

FUNDRAISING IN SCHOOLS: CHALLENGES, ISSUES, GUIDELINES, AND POLICIES

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63rd Annual Conference of the Education Law Association
The Sheraton San Diego, San Diego
November 8-12, 2017

FUNDRAISING IN SCHOOLS: CHALLENGES, ISSUES, GUIDELINES, AND POLICIES

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This paper will examine the use of fundraisers and fundraising activities and the challenges and issues surrounding the conduct of these activities. Various legal issues such as federal, state, and constitutional violations, including tort liability from various constituents or parties involved, i.e. the students, the parents, the school, the school district, the PTO, booster clubs, and those who oversee these fundraising efforts or activities are discussed. Finally, practical guidelines or principles and policies for minimizing liability and violations when using school fundraisers are suggested.

INTRODUCTION

Fundraising and fundraisers have been around in public schools for a long time and may have actually increased in recent years. A large majority of schools use fundraising activities to raise money from external sources to fund and support co-curricular activities and other school functions. This may be due to shrinking school budgets or the school's desire to supplement costly co-curricular activities or endeavors or to meet a school club or association's mission, needs, or goals. It is imperative for schools, particularly school administrators to be cognizant of the many challenges and issues surrounding school fundraising activities, understand the guidelines, and have policies in place to deal with the legalities involved with fundraisers in order to minimize school liabilities and potential lawsuits.

PURPOSE OF FUNDRAISING ACTIVITIES

The increase in fundraising activities in schools to seek additional monies is becoming more and more especially when schools face difficult financial times of budgetary cuts or shortfalls.

Fundraisers or fundraising activities are generally carried out to raise funds, considered as alternative sources of revenue, for the school or district, for the purposes of:

- Aiding an academic club or organization in the school
- Aiding an athletic, sports, or extracurricular program
- Aiding a particular student or group of students
- Aiding the school or district as a whole
- Supplementing the traditional funding from federal, state or local governments due to budget shortfalls

Other purposes of fundraising activities include “raising awareness for the community to come together, thus building a strong community; highlighting important educational skills, and instilling a sense of social awareness and moral values in the minds of our youth.”¹ They “also inculcate school spirit which enhances the experience for student participants.”²

¹ Kathy Diiorio, Former elementary school teacher and principal. Personal interview in Cash for Your Classroom: Expert Tips and Resources for Raising Funds and Building Relationships. Available at:

<http://www.accreditedschoolsonline.org/resources/school-fundraising/>

² Schultze, R.R. & Perry, G. H. (2014, November 21). F-5 – “Legal Issues to Consider with Booster Clubs and PTA’s”. Available at:

<http://members.nasbonline.org/Events/StateConference/2014/Handouts/F5.pdf>

DEFINITION OF “FUNDRAISER” OR “FUNDRAISING ACTIVITY(IES)

“Fundraiser” or “Fundraising Activity(ies)” refer to a school or district sponsored activity or event that uses students to generate funds.³ Fundraisers or fundraising activities can come in the form of group or individual; the former refers to funds raised for the mutual benefit of a particular organization or team, while the latter refers to funds that are being raised to help subsidize or pay for an individual student’s costs. Fundraisers or fundraising activities generally involve or use students to generate funds or monies for the organization, team, or individual. Alternative forms/streams of fundraising activities which also generate revenue for schools that may not use students include unsolicited donations such as private donations from individuals or organizations, unobtrusive programs such as Box Tops for Education, Labels for Education, Penny Wars, etc. and advertising in the bus, class newsletter or school newspaper, or in the local newspaper.

TYPES OF FUNDRAISING ACTIVITIES

A popular type of fundraiser or the historical method of fundraising commonly used by schools to raise monies, is through the sale of food and beverage items on campus such as bake sales, candy sales, and sales of sugary drinks.⁴ Food-related fundraisers are common and have been around for many years. According to study by the Centers of Disease Control and Prevention in 2006, the sale of foods and beverages occurred at 76% of elementary schools,

³ Nebo School District Board of Education. (2016, December 14). Policies and Procedures. Section: K-School/Community Relations. Policy Title: School Fundraising Activities. Available at: www.nebo.edu/pubpolicy/K/KAC.pdf

⁴ Caparosa, S.L., Shordon, M., Santos, A. T., Pomichowski, M.E., Dzewaltowski, D.A., & Coleman, K.J. (2013). Fundraising, Celebrations, and Classroom Rewards are Substantial Sources of Unhealthy Foods and Beverages on Public School Campuses. *Public Health Nutrition*, 17(6), 1205-1213

78% of middle schools, and 84% of high schools.⁵ Other food-related fundraising strategies comprise spaghetti dinners, pizza dinners, sponsored fundraiser nights at local restaurants, sale of food through student stores, snack bars, vending machines, concession stands, and/or at special school events, and as part of booster club activities, etc.

