

## ACTIVITY FUND SANCTIONING TALKING POINTS

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Budget constraints have caused many school districts to place a greater emphasis on alternative sources of revenue to support non-classroom expenses and extracurricular activities. Consequently, fundraising by outside support organizations (parent groups and booster clubs) has become something many schools depend on to supply sports and band equipment, playground equipment, field trips, and other activities or items that may have lost funding support due to budget cuts. While this additional revenue may provide some relief to budget pressures, it may also come with unforeseen legal and political consequences. Nevertheless, it would be unreasonable for most school districts to disassociate with outside support organizations and turn away their financial support. Districts can, however, reduce the risk of negative consequences by first recognizing where and how problems may develop and then by establishing policies and practices to address those areas of concern.

### Potential Trouble Spots

#### ***Tort Liability (Law Suits)***

Fundraisers held by booster clubs and parent groups traditionally include activities that involve some risk of injury. Car washes, fall carnivals with bounce houses and dunking booths, fun runs, and donkey basketball games are not inherently dangerous activities, but they create situations where injuries may result without proper supervision or sufficient safety measures. When injuries occur, the relationship between the outside support organization and the school district may dictate who will be ultimately liable in a negligence lawsuit. If a booster club or parent organization is indistinguishable from the school district, the district may be held responsible for the group's negligence. Such a determination will likely be influenced by the following conditions: (1) the group is permitted special access to school facilities and communication forums; (2) school employees routinely assist in the group's activities; (3) the group is allowed unrestricted use of the school's name, mascot, or logo; (4) the group is not a separate legally established not-for-profit corporation; and (5) announcements for group-related functions do not provide a clear indication of whether the event is sponsored by the group or the school district.

A school district's governmental immunity could also be limited under circumstances where the district is sued for the negligent acts of an outside support organization. For example, in some states, governmental immunity law does not apply to "actions to recover for bodily injury or property damage arising out of the performance of a proprietary function, which is defined as "any activity which is conducted primarily for the purpose of producing a pecuniary profit (**financial advantage that is dishonestly obtained by deception and that could constitute a criminal offence**) ...excluding any activity normally supported by taxes or fees. The Michigan's Supreme Court discussed the application of this exception in *Coleman v. Kootsillas*. In finding that a proprietary function led to the negligence in question, the Court reasoned that an activity is generally intended to be a general revenue-raising device if its profits are deposited in the governmental agency's general fund or used to finance an unrelated function. Conversely, if the revenue is used only to pay current and long-range expenses involved in operating the activity, the primary purpose of the activity is not to produce a pecuniary profit. Thus, in states where governmental immunity is waived when

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performing a non-governmental or a proprietary function, school districts will be more susceptible to liability when injuries occur at a fundraising event.

### ***Embezzlement***

Unfortunately, booster clubs and parent groups have become targets of embezzlement at an increasingly high rate. In most of these cases, the school district has no control of the accounts of the outside organization, so the embezzler is solely liable for the missing money. However, the relationships that a school district enjoys with its outside support organizations create a public perception that the district oversees and controls the organizations. This creates a difficult public relations situation for the school district, which may result in a political backlash from its constituency if it fails to take an active role in recovering or reimbursing the embezzled money.

A School District confronted such a situation by filing a lawsuit against a former principal who plead guilty to embezzling and laundering \$400,000 from an elementary school's parent teacher organization and child care program. According to the plea agreement, the principal will forfeit two parcels of property in order to reimburse the \$400,000, which was the amount of stolen money as identified by the U.S. Attorney's Office. The school district, however, conducted its own forensic audit and determined that the principal embezzled \$865,000. The district's lawsuit seeks to recoup the additional \$465,000 plus \$225,000 for audit and legal expenses. The school district's superintendent has declared that the district "will prosecute to the fullest extent of the law when the community's money and property is stolen. Parents gave up their time and money selflessly, assuming he [the principal] would be a custodian of the funds." The case is pending in the County Circuit Court.

### ***Discrimination***

Under Title IX, donations by booster clubs may not create vast differences in benefits or services to female and male athletes. Even though the school district is not the direct source of the financial support, Title IX imputes liability to the school district if unequal treatment occurs as a result of the actions of a booster club. The Title IX regulations prohibit aiding and perpetuating discrimination by "providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students. Thus, a school district that allows a booster club to operate a concession stand at football games or grants free facility use for other fundraising events, has an obligation under Title IX to ensure that the booster club's contributions do not create disparities in participation opportunities, equipment, and facilities between male and female athletic teams. Failing to ensure equity could lead to court ordered penalties or sanctions administered by the Office of Civil Rights (OCR). The OCR's TITLE IX ATHLETICS INVESTIGATOR'S MANUAL also stresses a school district's responsibility under Title IX to ensure that boys' and girls' athletic teams are provided with equivalent benefits, services, or opportunities regardless of their source. While noting that OCR has no jurisdiction to investigate independent booster clubs, the manual provides the following guidance on assessing a school district's ultimate responsibility for ensuring Title IX compliance in regards to booster donations:

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Where booster clubs provide benefits and services that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits and services. If booster clubs provide benefits and services to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the institution shall take action to ensure that benefits and services are equivalent for both sexes.<sup>8</sup> Thus, the bottom line is that school districts are responsible for Title IX compliance regardless of whether the disparate benefits are created by booster clubs or other sources of outside financial assistance.

