties assigned to employees. Determine who is responsible for conducting any training, and identify the employees who need to participate.

11. _____ Develop an “exhibits” section to the agreement.

The exhibits might include a list of properties subject to the agreement, an inventory of the conditions of the properties, hours of use, operating rules, insurance documentation, and forms for third-party users to complete.

12. _____ Receive formal approval.

Once the governing entities formally approve the agreement, the work of overseeing its implementation begins.

By: Representative Barker

To: Education

HOUSE BILL NO. 540
(As Sent to Governor)

1 AN ACT TO AUTHORIZE LOCAL SCHOOL BOARDS TO ALLOW SCHOOL
2 PROPERTY TO BE USED BY THE PUBLIC DURING NONSCHOOL HOURS FOR
3 RECREATION AND SPORTS; TO EXPRESS CERTAIN LEGISLATIVE FINDINGS
4 REGARDING OBESITY AND ASSOCIATED HEALTH RISKS; TO DEFINE CERTAIN
5 TERMS; TO LIMIT THE LIABILITY OF SCHOOL DISTRICTS AND SCHOOL
6 DISTRICT EMPLOYEES FOR CLAIMS ARISING FROM THE PUBLIC'S USE OF
7 SCHOOL PROPERTY AND FACILITIES FOR RECREATION AND SPORTS; TO
8 ENCOURAGE SCHOOL DISTRICTS TO ENTER INTO SHARED USE AGREEMENTS
9 WITH COMMUNITY ORGANIZATIONS AND LOCAL GOVERNMENTAL ENTITIES FOR
10 PURPOSES OF RECREATION AND SPORTS; TO REQUIRE THE STATE DEPARTMENT
11 OF EDUCATION, IN CONSULTATION WITH THE STATE DEPARTMENT OF HEALTH,
12 TO DEVELOP A BEST PRACTICES TOOL KIT RELATING TO SHARED USE
13 AGREEMENTS; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 SECTION 1. (1) The Legislature finds the following:

16 (a) The Centers for Disease Control and Prevention has
17 released studies documenting:

18 (i) Overweight and obese children experience the
19 same risk factors that are associated with heart disease in
20 adults, including high blood pressure, high cholesterol levels and
21 Type 2 diabetes, once referred to as adult-onset diabetes;

22 (ii) Every year, an estimated three hundred
23 thousand (300,000) people in America die because of diseases
24 caused by being overweight and obese;

25 (iii) Studies have shown that up to eighty percent
26 (80%) of overweight adolescents become overweight adults;

27 (iv) Fourteen percent (14%) of deaths from cancer
28 in men and twenty percent (20%) of cancer deaths in women are
29 because of being overweight and obese; and



30 (v) The annual economic impact in the United
31 States from obesity on our health care system is estimated at One
32 Hundred Forty-seven Billion Dollars (\$147,000,000,000.00);

33 (b) According to the National Survey of Children's
34 Health, Mississippi's childhood obesity rates are the highest in
35 the nation;

36 (c) A recent study by a major insurance carrier stated
37 that fifty percent (50%) of all Americans will have diabetes by
38 the year 2020, costing the health care system approximately Three
39 Trillion Three Hundred Fifty Billion Dollars
40 (\$3,350,000,000,000.00) if current trends in obesity are not
41 abated; and

42 (d) According to the Journal of Nutrition Education and
43 Behavior, adults with a household member who participated in a
44 community garden consumed fruits and vegetables one and
45 four-tenths (1-4/10) more times per day than those who did not
46 participate, and they were three and one-half (3-1/2) times more
47 likely to consume fruits and vegetables at least five (5) times
48 daily.

49 (2) Therefore, the Legislature declares that the intent of
50 this act is to make school property available to community members
51 during nonschool hours for recreational activities in order to
52 support active living, reduce obesity, reduce health care costs
53 associated with obesity, increase community safety, maximize
54 community resources, and promote community support for schools.

55 SECTION 2. As used in this act, the following words and
56 phrases have the meanings ascribed in this section unless the
57 context clearly indicates otherwise:

58 (a) "Recreation" means any indoor or outdoor game or
59 activity, either organized or unorganized, undertaken for
60 exercise, relaxation, diversion, sport or pleasure.