A second type of fundraising may be through the sale of non-food items such as the sale of flowers, or seeds, local restaurant coupon books, magazine subscriptions, wrapping paper, raffle tickets, auctions, game nights, movie nights, recycling programs, advertising, student-run stores, etc.

A third type of fundraising may include the use of physical activities such as fun runs, walks, jog, or bike-a-thons, sponsored by the Parent Teacher Organization/Association (PTO/PTA) or by the school or district.

Another type of fundraising may come directly through advertising or through an online medium like social media soliciting donations of private individuals or organizations in the community to the school or district to fund a specific activity, program, or project. They usually do not involve the participation of students or parents. Many schools sell advertising space on school buses, in hallways, on athletic uniforms, and just about anywhere else. Commercial and personal ads can be placed in athletic event programs and the programs are then sold at athletic and sporting events.

A final form of fundraising may be conducted by an independent parent group, such as the PTA/PTO or booster clubs to raise funds for a school to purchase new computers, playground equipment, pay for academic programming, classroom supplies, materials for the school, band trips, state and national athletic competitions, athletic or sports equipment, extracurricular programs, etc.

⁵ O'Toole, T.P., Anderson, S., Miller, C., Guthrie, J. (2007). Nutrition services and foods and beverages available at school: Results from the School Health Policies and Programs Study. *Journal of School Health*, 77(8), 500-521.

The aforementioned is not an exhaustive list of fundraisers or fundraising activities, however, it is one that is fairly representative and commonly used by schools and districts. These fundraisers or fundraising activities are generally conducted during the school day or outside of the school day by students, parents, volunteers, and/or other community groups or organizations,

LAWS ASSOCIATED WITH FUNDRAISING

Schools and school districts need to be mindful of federal, state, and local laws that govern the use of fundraisers and fundraising activities in areas such as tort liability (negligence), food, nutrition, and wellness compliance, gender equity based on disparate benefits under Title IX, freedom of expression and freedom of religion rights under the First Amendment, licensing, taxes, copyright issues, etc. The laws that surround fundraisers and fundraising activities are as follows:

FEDERAL LAWS

Child Nutrition and WIC Reauthorization Act of 2004. P.L. 108-265, Section 204, 2004. This law which took effect at the start of the 2006-07 school year, requires that school districts develop wellness policies. Wellness policies have also included nutrition guidelines related to fundraisers, fundraising practices and activities.

The Healthy, Hunger-Free Kids Act (HHFKA) of 2010. This piece of legislation provides strong nutrition standards for school meals and other foods sold to children on school campuses, and also sets new rules on school fundraisers that sell food such as bake sales, snacks sold in school vending machines, school

stores, and onsite cafes. A summary of this piece of legislation and associated regulations concerning fundraisers⁶ is provided below:

- Requires the US Department of Agriculture (USDA) to establish nutrition guidelines for all foods sold on the school campus⁷ at any time during the school day, including food sold outside the school meal programs.
- Allows USDA to consider “special exemptions for school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the Secretary), if the fundraisers are approved by the school and are infrequent within the school.”
- Does not require foods sold as part of fundraising activities that take place outside of school to comply with the nutrition standards if the foods will not be consumed on school property. (So, students may distribute order forms and foods not intended for consumption at school, such as frozen cookie dough, on campus.)⁸ However, state agencies or school districts, through their wellness policies, can prohibit or limit fundraisers during which these types of foods are sold.
- Authorizes the state agency overseeing the school meals programs to allow exemptions from the nutrition standards for foods and beverages that are sold during “*infrequent* school-sponsored fundraisers.”⁹

⁶ Healthy, Hunger-Free Kids Act and School Fundraisers. (2015, September). *Changelabsolutions.org*. Retrieved from

<http://www.changelabsolutions.org/publications/HHFKA-school-fundraisers>

⁷ 42 U.S.C. § 1779(b)(1)(B). In interpreting the Act, the USDA defines *school campus* as all areas of the property under the jurisdiction of the school that are accessible to students during the school day. *School day* means the period from the midnight before, to 30 minutes after the end of the official school day.

⁸ USDA, Smart Snacks in School Fundraisers Fact Sheet, available at: www.fns.usda.gov/sites/default/files/allfoods_fundraisers.pdf

⁹ National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010, 78 Fed. Reg. 39068, 39093 (June 28, 2013) (amending 7 C.F.R. Parts 210, 220), proposed § 210.11(b)(4), emphasis added.

