

Crowdfunding and Other Fundraising Considerations

Suffolk Association of School Business Officials

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What is Crowdfunding?

- ▶ Creating a public fundraising campaign.
- ▶ Offered in online form by several websites.
- ▶ School districts can **not** operate a crowdfunding campaign, however student organizations, teachers, individuals or educational foundations may operate a campaign.

Benefits of Crowdfunding

- ▶ Increases the District's goodwill with its community and goes beyond the local community.
- ▶ Provides another way for the District to indirectly obtain donations.
- ▶ Donors can receive a tax benefit for their donations.

OSC Opinion on Crowdfunding

- ▶ OSC has expressed the opinion that there is no authority for a municipality, including school districts, to conduct a campaign to solicit funds from the general public to be used for school district purposes (33 Opns St Comp 1977, p 62).
- ▶ OSC stated that a private entity (i.e., educational foundation) may, on its own behalf, solicit donations for the benefit of a municipality and make a gift to the municipality to be used for a specific purpose (33 Opns St Comp, 1977, p 62).

Managing a Crowdfunding Campaign

- ▶ Outside groups, teachers or student organizations should submit a proposal to the Board of Education and administrators for approval or denial prior to being posted on a crowdfunding platform.
- ▶ The proposal should specify how they would like donations to be spent, maximum amount, who is benefitting, how it would benefit the education program, and what crowd funding site they will be using. **The Board of Education has final say on how donations will be spent.**
- ▶ The campaign should strive to achieve the Board of Education's goals.

Managing a Crowdfunding Campaign

- ▶ Internal controls should be set in place by central administration for donations to be expensed in line with the campaign's stated purpose and Board approval.
- ▶ Monetary donations should be wired or sent to the school district not an individual.
- ▶ Consider setting up a separate bank account specific for the donations from a crowd funding campaign.
- ▶ Wire transfers should comply with the District's wire transfer policy and procedures.

Managing a Crowdfunding Campaign

- ▶ Assets (e.g., chrome books) received are the property of the school district and need to be tagged and tracked.
- ▶ Capital assets should be included in capital asset appraisal reports prepared by outside appraisal companies and reported on the financial statements.
- ▶ Consider the long term impact of replacing, maintaining or repairing capital assets donated to the District on future budgets (e.g., playground or information technology equipment).

Managing a Crowdfunding Campaign

- ▶ The Board of Education should accept the monetary donation or asset as part of a Board resolution.
- ▶ A budget revision should be recorded increasing the revenue code for monetary donations and the corresponding expenditure code at the time donation is received.

Popular Crowdfunding Sites



INDIEGOGO



Most Popular Crowdfunding Websites

- ▶ **GoFundMe.com**
 - #1 Fundraising platform in terms of funds raised.
 - GoFundMe Guarantee – If anything is wrong, a full refund is given by GoFundMe.
 - Very simple to create.
- ▶ **Classwish.org**
 - Donations specific to education.
 - Teachers/Administrators create a wish list of the resources needed.
 - Educators can request resources from dozens of vendors.

Know the Terms and Conditions of the Crowdfunding Site

- ▶ What happens if the project is not fully funded?
- ▶ Does the site provide adequate documentation of donation receipt?
- ▶ Who receives the end-donation?
- ▶ How long has the site been around?
- ▶ Do they have internal policies to safeguard against fraud or misuse of funds?
- ▶ Will they reimburse you if something goes wrong?

Legal and Practical Considerations

- ▶ The Education Law (§ 1709) does not specifically authorize public schools to conduct a fundraiser or solicit donations.
- ▶ Therefore, a school district cannot directly fundraise or act as a “middleperson” for same.
 - (*See Matter of Countryman*, 1 Ed. Dep’t Rept. 538 (1960) (where the Commissioner condemned the use of teachers to solicit and collect accident insurance premiums from students participating in an athletic program)).
- ▶ By extension, arguably, the Education Law does not authorize a school district to dictate terms for crowdfunding by individuals on behalf of the district if doing so would be akin to soliciting funds.
- ▶ A Board of Education is, however, permitted to accept gifts or donations.

Legal and Practical Considerations

- ▶ A Board of Education may:
 - “[...] take hold for the use of the said schools or of any department of the same [...] any gift, legacy or annuity, of whatever kind, given or bequeathed to the said board, and apply same or the interest or proceeds thereof, according to the instructions of the donor [...].” (Educ. Law § 1709(12)).
 - Appropriate at any time “[...] other gifts which are required to be spent for particular objects or purposes and insurance proceeds received for the loss, theft, damage or destruction of real or personal property, when proposed to be used or applied to repair or replace such property [...].” (Educ. Law § 1718(2)).

