

# Sanctioning Overview

April 12, 2021

Oklahoma School law requires that all money raised for student programs be controlled by the Edmond Public Schools (the “District”). There is an exception for organizations sanctioned by the Board of Education (the “Board”). If an organization is approved for sanctioning as detailed in Edmond Public School’s Policies and Procedures, Policy Number 5680, the organization may control its own funds, exempt from the statutory controls over student activity funds as set forth in the Oklahoma School Code, Okla. Stat. Tit. 70, § 5-129.

Edmond Public Schools Policies and Procedures, Policy Number 5680, Sanctioning Organizations by Board of Education, incorporated herein by reference, details the criteria, requirements and procedures for applying for sanctioning. Sanctioning is granted on an annual basis, but may be withdrawn at any time by the Board if it believes it is in the best interest of the District to do so. The decision by the Board whether to grant or deny sanctioning is final and non-appealable. Sanctioning of organizations will occur at the August board meeting of each year. *All applications must be received in the business office no later than June 15, 2021.*

## Legal

A sanctioned organization is *not* an authorized agent or arm of the District, but a separate and apart legal entity. As such, the organization is responsible for complying with all federal and state laws, including, but not limited to, taxation (income and sales tax) and federal Title IX compliance (as determined and coordinated by the District). The organization shall obtain its own tax identification number from the IRS. This can be done by completing IRS Form SS-4 on-line at <http://www.irs.gov> , by phone at 1-800-829-4933, by fax at 1-859-669-5760 or by mail. The organization *may not* use the District’s tax identification number or an individual’s social security number.

## Financial

A sanctioned organization is on its own both financially and with regard to personal liability. The sanctioned organization cannot insinuate that it is representing the District and cannot obligate or attempt to obligate the District. In any business dealings, vendors should be aware that they are doing business with the sanctioned organization and not the District. It is recommended that a surety bond cover the treasurer and any officers or members with access to the money. The surety bond should be for the amount the organization will raise during the year. If an organization’s treasurer mishandles the money, the District cannot provide any legal assistance or financial relief. The organization may want to adopt internal controls to mitigate its risk of financial loss. Guidelines for internal control procedures in a small organization are attached.

## **Liability**

The officers of the sanctioned organization are *not* covered by the District's insurance for personal liability. Likewise, for sanctioned organizations there is no \$100,000 limit on tort claims that state statute provides for a school district. Therefore, since the officers risk some personal liability, the organization should consider having policies in place to protect students who are participating in activities and fundraising.

## **Income Taxation**

A sanctioned organization is not income tax-exempt unless it has received exemption from the IRS under section 501(c)(3) of the Internal Revenue Code. PTAs that are members of the National Parent Teacher Association are exempt under a group and national exemption. More information on the criteria and process for applying can be found in IRS Publication 557. There are both advantages and disadvantages to obtaining 501(c)(3) status.

### **Advantages:**

- Income is tax exempt (except unrelated business income, e.g. advertising).
- Contributions received are tax deductible to the donor. (Many corporations and foundations require 501(c)(3) status before they will make contributions.)
- Individual members are protected from personal liability.
- 501(c)(3) status provides advantages in sales tax issues.

### **Disadvantages:**

- Legal, accounting and filing fees to apply for 501(c)(3) status may be costly. Setting up a 501(c)(3) involves filing a Certificate of Incorporation and Bylaws with the Secretary of State as well as filing an application and request for determination with the IRS on Form 1023. These fees could total an estimated \$2,000 if the organization is unable to acquire donated legal and accounting services. (Organizations that meet the requirements for 501(c)(3) exemption and have gross receipts of \$5,000 or less are automatically exempt and are not required to file Form 1023.)
- Application requires detailed financial information.
- There is an annual filing requirement (IRS Form 990). Most tax-exempt organizations with gross receipts of \$50,000 or less are not required to file Form 990 or 990-EZ if they electronically submit Form 990-N (e-Postcard) annually. Failure to file for three consecutive years triggers automatic revocation of tax exempt status.
- Lack of continuity can be a problem if incoming officers do not understand their filing obligations or if correspondence continues to go to the outgoing officers.
- The IRS may assess penalties against the organization and the responsible party for willful failure to file, failure to file on time, or for filing an incomplete, incorrect or fraudulent return.

## **Sales Tax**

### **Collecting Sales Tax as a Seller:**

Organizations are required to collect and remit sales taxes to the state UNLESS the organization is:

- A public or private student group or organization, or
- A 501(c)(3), or
- A PTO or PTA (even if not a 501(c)(3))

We have received a legal opinion that all our sanctioned organizations qualify for exemption from collecting sales tax on items they sell.

### **Paying Sales Tax on Purchases of Goods and Services:**

Organizations are required to pay sales tax on their purchases UNLESS:

- Organization is a 501(c)(3) AND annual purchases are less than \$15,000, or
- Organization is a PTA (member of national association; PTOs are not included)
- Items are purchased for resale and the organization has acquired a sales tax permit from the Oklahoma Tax Commission. Under Oklahoma statute Title 68 Section 1356 (13), there are 7 types of entities that qualify for sales tax permits, including parent/teacher organizations/associations and 501(c)(3) organizations.

## **Transactions with Employees of Edmond Public Schools**

The IRS has taken the position that payments to district employees by sanctioned organizations for services or gifts are subject to income and employment taxes as if they had been paid by the District.

- **Payments for services** related to the teacher's or sponsor's employment with the Edmond Schools should be made through the District's payroll system in order to comply with IRS regulations. The organization will reimburse the District the compensation amount plus employer FICA.
- **Gifts** related to the teacher's or sponsor's employment with the Edmond Schools are also considered taxable compensation. The exception is de minimus (value less than \$75 ) gifts of items (not cash or gift cards) that are given occasionally (e.g. holiday gifts).
- Gifts of *cash* or *gift cards* related to the teacher's or sponsor's employment with the Edmond Schools are **never** excludable from income. Payments to district employees in cash or gift cards should be avoided. The District's Business Manager must be notified of any instances of such payment.
- District employees may be reimbursed for qualified business expenses without tax consequence. Such expenses must have appropriate receipts to substantiate the business purposes.
- If a sanctioned group wishes to give a teacher a gift card to purchase classroom supplies without it being taxable to the teacher, the card should be donated to the school and kept in the school's financial office. The teacher can then check out

the gift card and return the appropriate receipts which substantiate the business purpose of the purchases.

### **Title IX Compliance**

Under federal law, any school district receiving federal funding may not discriminate with respect to its benefits, membership, programs, operation or organization on the basis of race, gender, age, religion, national origin or disability.

For compliance with Title IX, benefits provided by booster clubs are considered. Therefore, the District must ensure that the membership receives “equivalent” benefits and opportunities, considering both District and booster club resources. In the case of athletics programs, any booster club support shall be coordinated with the District’s Athletic Director who monitors the equivalent quality of sports programs. A booster club can raise funds to benefit the programs but cannot dictate to the District how the money will be spent.

**The Edmond Public Schools has the ultimate responsibility for Title IX compliance. In cases on non-compliance, the argument that a booster club provided funding that the District could not is not a legal defense. Title IX compliance encompasses the areas of trips, camps, facilities, equipment, coaches, uniforms, meals, tournaments, banquets, student awards, and letter jackets.**