- Requires the state agency to specify the number of exempt fundraisers or fundraising days (i.e. the frequency of fundraisers) that schools may have. The agency can set this number at zero. If the agency does not specify the allowable frequency, schools within the state may not hold any exempt fundraisers.
- Prohibits the sale of exempted fundraiser foods or beverages in the food service area during the meal service.¹⁰

If the State allows schools to hold exempt fundraisers:

- Fundraisers must be approved by the school;
- Fundraisers cannot be held in the food service area during the meal service; and
- Foods and beverages sold from vending machines, school stores, snack bars, and a la carte sales cannot be exempt from the minimal nutrition standards, even if a school uses these venues to raise funds for the school.

USDA Smart Snacks School Nutrition Standards (July 2014). With school nutrition being the focus of national policy efforts and following passage of the Healthy, Hunger-Free Kids Act of 2010, the government mandated new rules for competitive foods and beverages known as “Smart Snacks.” “Competitive foods and beverages” refer to food items that are not part of the traditional school meal and are sold on school campuses before the start of the school day to 30 minutes after the end of classes. With this in mind, the USDA developed the Smart Snacks School Nutrition Standards which define portion sizes and types of foods and beverages that may be sold outside of school meals on school campuses during the school day in the three venues of vending machines, school stores of snack bars, and a la carte lines in the cafeteria. Among the new regulations is a requirement that snack items to have 200 calories or less.

¹⁰ 42 U.S.C. § 1779(b)(1)(C)(ii)(IV)

Sodium must be 230 milligrams or less and will drop to 200 milligrams in 2016.¹¹ The Smart Snacks Standards also allow states to create an exemption from the regulations allowing a certain number of at-school fundraisers involving competitive foods and beverages that do not meet Smart Snacks nutritional guidelines if they so choose (Child Nutrition Act 2010). Many states have a zero-exemption policy meaning any products sold on a school campus as a fundraiser must comply with the Smart Snacks standards. However, the standards allow for occasional special exemptions for fundraisers, whereby non-compliant items may be sold on campus during school hours.¹² The number of allowable exemptions is left to the purview of the state agency overseeing child nutrition and varies substantially from state to state. As of 2014, the state of Missouri has a policy allowing five exempt, one day fundraisers annually, per school building.¹³ Prior to the Smart Snacks standards, state laws and district policies were lacking in the practice of placing limited restrictions on fundraisers.

Title IX of the Education Amendments Act of 1972. This federal law prohibits discrimination on the basis of gender for institutions receiving federal funding. The extent to which this piece of legislation is used in regard to fundraisers and fundraising activities is looking at the disparate benefits that may result in gender inequity and discrimination. Title IX requires that schools must ensure that equivalent benefits and services be provided to members of both sexes: Where booster clubs provide benefits and services that assist only teams of one sex, the school shall ensure that teams of the other sex receive equivalent benefits and services. If booster clubs provide benefits and services to athletes

¹¹ No More Bake Sales? New Federal Nutrition Rules Could Challenge School Fundraisers. (2014, July 21). *Education*. Available at:

<http://www.thestate.com/news/local/education/article13869755.html>

¹² U.S. Department of Agriculture. Food and Nutrition Service. *National School Lunch Program and School Breakfast Program: Nutrition standards for all foods sold in school as required by the Healthy, Hunger-Free Kids Act of 2010*. Interim final rule. Federal Register, 2013; 78(125):39067-39120.

¹³ Smart Snacks: State Agency Fundraising Exemption. Available at:

https://schoolnutrition.org/uploadedFiles/News_and_Publications/News/SmartSnacksFundraisingExemption.pdf

of one sex that are greater than what the institution is capable of providing to athletes of the other sex, then the school shall take action to ensure that benefits and services are equivalent for both sexes.¹⁴

Constitutional Law.

First Amendment to the U.S. Constitution. Fundraisers and fundraising activities/campaigns must comport with the First Amendment's Establishment and Free Speech clauses. With the Free Speech and Establishment Clauses, school systems must be cognizant of constitutional violations when raising funds through "buy a brick" fundraisers especially when religion is involved with the content of "inscribed" religious messages, or even with the use of "explicit" religious messages. School administrators must weigh the risks involved when the public or community are invited to place personal messages on public school property or through advertising in fundraising activities so there are no violations of the Free Speech Clause according to the First Amendment.

Tort Law. In tort law, negligence is an area that school officials must be mindful of the hazards, dangers, and take the necessary precautionary measures especially with fundraising activities that involve young students going from door-to-door selling things in the community to avoid liability claims. Liabilities can take different forms such as inadequate supervision, assault, sustaining a physical injury, rape, murder, kidnapping, etc. In order to avoid negligence claims, school officials must not violate the four elements required for negligence to be evident, i.e. the duty of care, breach of duty, proximate cause, and injury. Educators are held to the standard of a reasonable parent or prudent person in negligence claims. Board policies should address negligence and liability issues that might arise from conducting fundraising activities.