61 (b) "School property" means all indoor or outdoor
62 structures, facilities and land, whether owned, rented or leased
63 by the school or school district.

64 (c) "Sport" means an activity requiring physical
65 exertion and skill and which, by its nature and organization, is
66 competitive and generally accepted as being a sport.

67 (d) "Shared use agreement" means a legal agreement that
68 defines the rights and responsibilities of the school district and
69 another organization or governmental agency for use of the school
70 facilities for recreation or other purpose of importance to the
71 community.

72 (e) "Local government entity" means any county,
73 municipality, school district, public hospital or other political
74 subdivision of the state.

75 SECTION 3. (1) The school board of a school district may
76 adopt a policy allowing the public use of indoor or outdoor school
77 property during nonschool hours for purposes of recreation or
78 sport. The school district must ensure that this use of school
79 facilities by the public does not interfere with the use of those
80 facilities for school purposes.

81 (2) School districts and school district employees may not
82 be held liable for any claim resulting from a loss or injury
83 arising from the use of indoor or outdoor school property or
84 facilities made available for public recreation or sport.
85 However, this act does not relieve a school district or school
86 district employee of liability that otherwise exists for:

87 (a) Deliberate, willful or malicious injury to persons
88 or property by a school district employee; or

89 (b) Injury resulting from a lack of proper maintenance
90 or upkeep of a piece of equipment or facilities, unless the school
91 district or school district employee had attempted to restrict
92 access to a piece of equipment or facilities area in need of
93 repair which would endanger a student during normal school hours.



94 This subsection may not be deemed to create or increase the
95 liability of any person.

96 **SECTION 4.** (1) School districts are encouraged strongly to
97 enter into shared use agreements with community organizations and
98 local governmental agencies.

99 (2) Local government entities are expressly authorized to
100 enter into such shared use agreements and/or expend public funds
101 and/or to use public labor and/or equipment and/or commodities in
102 furtherance of the purpose of such agreements.

103 (3) The State Department of Education, in consultation with
104 the State Department of Health, shall develop a best practices
105 tool kit relating to shared use agreements for school districts.
106 This tool kit must include:

107 (a) Information outlining liability protections for
108 both the school district and school district employees for
109 injuries resulting from community use of school property or
110 facilities for purposes of recreation or sport during nonschool
111 hours;

112 (b) Model shared use agreement language;

113 (c) A list of technical assistance resources available
114 for the school district to promote community recreational use of
115 school property or facilities during nonschool hours;

116 (d) A list of potential community partners for shared
117 use agreements; and

118 (e) A list of any grants or funding opportunities
119 available to school districts to promote community recreational
120 use of school property or facilities during nonschool hours.

121 The tool kit must be posted on the State Department of
122 Education and State Department of Health websites. The State
123 Department of Education shall review the information required by
124 this section no less than every two (2) years and shall update the
125 information as necessary.



126 (4) The State Department of Education shall provide a link
127 on the department's website to any school district policies or
128 procedures that promote community recreational use of school
129 property or facilities in order to encourage information sharing
130 among the school districts.

131 (5) Each school district, in consultation with the school
132 health council, must address community recreational use of school
133 property or facilities during nonschool hours.

134 **SECTION 5.** This act shall take effect and be in force from
135 and after July 1, 2012.



II. Checklist - Technical Assistance Resources for Schools

The development of a shared use agreement is a process that requires a lot of thought, work and cooperation, and it may take some effort to come to an agreement on the range of issues involved. By defining the resources being governed and by clearly communicating each partner's roles and responsibilities, an effective agreement can minimize any potential conflict and ensure that the benefits of the partnership outweigh the challenges.

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Allocation of liability risk and the determination of types and amounts of insurance to require is an important consideration. Ensure that the agreement is consistent with existing state and local law and regulations, existing permitting procedures and existing fee procedures or structure.

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Extending a facilities hours of operation likely means that both the school district and the city will require some of their employees to work additional time. Consult with legal council to resolve any employment-related issues and check to see if some "overtime" duties could be handled by volunteers.

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resources are allocated according to identified priorities, as well as addressing issues regarding access, fees, insurance and risk management and liability.

