



# THE LEGAL LIMITATIONS ON THE RELATIONSHIP BETWEEN SCHOOL BOARDS AND PTA AND BOOSTER CLUBS

PRESENTED BY:

Emily Lucas, Esq., Ingerman Smith LLP

Stephanie Roebuck, Esq., Keane & Beane, PC

# Use of School Buildings and Facilities

NY Education Law Section 414 sets forth how school buildings and grounds can be used.

Boards of Education should adopt regulations to provide for what purposes buildings and grounds can be used, by which groups, limitations on days and hours, and fees for use of buildings and grounds.

# Education Law § 414

- Section 414 of the Education Law sets forth the permissible uses of school buildings when not in use for school purposes or when the use will not be disruptive of normal school operations.
  - Notably, no organization or group has the right to use school buildings or grounds **without the express permission of the board of education.**

# Education Law § 414

School buildings and grounds may be used for the following purposes:

- **Instruction in any branch of education, learning or the arts. Ed. Law § 414(1)(a).**
- Public libraries or as stations of public libraries. Ed. Law § 414(1)(b).
- Social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community that are **nonexclusive and open to the general public. Ed. Law § 414(1)(c).**
- Meetings, entertainments and occasions where admission fees are charged **when the proceeds are to be expended for an educational or charitable purpose. Ed. Law § 414(1)(d).**
  - However, these uses are not permitted if they are under exclusive control and the proceeds are to be applied for the benefit of a society, association or organization of a religious sect or denomination, or of a fraternal, secret or exclusive society or organization other than organizations of veterans of the armed forces and organizations of volunteer firefighters or volunteer ambulance workers.

# Education Law § 414

- Polling places for holding primaries and elections, for the registration of voters and for holding political meetings. Ed. Law § 414(1)(e).
- Civic and community forums. Ed. Law § 414(1)(f).
- Classes of instruction for intellectually disabled minors operated by a private organization that is approved by the commissioner of education. Ed. Law § 414(1)(g).
- Recreation, physical training and athletics, including competitive athletic contests of children attending a private, nonprofit school. Ed. Law § 414(1)(h).

# Education Law § 414

- The statute authorizes the Board of Education to adopt reasonable regulations that set forth the terms and conditions for such use by outside organizations, including a schedule of fees.
  - The Board of Education is authorized to charge a fee sufficient to cover “out-of-pocket” expenses. See Op. State Compt. 74-1109.
  - Further, the statute permits the Board to charge rental fees for certain enumerated uses. See Ed. Law § 414(2).
- The use of school district facilities is also limited by the language of Article VIII, Section 1 of the New York State Constitution which prohibits a gift or loan of school district property in furtherance of a **private undertaking**.

# Board-Adopted Policy

- “Where a board of education makes a **determination of criteria to be applied in the use of school buildings, it is the duty and responsibility of the board to formally adopt a policy reflecting such criteria pursuant to the legislative mandate contained in Education Law § 414(1).**” Appeal of Shakow, 26 Ed. Dept. Rep. 520 (1987).
- Moreover, a board of education must apply its policy consistently.
  - In Shakow, the superintendent denied a request to use district facilities based on the board’s determination to not allow use of school facilities on Sunday. However, such basis was not set forth in the board’s policy and the board previously granted similar Sunday use requests to other organizations.
  - The Commissioner admonished the board of education to administer its policy in a consistent manner going forward.

# Building Use

- It is proper to make a distinction between groups that exist for fund-raising purposes to support the school district, like PTAs, booster clubs and educational foundations, and other non-for-profit organizations.



# Building Use

- While PTAs are not governmental entities, and therefore, not subject to the Open Meetings Law, Section 414 provision's, considering PTAs as civic groups that can have access to school buildings, would mean that any PTA meeting or event on school district grounds must be open to the general public. OML-AO-054787

# Use of Facilities

## After-School Program

- Appeal of Amato, 30 Ed. Dept. Rep. 469 (1991) – Petitioner challenged the board of education’s decision to permit the PTA to use an elementary school building for an after-school program.
  - PTA offered enrichment courses such as ballet, woodworking, chess, cooking, karate, etc. Unless there was sufficient space, the PTA excluded children who did not attend the elementary school.
  - Petitioner argued that pursuant to Education Law § 414(1)(c), the program must be nonexclusive and open to the general public.
  - The Commissioner determined that the courses need not be open to the public since they involved a combination of instruction within the meaning of § 414(1)(a) and recreation/physical training within the meaning of § 414(1)(h). **Moreover, the Education Law did not prohibit the school district from allowing the PTA to give preference in enrollment to children attending the elementary school.**