¹⁴ Office of Civil Rights, Title IX Athletics Investigator's Manual.

STATE AND LOCAL LAWS

State and Local Ordinances Pertaining to Taxes, Licensing, Copyright, Nutrition & Wellness

Educators must be cognizant and in compliance with existing local ordinances and state laws that affect fundraisers and fundraising activities in areas such as licensing requirements and/or copyright issues with the use of movies or videos as fundraisers, state raffle laws governing licensing, the sale of raffle tickets, the values of prizes, or the format of tickets, etc., the imposition of local or state sales taxes, exemptions permitted for fundraisers, restrictions as it pertains to access to the community for students involved with sales of food items or products, and local ordinances and state nutrition requirements and wellness guidelines related to food preparation and sales. For example, the state of Missouri developed *The Missouri Eat Smart Guidelines Grades Pre-K-12* (2006) to guide the development of local wellness policies and provide suggested nutrition standards for school meals, a la carte items, vending/school stores, other foods available at school, and before- and after-school programs at three different levels: “Intermediate,” “Advanced,” and “Exemplary”.¹⁵ The minimum level complies with the minimum requirements for all school meals established by federal Child Nutrition Program regulations and state policy. The standards for each subsequent level are more healthful than those for the previous level.

LEGAL CHALLENGES AND ISSUES

There are many legal challenges and issues that schools and districts may face with regard to fundraisers and fundraising activities, whether it be through the sale of food items, non-food items, or any another activity forms. These challenges are based on the legalities surrounding fundraisers and questions that arise may include: 1) whether the fundraising activities are legal or illegal, 2) what

¹⁵ The Missouri Eat Smart Guidelines Grades Pre-K – 12. 2nd edition. Available at: http://www.fhsdschools.org/UserFiles/Servers/Server_995699/File/2011-2012/Finance/Missouri%20Eat%20Smart%20Guidelines.pdf

are the legal liabilities of using fundraisers and fundraising activities and risk management strategies that the school or district must be aware of? Is the school or district liable for any mishaps, injuries, or negligence resulting in student or parental involvement or participation in fundraising activities? 3) what is the obligation of the school or district to provide proper instructions to reduce the risk of injury, warnings regarding known or foreseeable hazards, and providing adequate supervision? 4) what are the constitutional violations involving the First Amendment rights such as free speech or the establishment of religion if and when personal or religious messages are placed on tangible items to be sold as fundraisers? 5) are there any federal, state, or local food/nutrition guidelines, health and wellness laws that schools must comply with when fundraisers using food items are involved? 6) are there problems associated with nutrition practices contributing to childhood or students' obesity¹⁶ when food-related fundraisers are involved? 7) can booster clubs or Parent Teacher Organizations/Associations (PTO/PTA) be held liable for violations of Title IX on disparate impact grounds? 8) what are the liabilities of using fundraisers and fundraising activities involving the sale of non-food items, the use of physical activities, or the solicitation of private donations or funds? 9) what are the issues involved when fundraising activities are conducted over the Internet? and 10) does the school or district have guidelines or policies in place involving fundraisers and fundraising activities when they are conducted in school or off-school grounds?

With all these challenges and legal issues that schools will encounter with fundraising activities, it is imperative that school administrators take the necessary precautions to not only minimize district liability and be cognizant of federal, state, and local laws, so as to be compliant and avoid violations of the law.

¹⁶ Kubik, M.Y., Lytle, L.A., & Story, M. (2005). Schoolwide food practices are associated with body mass index in middle school students. *Arch Pediatric Adolescent Medicine*, 159(12), 1111-1114.

GUIDELINES ON FUNDRAISING ACTIVITIES

In view of all the challenges and legal issues, it would be wise for schools and districts to develop guidelines and policies associated with fundraising activities. This would protect all parties involved in the fundraising efforts and activities and absolve the school and district of any liabilities arising from the implementation of these activities. A list of practical guidelines and principles for minimizing liability involving fundraisers and fundraising activities in schools and districts are discussed and presented below:

1). Determine the Purpose/s of Fundraising

Before commencing fundraising activities, it is important that the purpose/s are understood by all the parties as to why it is necessary and that the proceeds will be used for the purpose/s it was intended to begin with. Any proceeds from the fundraising activities should be spent for the benefit of the individual student, the entire student club or group, or the school depending on what the purposes were established in the first place. Funds raised should not be used to replace public education funding or support items funded through school or district budgets.