Legal and Practical Considerations

- ▶ A Board of Education may also:
 - Accept a donation/gift intended to be used for a specific program. But, in so doing, it may not delegate its responsibility for determining whether to offer the program, or control over the manner in which the program will be offered, to a third party. (*Appeal of DeMasi, et al.*, 18 Ed. Dep't Rep. 320 (1978)).
 - Accept gifts/donations from Booster Clubs, private foundations and other 501(c)(3) nonprofit organizations.

Legal and Practical Considerations

- ▶ A Board of Education (and district officers and employees) may not, however:
 - Directly or indirectly solicit or accept any gift valued at \$75 or more if doing so could “... reasonably be inferred that the gift was intended to influence [the Board of Education member(s), district officer(s) or employee(s)], or could reasonably be expected to influence [her/him/them], in the performance of [her/his/their] official duties or was intended as a reward for any official action....” (General Municipal Law § 805-a(1)(a)).

Legal and Practical Considerations

- ▶ Board of Education's acceptance of gifts/donations:
 - The Board will need to pass a resolution accepting the crowdfunded gift/donation.
 - The resolution should specifically identify what is being accepted and the purpose for which the gift/donation will be used.
 - Timing of Acceptance
 - The Board may want to consider conditionally accepting the gift/donation at the outset of the crowdfunding campaign instead of waiting until the campaign has ended.
 - Pro: Conditionally accepting at the beginning of the campaign gives individuals greater incentive to provide the Board/District with campaign details before the campaign is underway.
 - Con: There is no guarantee that the campaign will be completed or 100% funded, which may result in the Board revising its resolution accepting the gift/donation from same.

Legal and Practical Considerations

- ▶ With respect to crowdfunding, specifically:
 - Teachers, parents and other individuals are more frequently using crowdfunding to solicit money and donated items.
 - Oftentimes, schools do not find out about the crowdfunding efforts (or the results thereof) until the fundraising campaign is well underway (or has been completed).
 - At that point, from a public relations perspective, it is difficult to prohibit the continuation of the crowdfunding campaign or to have the Board of Education reject the donation.

Legal and Practical Considerations

So what do you do?

- ▶ Consider implementing a Comprehensive Policy
- ▶ Communicate Crowdfunding Guidelines to your Staff and the Public
- ▶ Explain **Why** the Guidelines are Important to Follow

Crowdfunding Policy

Crowdfunding Policy Considerations:

- ▶ State (in the policy or accompanying regulations, if applicable) that the District does not promote or require staff, students or other individuals to crowdfund or fundraise for the school district's benefit.
- ▶ Address the district's intellectual property rights regarding the use of its name, logo, *etc.* (unless addressed elsewhere, in which case that policy should be referenced).
- ▶ Require district pre-approval of the crowdfunding platform used to solicit funding.

Crowdfunding Policy

Crowdfunding Policy Considerations:

- ▶ Require school/administrative review of the crowdfunding campaign page, including administrative review of the page's text.
- ▶ Identify that funds and items donated to crowdfunding campaigns, once accepted by the Board of Education, are the district's property and will be used for the particular purpose for which they are accepted (if the Board so chooses).
- ▶ Explain that the crowdfunding campaign must be conducted consistent with all applicable laws, regulations and district policies and procedures.

Potential Legal Issues

- ▶ Family Educational Rights and Privacy Act (“FERPA”):
 - The crowdfunding page may not contain information about, or pictures of, students, absent parental authorization.
 - Ex: “I am seeking to raise funds to purchase fidget tools for my class. All of my students have behavioral challenges and these tools will go a long way towards making my classroom a more effective place to learn.”

Pictured – foreground: Mr. Jones; Rachel Adams; Steve Smith; Jason Kidd; Stephanie Doe; Allison Quinn.



Potential Legal Issues

- ▶ Individuals with Disabilities Education Act (“IDEA”):
 - The crowdfunding page may not imply that the district is not meeting its legal requirement to provide resources necessary for a student to meet his/her IEP goals.
 - Ex: “Help me raise funds to purchase iPads for my classroom, so that I can implement my students’ IEP goals and ensure that their educational needs will be properly met.”

Potential Legal Issues

- ▶ Title IX of the Education Amendments of 1972:
 - Districts may not discriminate on the basis of sex.
 - This includes accepting donations that may have a disparate/discriminatory impact on a particular sex.
 - But, a district need not expend equal amounts of money for girls' and boys' athletics programs, provided that the necessary funds for each program are provided. (*See McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d. 275, 293 (2d Cir. 2004); 34 C.F.R. § 106.41(c)).
 - Likewise, private trusts providing scholarships to students of a particular sex may lawfully be established, as they “do not necessarily violate public policy.” (*See Matter of Wilson*, 59 N.Y.2d 461 (1983)). Whether they may be implemented by a district, however, must be analyzed on a case-by-case basis.