# PTA & School Elections

# School District Elections

- A board of education may distribute factual information regarding the annual budget election or bond referendum, but are prohibited from using public funds to promote a partisan position or exhort a particular position. *Phillips v. Maurer*, 67 NY2d 672.
- Similarly, a board of education giving a PTA access to its channels of communications to parents to promote a partisan position that a board could not do on its own is prohibited. *Appeal of Huber*, Dec. No. 14,676

# School District Elections

- The Commissioner found improper the distribution of a PTA produced newsletter advocating passage of the budget placed in backpacks of students. *Appeal of Hoey and Kosowski*, Dec. No. 15,394.
- In that same decision, the Commissioner warned a school board that their provision of mailing labels of students at minimal costs to the PTA at the beginning of the year could be improper as the board did not account for this expenditure and have safeguards in place to ensure against partisan political activity.

# School District Elections

- Commissioner found that a PTA sponsored program where 6<sup>th</sup> grade students were given strips of paper that read “Have a Heart – Do Your Part” which students were to have their parents sign and bring back to school was improper. The distribution of the paper gave the appearance of improper partisan activity. *Appeal of Rampello*, Dec. No. 13,830.

# School District Elections

- School district officials should avoid attending private events sponsored by outside organizations, such as PTAs, during work hours that are not open to the public, to provide information about the election, as this gives the appearance of partisan activity. *Appeal of Goldin*, Dec. No. 14,250

# Fundraising & PTA/BOOSTER



# PTA/BOOSTER CLUBS

- Generally, a School District does not have any legal authority over the PTA/Booster Clubs' actions. Rather, a School District has the authority to accept or deny donations made by the PTA/Booster Club to the School District.
  - School District is not required to ensure that a PTA/Booster Club has proper fiscal management tools in place.
- **Caveat:** although a School District does not have control or direct oversight over PTA/Booster Clubs, it does have the responsibility to assess and monitor the Booster Clubs to ensure equivalent benefits and services for both sexes, under Title IX.

# FUNDRAISING BASICS

- Section 19.6 of the Rules of the Board of Regents provides that direct solicitation of charitable donations from children in the public schools shall not be permitted *on school property during regular school hours*.
- The intent of this rule was, “to guarantee public school children a learning environment free from the pressure of peers or adults to make charitable donations to selected organizations.”
- The Commissioner has opined, “solicitations of charitable donations cannot become intertwined with a district’s educational responsibilities, so as to make the two processes indiscernible.”

Appeal of Ponte, 38 Ed. Dept. Rep. 280 (1998); concluding that the popular Hoops for Heart should not occur on school grounds during gym class.

# PERMISSIBLE FUNDRAISING

- Fundraising which takes place off school grounds or outside of school hours
- Arms-length transactions: purchase of a ticket to a dance which is also serving as a fundraiser. This can occur on school grounds. Other examples include: bake sales, charity basketball game tickets.
  - Be aware- Games of chance, including raffles and 50/50, are regulated by Article 9-A of the General Municipal Law and the NYS Racing and Wagering Board
  - It is unlawful for a person under 18 years of age to sell or purchase raffle tickets! General Municipal Law 190-a(3)
- Indirect forms of charitable solicitation on school premises. For example, bins that collect food and clothing for shelters

# Fundraising by PTA and Booster Clubs

- Section 414 allows for civic organizations such as PTAs and booster clubs to fundraise for school districts in school buildings and on school grounds.
- There are limitations as to the types of fundraising activities that can be allowed to occur on school grounds, consistent with Section 19.6 of the Rules of the Board of Regents.

# Fundraising

- Board of Regent Rule 19.6 prohibits school-related organizations, such as PTAs and booster clubs, from **direct solicitations of students during school hours**.
  - This includes direct appeals for funds to support a sick student or contributions to scholarship funds.
  - This does not include sales of tickets to events, like concerts, even if a portion of the proceeds would go towards fundraising purposes, as the student is receiving consideration in the form of a ticket.

# Fundraising

- PTAs and booster clubs can fundraise on school grounds during non-school hours, with certain limitations.
  - Raffles:
    - Only individuals 18 years and older can sell and purchase tickets
    - Tickets must be sold within 180 days of drawing
    - Local municipalities may prohibit games of chance, which would make raffles on school property illegal
    - Alcohol cannot be one of the raffle prizes
    - Raffle tickets cannot be sold online

# Fundraising

- New York State has regulations regarding games of chance which would place limitations on popular fundraising events.
  - Casino Nights:
    - Must register casino night events with NYS Gaming Commission
    - Obtain license from municipality
    - Funds from event must be deposited in special checking accounts by the next business day after license period ends
    - Limitation on equipment
    - Limitations on prize amounts

# Fundraising

- Super Bowl and March Madness Fundraisers:
  - PTA and booster club fundraisers connected to the Super Bowl or NCAA Basketball Tournament which splits the proceeds 50/50 between the winner and the organization is illegal in New York.
- Bingo nights:
  - NY State Gaming Commission has rules regulating bingo nights which include:
    - Age of those who can participate
    - Prize amounts, including prizes based upon number of participants
    - Special prizes for certain numbers, patterns, etc.