2). Determine the Appropriateness of Fundraisers Used

It is important to determine the appropriateness of using certain fundraisers, particularly the ones involving the sale of food items such as candy bars, cookie dough, or beverages such as soda to raise money. These food items are deemed to be unhealthy and consumption of “empty calories” from the solid fats and added sugars in these products may cause obesity in children in their later years.¹⁷ The number of overweight, obese, and inactive students have been on the rise in recent years. Through the sale of unhealthy foods, schools

¹⁷ U.S. Department of Agriculture and U.S. Department of Health and Human Services. (2010). *Dietary Guidelines for Americans 2010*. 7th ed. Washington, D.C.: U.S. Government Printing Office.

may be sending mixed messages to the students as parents and schools are in the business of supporting activities aimed at keeping students healthy and well so as to help them achieve academic success. Therefore, it would be ideal to limit food fundraisers to healthier food/beverage items. Advocating for fundraisers to instead use non-food items to raise money through physical and health activities such as a jog- or bike-a-thon would be even better. Local school wellness policies should include language that addresses healthier fundraising.¹⁸

3). Ensure Gender Equity and Non-Discrimination in Funds Distribution

School groups and non-school groups that conduct fundraisers and fundraising using booster clubs, corporate sponsorships, private donations, alumni, etc., might want to ensure that discrimination is not evident in the disparate economic benefits received by either gender groups based on the different level of fundraising success or lack thereof. Booster clubs for boys' teams may be and are generally more successful at fundraising than girls' teams. To be compliant with Title IX legislation, a school must ensure gender equity in that equivalent benefits and services be provided to members of both sexes even though the booster club/s assist only team/s of one particular sex. Athletic directors are, therefore, required to track the flow of funds being distributed by booster clubs to ensure non-discrimination and gender equity. When outside resources result in inequity between boys' and girls' programs, the school must use its own funding to correct the inequities, if necessary. An equitable method of fund distribution would be for all the funds raised by all the booster clubs to be pooled together into one single large fund and then redistributed to all the athletic clubs or programs equally to avoid disparate impact claims or violations of Title IX. The principal or his or her designee should monitor fundraising activities and be present at all booster club meetings to ensure equitable treatment of groups or teams, and the provision of equal benefits. In *Capital Gymnastics Booster*

¹⁸ California Project Lean. Fact Sheet: Fundraising in Schools. Retrieved from www.CaliforniaProjectLean.org

Club, Inc. v. Commission of Internal Revenue,¹⁹ a case involving a Virginia booster club's practice of crediting individual families with points towards their athlete's annual fees and assessments based on the amount of money raised through fundraising activities, a U.S. Tax Court found that the practice benefitted only certain athletes and families in violation of rules governing tax-exempt organizations, and that fundraising credits are not charitable. The Internal Revenue Service revoked the Club's nonprofit tax exemption in 2008. A federal judge upheld the decision in August 2013.²⁰ Fundraising should benefit all the students on the team or in the club and not only a select few. Students whose families do not participate in fundraising activities should not be penalized.

4). Being Proactive About Legal Challenges and Issues

School officials should be proactive and take into consideration the legal challenges and issues associated with fundraising activities, especially those that involve liability and risk of injury to all the participants involved. Car washes, food sales (improper handling concerns), carnivals with bounce houses and dunking booths create situations where injuries may result without proper supervision or sufficient safety measures in place. Schools must either provide such safety measures or clearly disclaim to all participants any school involvement in the activity. School administrators should check the school's insurance policies to ensure that coverage exists for all parties involved in the event of any injury.²¹ This is all the more crucial especially when it comes to door-to-door fundraising sales of food or non-sale food items by students in the community. Many districts now discourage door-to-door fundraising after a sixth-grade student selling

¹⁹ *Capital Gymnastics Booster Club, Inc. v. Commission of Internal Revenue*
Available at

<http://www.ustaxcourt.gov/InOpHistoric/CapGymMemo.Gustafson.TCM.WPD.pdf>

²⁰ Tax Court Rules on Common Fundraising Practice. *PTO Today*. Available at
<https://www.ptotoday.com/pto-today-articles/article/1398-tax-court-rules-on-common-fundraising-practice>

²¹ Schultze, R.R. & Perry, G. H. (2014, November 21). F-5 – “Legal Issues to Consider with Booster Clubs and PTA's”. Available at:
<http://members.nasbonline.org/Events/StateConference/2014/Handouts/F5.pdf>

wrapping paper and candy was murdered and in another case, a young female student was raped. The court found a fundraising company liable in the rape case involving a 10-year old female student who participated in a fundraiser in a suit brought by her parents in *R.W. and C.W. v. Punxsutawney Area School District et al.*²², Precautionary measures should be in place to minimize school or district liability and avoid potential lawsuits by students, parents, or community members. Schools are now suggesting that if children go door-to-door fundraising, older siblings or adults, or parents accompany them when they sell and deliver the products. Some districts suggest only selling to relatives, friends, close neighbors, and parents' co-workers for safety reasons.