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When determining the length or duration of the agreement, also include acceptable reasons for cancelling or terminating the agreement before the term ends. Identify exactly how and when the agreement will be evaluated, and the data to collect. Establish the process and conditions for renewing the agreement.

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Decide if agency personnel need to be trained to carry out the agreement, including instruction on any new procedures or duties assigned to employees. Determine who is responsible for conducting any training, and identify the employees who need to participate.

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The exhibits might include a list of properties subject to the agreement, an inventory of the conditions of the properties, hours of use, operating rules, insurance documentation, and forms for third-party users to complete.

12. _____ Receive formal approval.

Once the governing entities formally approve the agreement, the work of overseeing its implementation begins.

III. Liability Protections for School Districts and School District Employees

House Bill 540 expressly provides that school districts and school district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport.

However, the law does not limit liability arising from deliberate, willful or malicious injury to persons or property by a school district employee, or for injury resulting from a lack of proper maintenance or upkeep of a piece of equipment or facilities. With regard to the latter, there is no liability if the school district or school district employee had attempted to restrict access to a piece of equipment or facilities area in need of repair which would endanger a student during normal school hours.

The immunity provisions in House Bill 540 are in addition to the general immunity school districts and school district employees acting within the scope of their duties have per Miss. Code Ann. §11-46-1 et seq.

School districts are strongly encouraged to enter into shared use agreements with community organizations and local governmental entities for the purposes of House Bill 540. The foregoing limitations of liability should be memorialized in any shared use agreement.

IV. Model Shared Use Agreements

The model shared use agreement documents below are provided for:

1. agreements between school districts and municipalities;
2. agreements between school districts and counties;
3. agreements between school districts and local governmental entities (other than municipalities or counties); and
4. agreements between school districts and community organizations.

These model shared use agreements are provided for your convenience. Use of the forms provided is not expressly required, and school districts may use the forms and provisions they deem most appropriate. However, school districts should be aware that a shared use agreement must define the rights and responsibilities of the parties, and should fully address the liability protections of the school district and district employees.

**SHARED USE AGREEMENT BETWEEN
THE _____ COUNTY SCHOOL DISTRICT
AND THE CITY OF _____, MISSISSIPPI**
(to be used for agreements between school districts and municipalities)

WHEREAS, MS House Bill 540 – 2012 Regular Session (“the Act”) authorizes and encourages school districts to enter into shared use agreements with community organizations and local government agencies for use of school facilities for recreation or other purpose of importance to the community; and

WHEREAS, the Act expressly authorizes local government entities to enter into shared use agreements with school districts, and/or to expend public funds and/or to use public labor and/or equipment and/or commodities in furtherance of the purpose of such agreements; and

WHEREAS, the _____ County School District (“District”) owns certain school property that could be used by the City of _____, Mississippi (“City”) for the purposes set out in the Act; and

WHEREAS, such school property should be used to increase and maximize recreational opportunities for the community; and

THEREFORE, the District and the City hereby agree to the following, to-wit:

1. DEFINITIONS

- (a) “Recreation” means any indoor or outdoor game or activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure.
- (b) “School property” means all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district.
- (c) “Sport” means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and generally accepted as being a sport.

2. PURPOSE

The purpose of this shared use agreement (“agreement”) is to make school property available to community members during non-school hours for recreational activities in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community resources, and promote community support for schools.

3. DURATION

The duration of this agreement shall be for the fiscal year of _____, unless terminated sooner.

4. TERMS OF USE

(a) The school property subject to this agreement is as follows:

(Description of property).

(b) The school property described herein may be used by the City as follows:

(Permissible use of the property).

(c) Such property will be available for use by the City as follows:

(Set out the times and dates/days City may use property).

(d) The obligations of the District are as follows:

(Set out what the District will do, such as provide a point of contact, ensure access to property during hours of use and secure facilities after hours of use, provide equipment, security, supervision, etc.).

(e) The obligations of the City are as follows:

(Set out what the City will do, such as provide a point of contact, use reasonable care in using school property, report any misuse or damage of school property, provide equipment, security, supervision, etc.).

(f) School property shall be available for use by the City during non-school hours only. Under no circumstances will the City's use of such property interfere with the use of property for school activities.

