

CROWDFUNDING

(Background Information for Policy Review Committee)

Crowdfunding is a relatively new source of revenue streaming that is being widely used by the education community. The trend of crowdfunding has hit the education community by storm, but NSBA's Council of School Attorneys (COSA) indicates that schools should approach this new trend with caution and carefully consider whether policies are necessary to regulate what teachers are doing online in the name of specific schools. A brief review of some of the publicly-available teacher posts on DonorsChoose.org, a site that is generally more protective of school and student interests than many other crowdfunding sites, revealed some concerning instances of potential liability, which are discussed below.

In the spring of 2016, there were 25,197 open projects waiting to be funded on Donorschoose.org and that's just one of the hundreds of crowdfunding sites available. Crowdfunding can be broken down into two different types: those aimed at raising capital for a business venture and those aimed at raising funds for charitable donations. For the most part, the charitable donation aspect of crowdfunding is the type that is gaining great traction in public schools, both for legal and practical reasons, but because it is important to understand the context and the vast practical and legal differences that exist between both of these categories, a brief overview of both types is provided below.

The business venture crowdfunding is generally undertaken by start-up businesses in lieu of getting a traditional business capital loan, with donors being promised, and expecting to get some sort of return on their investment. It is a small-business financing model, of sorts. In this category of investment-based crowdfunding are two general types: pre-purchase/reward-based investing and peer-to-peer lending. With the pre-purchase/reward models, investors are promised a prototype of the product being funded and/or a specifically-designated perk or reward for investing. These are, for all legal intents and purposes, contracts for the sale of goods and/or services, and they do not have the same securities law implications that the second type, the peer-to-peer lending model has.

With the second type of business venture crowdfunding, the peer-to-peer lending model, investors are expecting to be repaid, often with a financial return on their investments or a share in the company. Any lending or investment involving a financial return, including stock in the company, is regulated by securities law. In March of 2015, the SEC issued new regulations that open the door to non-accredited investors wishing to participate and invest in online capital-raising mechanisms. While it is possible that securities-based crowdfunding may be utilized by public schools in the future, COSA research of current trends did not reveal any instances of its current use in public schools today.

While donor-based crowdfunding for civic projects is fairly common, a few states have explored the use of crowdfunding for the purposes of raising capital for public projects. States are considering this type of funding as a mechanism for both accepting donor capital as well as utilizing investment-based crowdfunding for funding of projects.

Donation-based crowdfunding sites, such as DonorsChoose.org, are becoming increasingly popular with teachers and other individuals seeking to raise funds for their schools. A COSA review of some of the posts from educators on DonorsChoose.org revealed some significant legal issues within the teacher posts themselves, including potential FERPA violations and liability under the Individuals with Disabilities Education Act (IDEA). Regulation by schools of individual teacher postings on crowdfunding sites, COSA indicated, is a bare minimum essential to prevent some legal issues.

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(Background Information for Policy Review Committee) (continued)

While many of the entries posted on the DonorsChoose.org site posed little-to-no legal liability, there were an alarming number of entries that did pose some potentially significant issues. This included a number of potential FERPA issues related to teacher posted photographs, which were combined with specific written information in the posts about the classes. These descriptions could also legally be considered to be potential IDEA violations, and/or violations of specific district policies. Other posts, while they did not pose any particular threat of liability, painted the schools and/or districts in a very negative light when asking for funds.

Most teacher crowdfunding posts are designed to raise funds under the name of a specific school. Schools should have regulations regarding who can raise funds on behalf of a school and what procedures and protections should be put into place to protect the school in such instances. Teachers should be prohibited from using the school's name or any other identifying features unless the teacher is in full compliance with the procedures and/or protocols established by the school. Some recommendations for safeguards that should be put into place to protect schools are listed below. These protocols are designed to assist schools in reducing potential liability caused by teacher crowdfunding posts.