Issues related to constitutional violations of the Free Speech Clause and the Establishment Clause under the First Amendment should be considered in planning for a "brick" fundraiser when it comes to the content of inscribed messages and the extent to which the messages merit restriction. So, with respect to religious messages, should the entire, or some be excluded, or none at all? Who should approve the messages and what should the process involve? And with brick inscriptions, schools can get stuck between a rock (Establishment Clause) and a hard place (Free Speech). Placing a brick with a religious message on campus might violate the Establishment Clause; disallowing or removing it might also violate the paying inscriber's Free Speech rights. In *Demmon v. Loudoun County Public Schools*, 342 F. Supp. 2d 474 (E.D. Va. 2004), the court held that the school violated the free speech rights of parents when they removed bricks inscribed with a Latin cross. Similarly, in *Seidman v. Paradise Valley Unified School District No. 69*, 327 F. Supp. 2d 1098 (D. Ariz. 2004), the court held that a school's removal of "God" from a tile inscription "God Bless Quinn We Love You Mom and Dad" violated the Free Speech rights of the parents. In yet another case not involving bricks or tiles, a federal district court in

²² *R.W. and C.W. v. Punxsutawney Area School District et al*, Civil Action No. 00-861, at 15 (W.D. Pa., Feb. 28,2001), *aff'd without opinion*, *Robert v. Punxsutawney Area Sch. Dist.*, 281 F.3d 223 (3d Cir. 2001).

Pounds v. Katy Independent School District, 730 F. Supp. 2d 636 (2010), held that the school district engaged in viewpoint discrimination in violation of the Free Speech Clause when it removed an explicit religious message, “And she shall bring forth a son, and thou shalt call his name Jesus, for He shall save his people from their sins. – Matthew 1:21.” as one option for greeting cards selected by parents as part of a school fundraiser. The school chose to black out the explicit message. The order form for the holiday card which was prepared and sold through a third-party vendor clearly created a forum for, or facilitated the creation of the cards, and was clearly private expression. Pattison Elementary School in Katy, Texas, was selling the holiday cards as a fundraiser for art supplies. The program allowed parents to choose an artwork created by their own child as well one of several stock messages for inside the card.²³ However, in *Fleming v. Jefferson County School District R-1*, 298 F. 3d 918 (10th Cir. 2002), the court held that school officials could enforce guidelines barring religious symbols in a tile painting and installation project, as part of a reconstruction of the school where the Columbine shootings occurred, since the symbols were reasonably related to legitimate pedagogical concerns.²⁴ The “Hazelwood” standard was applied in the ruling of this case.

5). Being Compliant with Federal, State, and Local Laws

It is important for school officials to make sure that all federal, state, and local laws are adhered to and not violated when it comes to fundraising activities. Compliance with federal laws such as Title IX, the Child Nutrition and WIC Reauthorization Act, the Healthy Hunger-Free Kids Act, USDA Smart Snacks

²³ Walsh, M. (2010, September 3). Court: Religion OK for Public School Fundraiser. *Education Week*. Available at: http://blogs.edweek.org/edweek/school_law/2010/09/with_the_school_year_opening.html

²⁴ Doyle, C. (2006). Etched in Stone: “Buy a Brick” Fundraisers in Schools and the First Amendment. Available at: http://www.gregorydoylefirm.com/wpcontent/uploads/Article_First_Amendment_03-22-06.pdf

Nutrition Standards, the First Amendment, Tort Law, and State and local laws and guidelines pertaining to Nutrition and Wellness Standards are required.

GUIDELINES ON DEVELOPING POLICIES FOR FUNDRAISING

The following guidelines should be considered by schools and districts when developing policies on fundraisers and fundraising activities:

- A. Purpose and Philosophy – a brief statement describing the purpose, rationale and philosophy of the Board of Education behind fundraising, including a recognition regarding the ethics, liabilities, and legal issues involved in undertaking the endeavor. Other questions to consider would be: 1) “What are the ultimate long-term financial goals of the school’s fundraising efforts?” This means looking at the financial needs of the school, big or small, over the course of the entire school year. In addition, the needs should be specific and the goals realistic.; 2) “How and when will the funds raised from this activity be used?” Are the funds needed quickly for emergency purposes or are they to last throughout a semester, or an entire year? and 3) What is the time frame for raising the funds? Is it going to entail a day, several days, weeks, a semester-long, or an entire year? To avoid violation of child labor laws, it is suggested that sales-related activities be fairly short-term or limited and not overwork the children involved in the volunteering for charity activity.²⁵
- B. Definitions – terms such as “Fundraiser”, “Fundraising Activity(ies)”, “Individual Fundraiser”, “Group Fundraiser”, “Booster Club”, “Parent Organizations”, “Informal Support Groups”, “Liability”, etc. should be clearly defined in the school or board policy documents.