5. ADMINISTRATION

The provisions of this agreement will be administered for the District by its Superintendent, or his/her designee, and for the City by its Mayor, or his/her designee. No separate legal or administrative entity shall be created by this agreement.

6. LIMITATION OF LIABILITY

District and district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport pursuant to this agreement. However, this limitation of liability is subject to the provisions of the Act and the Mississippi Tort Claims Act. Nothing in this agreement shall be deemed to create or increase the liability of any person.

7. AMENDMENT

The provisions of this agreement may be amended only by the written consent of both parties. Any amendment shall be executed and approved in the same manner as this agreement.

8. ASSIGNMENT

The rights and obligations conferred upon the District and the City pursuant to this agreement shall not be assignable or transferrable.

9. TERMINATION

Either party may terminate this agreement by giving notice, in writing, to the other party at least three (3) days prior to the date of termination.

10. MISCELLANEOUS PROVISIONS

(a) The governing bodies of both the District and the City have each approved this agreement in accordance with controlling law.

(b) This agreement shall in no way affect title and ownership to any real or personal property involved.

(c) If any provision of this agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining provisions of the agreement shall not be affected.

(d) This agreement is authorized per the Act, and is not subject to the provisions of the Interlocal Cooperation Act of 1974, Miss. Code Ann. §17-13-1, et seq.

11. ENTIRE AGREEMENT

The agreement set forth herein constitutes the entire agreement by and between the District and the City.

APPROVED AND EXECUTED in duplicate originals on the dates indicated.

(Representative for School District) Date
(Title)

(Representative for City) Date
(Title)

**SHARED USE AGREEMENT BETWEEN
THE _____ COUNTY SCHOOL DISTRICT
AND _____ COUNTY, MISSISSIPPI**
(to be used for agreements between school districts and counties)

WHEREAS, MS House Bill 540 – 2012 Regular Session (“the Act”) authorizes and encourages school districts to enter into shared use agreements with community organizations and local governmental agencies for use of school facilities for recreation or other purpose of importance to the community; and

WHEREAS, the Act expressly authorizes local governmental entities to enter into shared use agreements with school districts, and/or to expend public funds and/or to use public labor and/or equipment and/or commodities in furtherance of the purpose of such agreements; and

WHEREAS, the _____ County School District (“District”) owns certain school property that could be used by _____ County, Mississippi (“County”) for the purposes set out in the Act; and

WHEREAS, such school property should be used to increase and maximize recreational opportunities for the community; and

THEREFORE, the District and the County hereby agree to the following, to-wit:

1. DEFINITIONS

- (a) “Recreation” means any indoor or outdoor game or activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure.
- (b) “School property” means all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district.
- (c) “Sport” means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and generally accepted as being a sport.

2. PURPOSE

The purpose of this shared use agreement (“agreement”) is to make school property available to community members during non-school hours for recreational activities in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community resources, and promote community support for schools.

3. DURATION

The duration of this agreement shall be for the fiscal year of _____, unless terminated sooner.

4. TERMS OF USE

(a) The school property subject to this agreement is as follows:

(Description of property to be used).

(b) The school property described herein may be used by the County as follows:

(Permissible use of the property).

(c) Such property will be available for use by the County as follows:

(Set out the times and dates/days County may use property).

(d) The obligations of the District are as follows:

(Set out what the District will provide, such as a point of contact, ensuring access to property during use hours and securing property after use hours, providing equipment, security, supervision, etc.).

(e) The obligations of the County are as follows:

(Set out what the County will do, such provide a point of contact, use reasonable care in using school property, reporting any misuse or damage of school property, providing equipment, security, supervision, etc.).

(f) School property shall be available for use by the County during non-school hours only. Under no circumstances will the County's use of such property interfere with the use of property for school activities.

5. ADMINISTRATION

The provisions of this agreement will be administered for the District by its Superintendent, or his/her designee, and for the County by _____ (*county administrator, etc.*), or his/her designee. No separate legal or administrative entity shall be created by this agreement.

6. LIMITATION OF LIABILITY:

District and district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport pursuant to this agreement. However, this limitation of liability is subject to the provisions of the Act and the Mississippi Tort Claims Act. Nothing in this agreement shall be deemed to create or increase the liability of any person.

7. AMENDMENT

The provisions of this agreement may be amended only by the written consent of both parties. Any amendment shall be executed and approved in the same manner as this agreement.