# TITLE IX IMPLICATIONS

- Title IX of the Educational Amendment of 1972, 20 USC §1681 et seq., **prohibits discrimination on the basis of sex** in any educational program or activity receiving federal financial assistance.
- Title IX requires “equal treatment”
  - **Compliance in the area of “equal treatment” is assessed based on an overall comparison of the male and female athletic programs.**
    - “Identical benefits, opportunities, or treatment are not required, provided the overall effect of any differences is negligible.” OCR Policy Interpretation, 44 Fed.Reg, at 71,415
  - **A disparity in one program component, can be offset by a comparable advantage to that sex in another area, as long as the overall effect of any differences is negligible.**

# PTA/BOOSTER CLUBS AND TITLE IX

- In a February 7, 1995 determination, OCR address whether a California School District's obligation "to assure that services, benefits and opportunities in its athletic program are provided on an equivalent basis to both boys and girls **applies to those services, benefits and opportunities that are provided through the use of 'outside' financial assistance such as donations, fund-raising, and booster clubs.**"
- OCR concluded that, "the District has a responsibility under Title IX to ensure that boys' and girls' **programs are provided with equivalent benefits, treatment, services or opportunities regardless of their source.**"
  - Courts have likewise concluded that, "A school may not skirt the requirement of providing both sexes equal opportunity in athletic programs by providing one sex more than substantially proportionate opportunity through the guide of 'outside funding'." Chalenor v. University of North Dakota, 142 F.Supp2d 1154 (2000)
- OCR rationale: "if all benefits are not considered in examining interscholastic athletics, the purpose and effect of Title IX requirements could be routinely undermined by the provision of unequal benefits through private financial assistance."

# PTA/BOOSTER CLUBS AND TITLE IX

- In 2012, OCR issued a determination concluding that a public school in Massachusetts, “...did not monitor booster club funding, or implement other measures, to ensure that the District was fulfilling its obligation to provide equivalent benefits and services for both sexes.”
  - Booster Club provided \$10,000+ to male teams and female teams were not provided with the same benefit
  - Provided funding for additional coaches for male teams
- In 2002, the 8<sup>th</sup> Circuit confirmed a School’s elimination of a wrestling team to equalize athletic opportunities between sexes, despite the availability of outside funding to support the team. Chalenor v. Univ. N. Dakota, 142 F. Supp.2d 1154

# PTA/BOOSTER CLUBS AND TITLE IX

- How do we manage funding from PTA/Booster Clubs?
  - All donations from PTA/Booster Clubs must be accepted by the Board of Education.
    - Education Law Section 1709 provides that only school boards can accept donations
  - Teams are not required to “share” proceeds from fundraising or donations Letter to Atkinson, et al., February 7, 1995
  - Totality Analysis. Permitted to offset by other benefits provided
    - Not sport specific analysis (i.e. baseball v. softball)
    - Work with your PTA/Booster Clubs to avoid a funding disparity!
    - Create Policies and Regulations

# Accommodations at PTA Meetings and Activities

- School districts must make accommodations for parents to have meaningful access to school district meetings and activities.  
*Rothschild v. Grottenthaler*, 907 F2d 286 (2d Cir. 1990)
  - This is limited to “activities directly involving their children’s academic and/or disciplinary progress.”

# Accommodations at PTA Events on School Grounds

# Accommodations at PTA Meetings and Activities

- Generally, school districts would not be responsible for private organizations, like PTAs to provide reasonable accommodations under the ADA or Section 504.
- The Department of Education Office of Civil Rights has determined that If the school district provides “significant assistance” to the PTA, the district may be responsible for providing accommodations at PTA events. *Irvine Unifed Sch. Dist.*, OCR 09-93-1043

# Accommodations of PTA Meetings and Activities

- “Significant assistance” can be demonstrated by:
  - The District providing its facilities free or at a reduced cost
  - Facilitation of advertisement of events/meetings
  - Does the PTA use the district’s logo or name in flyers or marketing materials
- Implications:
  - Accommodations for students to participate in PTA after-school programs
  - Accommodations for parents to participate in PTA meetings