²⁵ Are there child labor issues with having children sell goods for nonprofit fundraising? Available at <http://www.nolo.com/legal-encyclopedia/are-child-labor-issues-having-children-sell-goods-nonprofit-fundraising.html>

- C. Leader/Administrator – A successful fundraising campaign requires an effective leader or administrator, a key person or persons who have the talent, time, energy, leadership and organizational skills to see the campaign through and be able to coordinate all the participants who are involved in the fundraising effort. Sometimes hiring a consultant who specializes in school fundraising events might be more cost-effective depending on factors such as experience level of the leaders, the size and difficulty of the fundraising campaigns, level of support, etc.
- D. Participants – Who are the people involved in the fundraising efforts and how many people will be needed to carry out a particular activity or event at a particular time frame are vital to the success of the fundraising? A solid supporting crew comprising lots of volunteers is essential besides a strong leadership. Participation in fundraising events should be voluntary; it cannot be made mandatory or a requirement for students, and penalties should not be imposed on students if they chose not to participate.
- E. Types of Fundraising Activities – General guidelines regarding fundraising should be explicitly stated, followed by specific guidelines on fundraising using food/beverage items, using non-food items, and when physical activities are involved.
- (1) Certain guidelines may be set up applying to parent groups selling food to students as fundraisers during the school day. Federal and state nutrition guidelines and exemptions will need to be adhered to, including licensing, following health code regulations, and also hiring certified food preparation specialists. Restrictions can also be placed on certain kinds of food sales and exclusive carbonated beverage sales from vending machines through vending contracts. If food is being prepared on campus such as at the concession stand or in the school kitchen for fundraising purposes, administrators must ensure that health code regulations are adhered to and that trained personnel are present during the activity. Geier (2016) provides a list of food

fundraising guidelines that administrators and advisers can use to ensure compliance with the law and school board policies (p.17).²⁶

- (2) Fundraising raffles or games of chance can be conducted as long as they are compliant with state and local laws and are not considered as illegal gaming. Raffles are subject to varying regulations depending upon the amount of proceeds to be generated and may include the payment or collection of sale taxes. Geier (2016) states that “46 states and the District of Columbia have laws governing raffles. Some state raffle laws may require the applying of a license, limiting the number of raffles a tax-exempt organization can hold, the value of prizes given away, and the format of tickets” (Slide 18).²⁷
 - (3) Movie nights as organized fundraisers whereby a movie is rented or privately purchased might infringe on copyright rights without a license being purchased. School administrators need to ensure that copyright violations are minimized by requesting permission from the appropriate entities.
- F. Alternative revenue streams – alternative methods of raising revenue where students are not involved or used, such as unsolicited donations, raising revenue through the sale of advertising, and the use of unobtrusive programs such as, but not limited to Box Tops for Education, Penny Wars, etc. Placement of advertisement in schools on tables, wall panels, hallways, bleachers, murals, and banners would generally require advertisement agreements to be approved and signed with the governing board of the school district.

²⁶ Geier, B. (2016, January). Let’s Sell Food! Food Fundraising Parameters and Legal Obligations. *School Business Affairs*, 16-17. Available at: <http://www.naylornetwork.com/asb-nw/pdf/LetsSellFood.pdf>

²⁷ Geier, B. (2016, March 7). Fundraising Activities in Schools: The Legal Parameters Guiding Compliance. *ELA Webinar & PowerPoint*.

- G. Fundraising Registration – In order to solicit contributions from state residents through fundraising activities, 40 states²⁸ require nonprofits to register with a state agency before solicitation of funds are carried out to be in compliance with state law and the IRS. Solicitations can include any type of request for donations by mail, phone, advertisement, email or Internet, or person-to- person. Registration requirements are not needed for the states of Arizona, Delaware, Idaho, Indiana, Iowa, Montana, Nebraska, South Dakota, Texas, Vermont, and Wyoming.
- H. Vendors – guidelines pertaining to vendors and other third-party parties related to licensing, registrations requirements, procedures, and the approval process must be clearly spelled out.
- I. Approval of Fundraising Activities – guidelines pertaining to the process and procedures to be followed for the fundraising activity(ies) whether individual or group, including the form/s required to be completed for the approval of the fundraising activity and the parent disclosure form. Before the approval is given, the principal or designee should review the purposes of the fundraising activity; the finance, and auditing procedures involving how the money is to be collected, accounted for, and how it is going to be distributed or spent; guidelines and directions to students regarding participation; identifying potential risk concerns including student safety, supervision and transportation issues, etc.; and issues related to federal or state laws, local ordinances, and district policies.
- J. Procedures Governing Interaction with Parents, Donors, and Other Organizations – this would involve the required Parent Disclosure form to be made available to the parents of all the students in the school, fundraising fliers, the Approval Request and Disclosure form, and other procedures regarding interaction between students, parents, employees, donors, organizations during the fundraising activity(ies) etc., and