8. ASSIGNMENT

The rights and obligations conferred upon the District and the County pursuant to this agreement shall not be assignable or transferrable.

9. TERMINATION

Either party may terminate this agreement by giving notice, in writing, to the other party at least three (3) days prior to the date of termination.

10. MISCELLANEOUS PROVISIONS

(a) The governing bodies of both the District and the County have each approved this agreement in accordance with controlling law.

(b) This agreement shall in no way affect title and ownership to any real or personal property involved.

(c) If any provision of this agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining provisions of the agreement shall not be affected.

(d) This agreement is authorized per the Act, and is not subject to the provisions of the Interlocal Cooperation Act of 1974, Miss. Code Ann. §17-13-1, et seq.

11. ENTIRE AGREEMENT

The agreement set forth herein constitutes the entire agreement by and between the District and the County.

APPROVED AND EXECUTED in duplicate originals on the dates indicated.

(Representative for School District) Date
(Title)

(Representative for County) Date
(Title)

**SHARED USE AGREEMENT BETWEEN
THE _____ COUNTY SCHOOL DISTRICT
AND _____**

*(to be used for agreements between school districts and local governmental entities – other than
city of counties)*

WHEREAS, MS House Bill 540 – 2012 Regular Session (“the Act”) authorizes and encourages school districts to enter into shared use agreements with community organizations and local governmental agencies for use of school facilities for recreation or other purpose of importance to the community; and

WHEREAS, the Act expressly authorizes local governmental entities to enter into shared use agreements with school districts, and/or to expend public funds and/or to use public labor and/or equipment and/or commodities in furtherance of the purpose of such agreements; and

WHEREAS, _____ (“the Local Government”) is a local government entity for the purposes of the Act; and

WHEREAS, the _____ County School District (“District”) owns certain school property that could be used by the Local Government for the purposes set out in the Act; and

WHEREAS, such school property should be used to increase and maximize recreational opportunities for the community; and

THEREFORE, the District and the Local Government hereby agree to the following, to-wit:

1. DEFINITIONS

(a) “Recreation” means any indoor or outdoor game or activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure.

(b) “School property” means all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district.

(c) “Sport” means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and generally accepted as being a sport.

(d) “Local government entity” means any county, municipality, school district, public hospital or other political subdivision of the state.

2. PURPOSE

The purpose of this shared use agreement (“agreement”) is to make school property available to community members during non-school hours for recreational activities in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase

community safety, maximize community resources, and promote community resources, and promote community support for schools.

3. DURATION

The duration of this agreement shall be for the fiscal year of _____, unless terminated sooner.

4. TERMS OF USE

(a) The school property subject to this agreement is as follows:

(Description of property to be used).

(b) The school property described herein may be used by the Local Government as follows:

(Permissible use of the property).

(c) Such property will be available for use by the Local Government as follows:

(Set out the times and dates/days the Local Government may use property).

(d) The obligations of the District are as follows:

(Set out what the District will provide, such as a point of contact, ensuring access to property during use hours and securing property after use hours, providing equipment, security, supervision, etc.).

(e) The obligations of the Local Government are as follows:

(Set out what the Local Government will do, such provide a point of contact, use reasonable care in using school property, reporting any misuse or damage of school property, providing equipment, security, supervision, etc.).

(f) School property shall be available for use by the Local Government during non-school hours only. Under no circumstances will the Local Government's use of such property interfere with the use of property for school activities.

5. ADMINISTRATION

The provisions of this agreement will be administered for the District by its Superintendent, or his/her designee, and for the Local Government by _____ *(named person or position)*, or his/her designee. No separate legal or administrative entity shall be created by this agreement.

6. LIMITATION OF LIABILITY

District and district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport pursuant to this agreement. However, this limitation of liability is subject to the provisions of the Act and the Mississippi Tort Claims Act. Nothing in this agreement shall be deemed to create or increase the liability of any person.

7. AMENDMENT

The provisions of this agreement may be amended only by the written consent of both parties. Any amendment shall be executed and approved in the same manner as this agreement.

8. ASSIGNMENT

The rights and obligations conferred upon the District and the Local Government pursuant to this agreement shall not be assignable or transferrable.