1. *Require Administrative Approval of all Postings Before They Are Published*

Individuals wishing to raise funds for a particular school should be required to obtain written approval after providing pertinent details, such as the site on which the funds would be raised, a complete copy of the proposed listing, and a copy of the school personnel's personal profile to be listed on the site. Approving administrators should carefully review the proposed posts to ensure that no potential legal liability, violation of state or federal laws, and/or violation of the school's policy and/or procedures exists. The proposed posts should also be reviewed to ensure that the posts do not paint the school, the district, or any of its employees or students in a negative light. Ideally, school regulations/procedures should prohibit all posting of student images on the site, limiting pictures to that of the classroom, the teacher and/or photos of students where the students are not identifiable (e.g., their hands, backs of heads, etc.). Reviewing administrators should have the authority to deny permission for a teacher to crowdfund on behalf of the school and/or the teacher's individual classroom where potential issues or violations are present. Where a reviewing administrator spots an issue that might have legal implications, legal counsel should be consulted.

2. *Develop an Approved Site List and Only Permit Crowdfunding on Sites that Send Proceeds and/or Items Directly to the Schools, NOT the Individual Employee*

Funds raised and/or items purchased should go directly from the crowdfunding site to the school being served. Schools should require that funds and/or items be delivered directly to the school administrator. If districts wish to permit crowdfunding by teachers, schools should carefully consider all of the available sites and approve only those that provide the safeguards deemed most appropriate by the school.

3. *Ensure that Proceeds/Items Obtained Through Crowdfunding Fulfill Stated Purpose*

Funds raised and/or items purchased via crowdfunding must be used for their designated purpose. As such, schools should have safety mechanisms in place to ensure that the funds/materials are being used as described. Schools should also make clear, via written policy or procedures, that all funds and/or materials are property of the school and shall remain with the school in the event that the teacher terminates his or her employment with the school.

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(continued)

4. *Require that all Crowdfunding Activities, as Well as Activities Being Funded, be Fully Compliant with Board Policies*

It is imperative that teachers are made aware that crowdfunding postings and requests *must* be compliant with all board policies. Administrators who are reviewing and/or approving crowdfunding requests should be careful to review them for policy violations and deny any that do, or have the potential to, violate existing district policies.

In conclusion, it is necessary to take reasonable measures to regulate the crowdfunding that may be done in the name of the schools. This fast-moving trend needs to be monitored for the onslaught of legal issues, legislation and best practices that will inevitably follow. Such measures should include the adoption of a district-wide policy either prohibiting or specifically and carefully restricting crowdfunding in the areas discussed. Heightened awareness and regulation of these practices protect the students first and foremost, but they also protect the school and teachers from potential liability.

Source: This narrative is excerpted from "Crowdfunding in Public Schools: Mitigating Potential Liability Through Effective Policies," By Erin Duryea Gilsbach, Esq., Director of Professional and Policy Development, King, Spry, Herman, Freund & Faul, Bethlehem, Pa., *May 2016 Inquiry & Analysis, Council of School Attorneys (COSA)*, National School Boards Association.

Policy Implications

A new policy and an accompanying administrative regulation, #3281.2, "Online Fundraising Campaigns – Crowdfunding," has been developed. These are considered optional for inclusion in the district's manual. The samples follow.

Another approach is to add language to policy #3280, "Gifts, Grants and Bequests," pertaining to this issue. A sample follows.

An optional policy to consider.

Business/Non-Instructional Operations

School Fund Raisers

Online Fundraising Campaigns - Crowdfunding

The _____ Board of Education (Board) believes online fundraising campaigns, including crowdfunding campaigns, may further the interests of the District. Any person or entity acting on behalf of the District and wishing to conduct an online fundraising campaign for the benefit of the District shall begin the process by seeking prior approval from the Superintendent or his/her designee. Money or items raised by an online fundraising campaign will be the property of the District only upon acceptance by the Board, and will be used only in accordance with the terms for which they were given, as agreed to by the Board.

“Crowdfunding service” means a web-based service used for the solicitation of goods, services and/or money from a large number of people via the Internet. Crowdfunding is considered a form of fundraising.