²⁸ Fundraising Registration: An Overview. Available at <http://www.nolo.com/legal-encyclopedia/fundraising-registration-does-nonprofit-need-33598.html>

- compliance with school or district policies clarified. With PTO/PTAs, booster clubs or organizations, the school may supervise and control the activities of the PTO/PTA or booster club if it is set up as a program of the school and therefore, liability would be extended for the activities conducted by the PTO/PTA or booster club. However, for independent PTO/PTAs, the school may have a limited authority in only “supervising and controlling the use of school facilities and the activities the students engage in during school hours or as part of a school program. Beyond that, the PTO/PTA’s own rules – constitution or articles of incorporation and bylaws – should control.”²⁹
- K. Receipt and Use of Fundraising Proceeds – guidelines for how the proceeds of any fundraising activity may be used and expended for the different programs, groups, organizations or individuals should be in place. Costs and expenses may be approved for basic program expenses, facilities expenses, uniform expenses, travel expenses, and any other categories deemed appropriate.
 - L. Disclosure of Financial Interest – disclosure forms indicating whether the coach, advisor, administrator, or district employee who manages or oversees a fundraising activity has a financial or controlling interest in or access to the bank accounts, or receiving any compensation as a result of the fundraising activity and must be completed before the fundraising activity is approved.
 - M. Accountability and Financial Reporting – an annual report on monies generated from fundraisers and fundraising activities should be prepared and made known to the public for accountability and stewardship purposes, and expectations.

²⁹ Englund, S.P. (2017, March 2). Whose Rules, School or PTO? Available at <https://www.ptotoday.com/pto-today-articles/article/167-whose-rules-school-or-pto>

- N. General Rules and Restrictions – A section of the policy providing the general rules and restrictions governing all fundraising activities must be clearly stated and clarified and the authority given to an administrator or designee if and when questions or issues should arise.
- O. Liability Disclosure Governing Fundraising Activities – A liability statement absolving the school or district as far as liability for the fundraising activities or programs sponsored by school-connected organizations even when conducted on school property. The district may require proof of liability insurance and coverage from school-connected organizations. Liability statements should be clearly stated on the fliers, disclosure forms, parent/guardian permission slips, etc.
- P. Frequently Asked Questions (FAQ) – It would be a good idea to include a section comprising frequently asked questions at the end of the school or district policy documents. This might be helpful for all the stakeholders involved in the fundraising activity to understand and know the guidelines, rules, restrictions, consequences, procedures, processes, risks, legal issues, and liabilities involved.

The abovementioned suggested guidelines on developing policies for fundraising activities were derived from examining the existing policies and procedures of three school districts in Farmington, UT, Lynnwood, WA, Spanish Fork, UT, and the Ontario Ministry of Education, Canada, a governmental education agency (See Davis School District Policy & Procedures on Donations, Fund Raising, and Commercialism; Edmonds School District No. 15 FAQ Regarding Parent Fundraising for Schools; Nebo School District Board of Education, Policy and Procedures on School Fundraising Activities; and Ontario Ministry of Education Fundraising Guideline).

Fundraisers and school fundraising activities can be a daunting task and overseeing them can be a financially challenging responsibility for school officials, yet they are invaluable and serve a myriad of purposes. While

fundraising for monetary reasons are important, school spirit and team and community building skills are equally important as well for the education and development of our students in the future

In summary, when schools and districts choose to engage in fundraising activities, it is vital that they know the purpose/s of fundraising, the different types of fundraisers, the laws surrounding fundraising activities, the various legal challenges and issues involved in the conduct of this activity, and develop guidelines and policies to manage risks and minimize liabilities on the part of all the parties involved. Geier (2016) suggests three principles for school administrators to bear in mind in order to minimize potential liability when it comes to fundraising. They are: “1) develop policies that require all school sponsored fundraisers to be approved prior to implementation; 2) periodically hold meetings to train sponsors regarding legal pitfalls incurred by conducting fundraising activities; and 3) continue to be vigilant regarding knowledge about fundraising activities. Do not ever assume that you know something. It is always worthwhile to seek legal counsel if you are unsure about the legality of certain activities” (Special Section: Education Executive’s Update).

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