### ***Record Keeping***

Title IX compliance places an obligation on school administrators to monitor the distribution of all benefits to athletic teams provided by the school district and booster clubs. If a complaint is filed against a school district alleging disparities favoring male athletic teams as a result of outside financial assistance by booster clubs, the district can defend against the complaint by providing evidence of an off-setting benefit provided to female athletes by the school. According to OCR, the difference in the amount of funds received by male and female athletic teams from booster clubs is not, in and of itself, a violation of Title IX.

### ***Violating High School Athletic Association Regulations***

In some instances, contributions from booster clubs may be contrary to rules approved by a state's high school athletic association. For example, the High School Athletic Association prohibits a coach from receiving financial compensation from any source except the school district. This regulation would prohibit a booster club from directly paying a talented coach additional compensation as an incentive to remain at the school district. Additionally, most state high school athletic associations prohibit booster clubs and parent organizations from sponsoring or supporting out-of-season programs or performing out-of-season functions if the school district is prohibited from doing so under the same circumstances. Therefore, a regulation that prohibits using school transportation for out-of-season activities could not be circumvented by having a booster club reimburse the school district for the expenses of the school vehicle and driver. Violating established athletic association regulations, which includes violations by a school district's booster clubs, could provide the basis for the association to impose censure, probation, forfeiture, loss of privilege of revenue sharing, or expulsion against a school district.

### **Avoiding Negative Consequences**

The following information provides guidance on taking preventative measures to limit the risk of school district liability for the activities of booster clubs and parent groups.

### ***Policies and Procedures***

Many of the possible trouble spots discussed above can be addressed by adopting appropriate board policies and administrative procedures on the following matters:

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**Clarifying the relationship between the school district and its booster clubs and parent groups.** Groups and clubs that are not incorporated under law as not-for-profit corporations could be categorized as “internal groups” under the school district policies. These groups would be subjected to greater district oversight, which would require the groups’ income to be deposited into the school’s internal accounts (Activity Fund Account) and subjects the groups to all policies and procedures related to receiving and disbursing funds. Other groups and clubs that have incorporated could be classified as “external groups” or “independent organizations” with bank accounts separate from those of the school district.

**Parameters for using the school district’s name, logo, or mascot.** Such use should be revocable and contingent upon complying with school district policies.

**Requiring accounting procedures for “external groups.”** Even though a school district will not be overseeing the accounts of “external groups,” the district may still require the groups to follow specific accounting practices: (1) the treasurer of the group shall handle all funds; (2) two signatures are required on all checks; (3) funds are always deposited into the authorized bank account; (4) two people count the money and provide the treasurer with a signed proceeds receipt; (5) school employees shall not be authorized to sign checks drawn on the bank account; (6) sales slips, receipts, or invoices are provided for every expenditure; (7) bank statements are reconciled by the treasurer and reviewed by someone who does not have check signing authority; (8) a copy of the budget shall be provided to the school or district at the beginning of each school year: and, external group must be audited by an independent auditor or auditor for the school district.

**Approving activities.** Require prior written approval of the group’s activities by a building principal (or designee). Announcements of the event should clearly indicate that it is sponsored by the group and not the school or district. Groups should warrant that the activities will be adequately supervised.

**Insurance.** Booster clubs and parent groups should maintain a general liability insurance policy that names the school district as an additional insured party. In the past, most school insurance policies covered booster clubs and parent groups, but many insurance companies have been dropping outside support organizations from school policies. Or, in some cases, coverage for liability claims made against individuals participating in booster club or parent organization events are limited to events that are sponsored by the school district in cooperation with the outside group. And, some policies only cover booster clubs and parent groups for events during school hours or on school property. Whatever the case may be, school districts can seek complete coverage by mandating that the outside support organizations obtain comprehensive liability policies and consider property coverage, officer’s liability, and **bond coverage for the treasurer or fund custodian.**

**Audits:** Because audits provide a defense against embezzlements and fraud, booster clubs and parent groups should be encouraged, if not required, to conduct annual audits

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of their financial records. Many insurance companies will also require a booster club or parent group to conduct an annual audit by an audit committee or qualified accountant in order to qualify for bond coverage. The audit should be performed by someone who is independent from the group's day-to-day financial activities. If an auditing committee is charged to conduct the audit, its members should not include the signers on the checking account. Upon completion, the results of the audit should be reported to the board of directors of the group and then filed with the school district.

### **School-wide Booster Clubs**

Another way to minimize liability under Title IX is to encourage school-wide booster clubs. For example, instead of having separate booster clubs for boys' and girls' basketball, a school-wide basketball booster club would support all of the school's basketball teams. If school-wide booster clubs covered all of the sports that are offered for both boys and girls (i.e., soccer, basketball, swimming, golf, track, cross country, etc.), the administrative burden of monitoring and tracking the flow of benefits from booster clubs to athletic teams for the purposes of complying with Title IX would be limited to traditional single-sex sports, such as football, volleyball, and wrestling.

### **Sharing Information**

Booster clubs and parent groups should receive information on policies relating to sexual harassment, nondiscrimination, fundraising, alcohol and smoke-free schools, facility use, donations, advertising, and other issues that could affect the organizations and their activities. The athletic booster clubs should also be aware of pertinent high school athletic association regulations that cover undue influence, compensating coaches, and out-of-season activity restrictions.

### **Conclusion**

Undeniably, booster clubs and parent groups play a very important role in assisting school districts with non-classroom expenses. Without these organizations, many playgrounds would be archaic, band uniforms would seldom be replaced, and athletic equipment would remain broken or outdated. While the pros of having booster clubs and parent groups far outweigh any cons, school districts should still consider what liability may result from their activities and what can be done to protect the school district as well as the organization itself. By taking such a proactive approach in dealing with parent groups and booster clubs, school districts can reap the benefits of support from their dedicated community members.