Any staff, administrators, school-related groups, or members of the public seeking grants or donations on behalf of the school or for the benefit of the school and/or its students should first discuss such request with the building Principal.

Prior to finalization of any grant or donation associated with the school and/or its students, all requests for grants or donations must be approved by the Superintendent or his/her designee. When the appropriateness of a request is in doubt or if the grant/donation obligates the school to engage in specific actions, obligations or involves the addition of District/school funding, the Superintendent shall refer the request to the Board for final acceptance or rejection.

Approval of requests shall depend on factors including, but not limited to:

- Compatibility with the District’s educational program, mission, vision, core values, and beliefs;
- Congruence with the District and school goals that positively impact student performance;
- The District’s instructional priorities;
- The manner in which donations are collected and distributed by the crowdfunding platform;
- Equity in funding; and
- Other factors deemed relevant or appropriate by the District.

If approved, the requestor shall be responsible for preparing all materials and information related to the online fundraising campaign and keeping District administration apprised of the status of the campaign.

Business/Non-Instructional Operations

School Fund Raisers

Online Fundraising Campaigns - Crowdfunding (continued)

The requestor is responsible for compliance with all state and federal laws and other relevant District policies and procedures. All items and money generated are subject to the same controls and regulations as other District property and shall be deposited or inventoried accordingly. No money raised or items purchased shall be distributed to individual employees.

Note: Online fundraising campaigns have become an increasingly popular mechanism for individual educators to raise money. "Crowdfunding" can be defined as, the use of small amounts of capital from a large number of individuals to finance a project, business venture, or to fundraise for a specific cause or charity. For examples of organizations dedicated to crowdfunding for education please visit: DonorsChoose.org, an organization with a mission to empower "public school teachers from across the country to request much-needed materials and experiences for their students" or AdoptAClassroom.org, an organization with a mission to give "teachers a hand by providing needed classroom materials so that students can succeed."

District employees shall comply with all of the following provisions relating to online solicitations and the use of crowdfunding services for school-related purposes. All property and proceeds received as a result of online fundraising or solicitation as the result of a crowdfunding service become the property of the Board. As a result, no online fundraising may occur except as provided below:

1. The school Principal, subject to the approval of the Superintendent or his/her designee, shall approve all online fundraising activities prior to any employee posting any such fundraising solicitation.
2. Employees may only use crowdfunding services that send the items or proceeds solicited by the employee directly to the school where he or she is employed.
3. The employee must verify under the crowdfunding services' terms and conditions that he/she meets all requirements for such solicitation.
4. Any employee seeking to display or post a picture of a District student in conjunction with a fundraising solicitation must secure the written consent of the student's parents/guardians.
5. If an employee's proposal is approved by the crowdfunding service, the employee agrees to use the donated materials solely as stated in the employee's proposal.
6. If a solicitation is not fully funded within the time period requested by the crowdfunding service, donations will be returned to the donor or to the employee as "account credits."
7. If for any reason, a solicitation cannot be concluded (for example, the employee no longer works at the original school), donations shall be returned to the donor or to the employee as "account credits."

Business/Non-Instructional Operations

School Fund Raisers

Online Fundraising Campaigns - Crowdfunding (continued)

8. Any solicitation shall be for educational purposes only. The solicitation of personal items (for example, winter coats, nutritional snacks) shall benefit students directly.
9. Unless otherwise approved by the Superintendent or his/her designee in writing, all goods and/or proceeds received through any online solicitation shall become the property of the Board and not of the individual employees who solicited the item(s) or funds.
10. To the extent an employee solicits any technology or software, the employee shall secure the prior written approval of the Director of Technology or his/her designee prior to any such solicitation.
11. The Board reserves the right to deny approval of solicitation of any funding or grant application or to refuse acceptance of any funds awarded or donated.

(cf. 1324 – Solicitation of Funds by School Groups, Booster Clubs or Parent Groups)

(cf. 3280 – Gifts, Grant, and Bequests)

(cf. 3281 – School Fund Raisers)

Policy adopted:

cps 1/17

An administrative regulation to consider.