Potential Legal Issues

▶ Unequal resources:

- Depending on the circumstance, accepting crowdfunded donations may create unequal resources among the district's schools.
- This is especially important to consider in the context of Title IX (which prohibits discrimination on the basis of sex) and Civil Rights Law § 504 (which prohibits discrimination against individuals with disabilities and ensures equal access to an education for children with disabilities).

Potential Legal Issues

- ▶ Crowdfunding for capital improvements or other construction-based projects:
 - Ex: Crowdfunding to purchase turf fields.
 - Voter approval is required if a district expends any funds on the project.
 - But, the Commissioner has previously held that the Education Law does not require voter approval for improvements to an athletic field donated as a gift to a school district. (*See Appeal of Cook*, 32 Ed. Dep't Rep. 71 (1992)).
 - NY State Environmental Quality Review Act (“SEQRA”) obligations apply, and a determination must be made as to the environmental impact of the project. (*See* 6 N.Y.C.R.R. § 617 *et seq.*; *Groarke v. Bd. of Educ. of Rockville Cent. Union Free Sch. Dist.*, 880 N.Y.S.2d 535, 63 A.D.3d 935 (2009) (replacing an athletic field with, among other things, artificial turf, required SEQRA compliance)).

Potential Legal Issues

- ▶ Crowdfunding for capital improvements or other construction-based projects (cont'd.):
 - Certain capital improvements may require NY State Education Department approval.
 - Competitive bidding laws may be invoked in order for the fundraised work to be performed, depending on the type/amount of the work to be done with the donation.
 - For example, all public work contracts expending more than \$35,000 and all purchase contracts expending more than \$20,000 must abide by the competitive bidding rules in NY General Municipal Law § 103.
 - Building aid may be available for certain capital projects, the amount of which is determined based on monetary donations, not on the value of donated supplies or services.

Potential Legal Issues

- ▶ Conditionally providing programs based on the amount of funds raised for same:
 - In *Appeal of Farrell*, 30 Ed. Dep't Rep. 81 (1990), the Board of Education conditioned providing an inter-scholastic sports program on receipt of necessary donations to fund same.
 - A challenge was brought claiming a violation of the Education Law (§ 1718) because the booster club seeking to fund the program was not able to raise the funding amount needed for the entire program prior to the start of the fall season.
 - The Commissioner held that it was not a violation because the full funding amount was not required to be provided prior to the start of the school year.
 - The Commissioner opined, though, that the board should, in the future, ensure that it has sufficient private funding before implementing the program.

Other Potential Issues

▶ Compliance with District Policy

- The crowdfunding page may not request items or funding for items that are not permitted pursuant to district policy, such as unhealthy foods.
 - Ex: “Please help me raise funds to purchase snacks such as potato chips, cookies, gummies, *etc.* for my classroom’s snack time.”

▶ School Publicity (Negative):

- The crowdfunding page may not assert or imply that the district is not fulfilling its obligations to staff and students.
 - Ex: “Despite numerous requests, our school refuses to allocate money to fix/replace our broken and/or over-used instruments. Help me raise funds to go get them fixed myself so that our students are using properly functioning instruments.”

Other Potential Issues

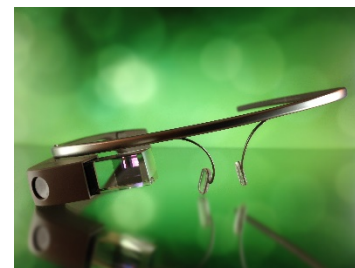
- ▶ Stealing or improper use of received funds/items:
 - The individual coordinating the crowdfunding might keep the funds/items instead of donating them to the district for their intended purpose.
 - Even when properly donated, received funds/items might not be used by the individual/teacher/*etc.* for their stated purpose.

- ▶ Employment/grade-level status changes:
 - A teacher may leave the district or be assigned to a different grade or building, yet believe that she/he is entitled to bring the crowdfunded donations with her/him.

Other Potential Issues

▶ Non-Integrating Technology/Items:

- The donated items do not properly integrate with the district's technology or required security levels.
- Ex: The district receives a donation of Apple computers, but its current computers and program licenses are all for P.C.-based operating systems. Thus, in order to use the donated computers, the district would need to buy new/additional licenses that are Apple-compatible and install Apple-compatible security programs, which would cost a significant amount of money.
- Ex: The district receives a donation of Google Glass(es), which the Director of Technology and/or the teacher(s) do not know how to use, requiring additional training and time to implement them in the classroom.



Google Glass

Credit: Dan Leveille (danlev on Wikimedia) –
Own work, CC BY-SA 3.0,

Other Potential Issues

- ▶ Acknowledging crowdfunded gifts:
 - Depending on the type of donation, a Board of Education might want to acknowledge the gift in a particular manner.
 - From a legal standpoint, the same rules governing acknowledgment of other gifts would apply to crowdfunded donations/gifts.
 - The way in which the donation/gift is acknowledged, however, should not be one where it could be perceived as soliciting additional crowdfunded gifts.
 - As a practical matter, acknowledging crowdfunding donations/gifts more conspicuously or in a manner significantly different than other types of donations/gifts might “send the message” that crowdfunding gifts are preferred, even where that is not, in fact, the case.