9. TERMINATION

Either party may terminate this agreement by giving notice, in writing, to the other party at least three (3) days prior to the date of termination.

10. MISCELLANEOUS PROVISIONS

(a) The governing bodies of both the District and the Local Government have each approved this agreement in accordance with controlling law.

(b) This agreement shall in no way affect title and ownership to any real or personal property involved.

(c) If any provision of this agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining provisions of the agreement shall not be affected.

(d) This agreement is authorized per the Act, and is not subject to the provisions of the Interlocal Cooperation Act of 1974, Miss. Code Ann. §17-13-1, et seq.

11. ENTIRE AGREEMENT

The agreement set forth herein constitutes the entire agreement by and between the District and the Local Government.

APPROVED AND EXECUTED in duplicate originals on the dates indicated.

(Representative for School District) Date
(Title)

(Representative for Local Government) Date
(Title)

SHARED USE AGREEMENT BETWEEN
THE _____ COUNTY SCHOOL DISTRICT
AND _____

(for use with agreements between school districts and community organizations)

WHEREAS, MS House Bill 540 – 2012 Regular Session (“the Act”) authorizes and encourages school districts to enter into shared use agreements with community organizations for use of school facilities for recreation or other purpose of importance to the community; and

WHEREAS, _____ (“Organization”) is a community organization for the purposes of the Act; and

WHEREAS, the _____ County School District (“District”) owns certain school property that could be used by the Organization for the purposes set out in the Act; and

WHEREAS, such school property should be used to increase and maximize recreational opportunities for the community; and

THEREFORE, the District and the Organization hereby agree to the following, to-wit:

1. DEFINITIONS

- (a) “Recreation” means any indoor or outdoor game or activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure.
- (b) “School property” means all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district.
- (c) “Sport” means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and generally accepted as being a sport.

2. PURPOSE

The purpose of this agreement is to make school property available to community members during non-school hours for recreational activities and/or sport in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community resources, and promote community support for schools.

3. DURATION

The duration of this shared use agreement (“agreement”) shall be for the fiscal year of _____, unless terminated sooner.

4. TERMS OF USE

(a) The school property subject to this agreement is as follows:

(Description of property).

(b) The school property described herein may be used by the Organization as follows:

(Permissible use of the property).

(c) Such property will be available for use by the Organization as follows:

(Set out the times and dates/days Organization may use property).

(d) The obligations of the District are as follows:

(Set out what the District will provide, such as provide a point of contact, supervision, ensure access to property during hours of use and securing facilities after hours of use, provide equipment, security, supervision, etc.).

(e) The obligations of the Organization are as follows:

(Set out what the Organization will do, such provide a point of contact, use reasonable care in using school property, report any misuse or damage of school property, provide equipment, security, supervision, etc.).

(f) School property shall be available for use by the Organization during non-school hours only. Under no circumstances will the Organization's use of such property interfere with the use of property for school activities.

5. ADMINISTRATION

The provisions of this agreement will be administered for the District by its Superintendent, or his/her designee, and for the Organization by *(director, etc.)*, or his/her designee. No separate legal or administrative entity shall be created by this agreement.

6. LIMITATION OF LIABILITY:

As provided by the Act, the District and District employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport pursuant to this agreement. However, this limitation of liability is subject to the provisions of the Act and the Mississippi Tort Claims Act. Nothing in this agreement shall be deemed to create or increase the liability of any person.

(Optional provisions)

Except as otherwise provided, the Organization shall fully indemnify and hold harmless the District, its officers, employees and agents from and against any and all liability, loss, expense or claim for injury or damage arising out of the use of school property under this agreement. The Organization shall purchase and maintain liability insurance to indemnify the District for any and all claims that may arise from performance of this agreement. The District shall be a named insured under such insurance policy, which shall be in the amount of \$_____.

7. AMENDMENT

The provisions of this agreement may be amended only by the written consent of both parties. Any amendment shall be executed and approved in the same manner as this agreement.

8. ASSIGNMENT

The rights and obligations conferred upon the District and the Organization pursuant to this agreement shall not be assignable or transferrable without the written consent of both parties.

9. TERMINATION

Either party may terminate the provisions of this agreement by giving notice, in writing, to the other party at least three (3) days prior to the date of termination.