Business/Non-Instructional Operations

School Fund Raisers

Online Fundraising Campaigns - Crowdfunding

The Board of Education (Board) considers crowdfunding as a fundraiser.

A District professional employee may submit a proposal to benefit the _____ Public Schools by raising funds or acquiring materials via a crowdfunding platform that has been approved by the Superintendent or his/her designee. The individual proposal shall first be submitted to the building Principal for approval. Once approved by the Principal, the Superintendent or her/his designee will then review the proposal. A decision on the application will be made within _____ business days. A list of approved crowdfunding platforms will be maintained by the Superintendent or his/her designee.

Guidelines

1. When posting pictures/videos/images of any students or staff, all Board policies and administrative regulations must be followed. Some platforms require their own student permission forms.
2. A file is to be maintained at the school for any crowdfunding request. This file shall contain:
 - a. The Principal's fundraising approval form;
 - b. The written detail of the projects as well as what is posted on the platform website;
 - c. Any photos or images posted with the project; and
 - d. A copy of all agreements and permission forms.
3. Platforms terms:
 - a. When using platforms there can be different terms. Principals or directors should understand the terms prior to the start of a project:
 - i. AON-All or nothing: This means that if the amount requested is not reached, the project does not get funded. The donor then has the option to pick another project to fund or give the current teacher a credit toward their next project.
 - ii. KIA-Keep it all: This means that if any amount is reached, the school will get a check even if the goal is not reached.
 - b. Make sure to monitor and take down sites when the event or request is completed.

Business/Non-Instructional Operations

School Fund Raisers

Online Fundraising Campaigns - Crowdfunding

Guidelines (continued)

4. Equipment – If the request involves equipment, either technology or non-technology, preapproval needs to be obtained from:
 - a. District Technology Coordinator
 - b. Maintenance: Contact the Director of Maintenance, as electric and plumbing considerations may need to be reviewed before any equipment is ordered.
5. All non-monetary items (supplies, equipment...) obtained are the property of the District and all inventory procedures apply.
6. All monetary donations should be properly recorded in the funds accounting system at each school. A line item may need to be set up for a new account if this is a new project. Please note, no school banking information should ever be given out. A check should be requested to be mailed to the school in the name of the school, not to an individual person.
7. When developing a project, it is necessary to be mindful as to what is being requested. The intent of the request always needs to be followed.
8. If a proposal is successfully funded, the author(s) shall immediately notify the District Business Office.
9. All gifts, grants, bequests and contributions must be officially accepted by the Board of Education, become the property of the District and, if applicable, will remain in the school where the author(s) was (were) located at time of the grant award.

Denial of Proposal

If the proposal is denied by the Superintendent or her/his designee, s/he will communicate the reason for denial. Reasons for denial may include:

- The proposal requests the purchase or use of technology that is not compatible with the District's current or future plans for the purchase and/or use of technology.
- The proposal requests the purchase and/or use of technology not supported by the District Network Administrator and the Assistant Director of Curriculum and Instruction for Instructional Technology.
- The proposal requests the purchase of curriculum materials and supplies that are not standards-based.

Business/Non-Instructional Operations

School Fund Raisers

Online Fundraising Campaigns - Crowdfunding

Denial of Proposal (continued)

- The proposal requests materials that could be substituted by similar materials that are already supplied by the District or will be supplied by the District.
- The proposal seeks to start a program that would require the continued use of materials or funding beyond what is obtained through the proposal.
- The proposal will result in demands on staff not involved in the proposal.
- The proposal is in conflict with or takes away from adequate instructional time and/or established foci of the District Improvement Plan or the School Improvement Plans.
- The proposal requests athletic equipment or donations not consistent with or in direct conflict with the athletic programs of the District.
- The proposal is in conflict with current and/or planned curriculum and instruction initiatives, Board policy, one or more of the District Collective Bargaining Agreements, regulations of the Connecticut Department of Education and/or Connecticut General Statutes.

Regulation approved:

cps 1/17