Educational Foundations

- ▶ Need to complete an IRS Form 1023 *Application for Recognition of Exemption* – Under section 501(c)(3) of the *Internal Revenue Code* and an annual IRS Form 990 *Return of Organization Exempt from Income taxes*.
- ▶ Nonprofit organization established to assist with the funding of projects and programs that support and enhance District initiatives not funded through the budget.

Educational Foundations

Educational foundations have their own Board of Directors and their own staff.

- ▶ Operate as an independent entity.
 - No formal or legal relationship to the school district.
 - Foundations can specify in their bylaws whether the members of the School Board will be involved in voting or excluded from voting.

Educational Foundations

- ▶ Positive marketing tool for the school district
 - Provides another way for the community to be actively engaged with the school district.
 - Especially non-parent community members.
- ▶ Grant Opportunities
 - Educational foundations will allow the school district to have access to some grants for which the District would not normally be eligible.

Extraclassroom Activities

Fundraising

- ▶ Benefits a club or an entire grade (e.g., senior prom) that is not part of the regular school curriculum.
- ▶ Other fundraising events include sale of candy bars or baked goods.
- ▶ Students can also accept donations to their extra classroom account.

Extra Classroom Activities-Sales Tax Implications

- ▶ If fundraisers are a common practice, register with the New York State Department of Taxation and Finance as a vendor.
- ▶ Extraclassroom clubs are not exempt from sales tax law. They become a vendor of services or goods.
- ▶ Once registered as a vendor, the club will be able to issue *Resale Certificates*.

Extra Classroom Activities Sales Tax

- ▶ Resale certificates enable the clubs to make purchases tax free from their suppliers.
- ▶ Students must collect tax on all taxable items sold.
- ▶ The extra classroom activity fund must file returns periodically and pay any tax due to the Tax Department.

Statement of Profit & Loss

- ▶ It is important to complete a profit & loss statement for each fundraising event.
- ▶ Comparing revenue and expenses directly will give the club a sense of which fundraising activities to continue to approve.
- ▶ Profit & loss statements should be completed by the club and provided to the District Treasurer.

Sales Tax Guide

Activity	Taxable/Non-Taxable	Description
Sale of Candy, Soda and Soft Drinks	Taxable with exceptions	Candy, soda/soft drinks, fruit drinks with <70% natural juice.
Spaghetti Dinners and Catered Meals	Taxable	
Bake Sales	Taxable	
Vending Machine Sales	Taxable with exceptions	Taxable when near eating facilities (i.e. tables, benches, chairs). Non-taxable where no eating facilities are available.
Pizza, Chicken, Popcorn, Coffee, Tea, etc.	Taxable	All sales of prepared food sold in a heated state are subject to sales tax.

Sales Tax Guide (Cont.)

Activity	Taxable/Non-Taxable	Description
Admission Charges	Taxable with exemptions	Exemption for admissions to dramatic or musical arts performances, which does not include variety shows, magic shows, dances, and similar performances.
Sale of Newspapers/Magazines	Non-Taxable	
Sale of shrubs, plants, trees	Taxable	
Sale of Yearbook	Taxable	If the entire cost of the yearbook is underwritten by the Board, the revenue is recognized as a general fund item, exempt from sales tax.

Sales Tax Guide (Cont.)

Activity	Taxable/Non-Taxable	Description
Sale of Yearbook Advertising Space	Non-Taxable	
Sale of clothing	Taxable	Sales tax is imposed on the sale of tangible personal property.
Book Store Sales	Taxable	
Prepackaged Popcorn, Potato Chips, Pretzels	Non-Taxable	When packaged and sold in a cold state, prepackaged snack foods are exempt.
Repair/Maintenance Services, Car Washes	Taxable	An exemption is provided for the repair, maintenance or service of farm machinery.

Other Fundraising Ideas

- ▶ **Product Sales**
 - Having a product with a large target market is essential.
- ▶ **Walk-a-thon**
 - Promotes health & fitness while also having a near 100% profit margin.
- ▶ **Just Ask**
 - Many local businesses will be interested in donating to schools.

QUESTIONS?



**THIS OUTLINE IS MEANT TO ASSIST IN THE
GENERAL UNDERSTANDING OF THE CURRENT
LAW. IT IS NOT TO BE REGARDED AS LEGAL
ADVICE. SCHOOLS OR INDIVIDUALS WITH
PARTICULAR QUESTIONS SHOULD SEEK ADVICE OF
COUNSEL.**

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