10. MISCELLANEOUS PROVISIONS

- (a) The governing bodies of both the District and the Organization have each approved this agreement in accordance with controlling law.
- (b) This agreement shall in no way affect title and ownership to any real or personal property involved.
- (c) If any provision of this agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining provisions of the agreement shall not be affected.

11. ENTIRE AGREEMENT

The agreement set forth herein constitutes the entire agreement by and between the District and the Organization.

APPROVED AND EXECUTED in duplicate on the dates indicated.

(Representative for School District) Date
(Title)

(Representative for Organization) Date
(Title)

V. Potential Shared Use Partners:

- Parks and Recreation Departments
- YMCAs
- National Guard/Military Facilities
- Faith Based Organizations
- Governmental Agencies
- Hospitals/Medical Centers
- Non-profit Organizations

VI. Possible Funding Opportunities:

a) Federal and State Grants

Shared Use Agreement funding has been provided in the past through the Mississippi State Department of Health (MSDH) as a result of funds provided by the *American Recovery and Reinvestment Act of 2009*. Eighteen schools/school districts received funds through the *Communities Putting Prevention to Work-State and Territory Initiative Grant* to enter into a shared used agreement with community agencies. A listing of those schools/school districts can be found in section VII.

Future grant funding may be made available to schools. Districts are encouraged to contact the Office of Healthy Schools at the Mississippi Department of Education or the Mississippi Department of Health’s Bureau of Community and School Health for updated grant funding information. Contact numbers are provided on page one of this document.

b) Public Sources – City General Funds

Contributions or grants from city general funds may finance capital improvements as well as maintenance and operational costs incurred through shared use.

c) Private Foundation Grants

Private foundations may award grants specifically for developing or improving public recreational space. They are interested in promoting healthy lifestyles, preventing diseases and reducing health risks among children and adults. Often times, they seek to fund successful health programs and initiatives that are working to improve the health of Mississippians.

VII. Schools and Districts in Mississippi with Shared Use Agreements (effective July 1, 2012)

<i>School/Community</i>	<i>Agreement</i>
A.W. Watson Elementary/Claiborne County Parks	- After school soccer league
Hernando High School/City of Hernando	- Opening of Gym from 8-8 for exercise and play
Hernando Middle School/City of Hernando	- Opening of Gym from 8-8 for exercise and play
Joyner Elementary/Tupelo	- SafeSplash Swim Program for Elementary students
Kirkpatrick Elementary/Clarksdale	- Yoga Classes after school
Leakesville Elementary/Leakesville	- Revitalization of playground for safe play
Leland School District/Washington County Planning	- Purchase & use of fitness equipment after school
Magnolia Elementary/City of Magnolia	- Fitness Cluster for citizens of Magnolia
Marshall Elementary/City of Jackson	- Broader range of sports at school facility (tennis & golf)
McEvans Elementary/Shaw	- Opening gym for extended hours/purchase equipment
Oak Forest Elementary/City of Jackson	- Broader range of sports at school facility (tennis & golf)
Oak Grove Elementary/City of Hernando	- Opening of Gym from 8-8 for exercise & play
Okolona/City of Okolona	- Safe Walking Trails at Okolona Vocational Complex
Parkway Elementary/Tupelo	- SafeSplash Swim Program for Elementary students
Thomas Street Elementary/Tupelo	- SafeSplash Swim Program for Elementary students
West Bolivar School District/Rosedale	- Opening gym for extended hours/purchase equipment
West Clay Elementary/Clay County (Districts 3 & 5)	- Revitalize baseball fields for community use

VII. Conclusion

As is discussed in this tool kit, shared use agreements are an excellent vehicle for providing communities with access to safe and attractive indoor and outdoor recreational facilities for physical activity. They can be an important obesity prevention strategy as they provide a way for community members to participate in activities that will help them to be healthier. For additional information concerning shared use agreements contact the Mississippi Department of Education's Office of Healthy Schools at 601-359-1737 or the Mississippi State Department of Health's Bureau of Community and School Health at 601-576-7858. This information is posted on both the MDE and MSDH websites: www.mde.k12.ms.us and www.msdh.ms.gov for your convenience.