

# perspectives

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MY BENESCH MY TEAM

Trends and topics in not-for-profit management

## Not-for-Profit Spotlight



Youth development is a central pillar to the mission of the Ohio Alliance of YMCAs (Ohio YMCAs), and the Ohio YMCAs take that responsibility very seriously. As part of its mission to help young people excel, the Ohio YMCAs offers a Youth in Government program to help students better understand the democratic process, both by training for and participating in a statewide conference at the Ohio Statehouse. At this event, youth take on roles of governor, speaker of the house, president of the senate, chief justice, legislators, attorneys and others. The three-day learning opportunity brings the workings of the Ohio state government alive to students in grades 7–12. Students do not have to be YMCA members to participate. They must simply possess a passion to learn about our government.

Youth in Government dates back to the late 1930s and is a national YMCA program.

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## Booster Groups in Schools: Things That Can Go Wrong for a Good Cause

Ohio hosts a robust cadre of education-related not-for-profit organizations, with more than 8,000 such Ohio-registered entities reporting yearly revenue in excess of \$3.5 billion and assets of almost \$9 billion.<sup>1</sup> Many of these organizations—including athletic booster groups, parent-teacher organizations and educational foundations—directly support the programs of Ohio’s publicly funded schools. Indeed, a single school building often receives funding support from multiple not-for-profits. At the district level, community-based educational foundations, alumni groups, athletic booster groups and state and national-level not-for-profits provide fundraising and financial support through donations, grant-making and volunteering. At the building level, parent-teacher organizations provide broad financial and operational support, and sport and activity-specific booster groups help fund a broad array of cocurricular programming ranging from the cost of trips and camps to the cost of required uniforms. In short, the richness of Ohio students’ education depends in no small part on the support of not-for-profit organizations working in and through Ohio’s public schools.

But education-related not-for-profits face unique challenges. For instance, board members typically cycle in and out on a yearly or bi-yearly basis. This turnover complicates long-term planning, record-keeping, accounting and compliance practices. One unfortunate result of this turnover is that education-related not-for-profits sometimes struggle to manage the risk of officer fraud or embezzlement. In fact, due in part to high-profile cases of theft and embezzlement, including one involving theft of \$161,725 from six different booster groups in one district, Ohio’s Attorney General issued new compliance regulations for charitable trusts. These regulations, which became effective nearly one year ago, add to the already substantial compliance burden of many education-related not-for-profits. However, the new Ohio charitable trust regulations also help safeguard charitable funds and encourage not-for-profits to maintain organizational best practices, including accountability and transparency.

### Which Organizations Must Register with the Ohio Attorney General?

Ohio law defines a charitable trust as “any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose.” [R.C. § 109.23] Put simply, this definition includes any organization that holds funds designated for charitable or educational purposes in Ohio, including school booster groups, parent-teacher organizations and educational foundations.

Under OAC 109:1-1-02(A), all charitable trusts must meet registration obligations unless exempted under the rule. The rule includes six exemptions. The most relevant exemption to education-related not-for-profits exempts any “parent-teacher association, fraternity, alumni, booster or social club” that, for any taxable year, has gross receipts of less than \$25,000 or at the end of the taxable year holds gross assets of less than \$25,000. [OAC 109:1-1-02(B)(2)] In order to qualify for this exemption, the entity must also be “organized and operated in conjunction with and for the benefit of students of primary and secondary schools and educational institutions.” In other words, only

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## Booster Groups in Schools: Things That Can Go Wrong for a Good Cause

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education-related not-for-profits that maintain formal operating relationships with the schools they benefit qualify for the exemption in OAC 109:1-1-02(B)(2).

Typically, education-related not-for-profits establish formal operating relationships with school districts by meeting the school districts' requirements for designation as a district support organization (DSO). A school district defines qualification and compliance requirements for DSOs through policies adopted by its board of education. DSO policies usually include requirements that interested organizations: (1) be formed and operate for the purpose of supporting the district's programs, (2) obtain approval from the district prior to use of the district's name, logo or facilities, (3) purchase dishonesty bonds for officers of the organization, (4) clearly communicate as part of fund-raising activities that the organization does not represent the district (but rather supports a district activity), (5) expend funds only in ways consistent with the organization's stated purpose, (6) not use district tax identification numbers or tax status designations and (7) annually file copies of the organization's tax forms or charitable financial reports with the district.

Each school district controls its own policy, so organizations seeking DSO status should consult the district's board policy for applicable requirements. Some school district policies prohibit district employees from having certain types of involvement in DSOs, such as serving as an officer of a DSO. Some policies, though, require the DSO to maintain an advisory board that includes a district employee. In practice, such policies help clarify the role of the coach, athletic director, activity advisor or school administrator who cooperates with the DSO to facilitate the group's operations. Additionally, some board policies encourage or require DSOs to obtain 501(c)(3) status with the IRS, which provides the added benefits of making most individual donations to the group eligible for deduction and qualifying the group for participation in fundraising with certain corporate partners (such as Max & Erma's, Target and others).

Many DSOs qualify for exemption from registration with the Ohio Attorney General

because their annual gross receipts or end-of-year assets never exceed \$25,000. This is one significant benefit to qualifying as a DSO. However, those DSOs with larger budgets must carefully monitor their registration compliance as part of their yearly tax and financial reporting procedures.

### When Must Covered Organizations Register with the Attorney General and What Information Must They Provide?

Charitable trusts that are not exempted from registration must register within six months after creation of the charitable trust or within six months after an event that triggers the registration requirement.

To fulfill registration requirements, charitable trusts must provide: (1) a copy of the entity's organizational documents (for education-related not-for-profits, usually articles of incorporation, bylaws and constitution), along with any amendments to those documents, (2) a copy of the organization's IRS determination letter of exempt status, if available, and (3) a registration fee, which ranges from \$0 to \$200, depending on the amount of the organization's assets. Additionally, registered charitable trusts must annually file either their IRS Form 990 or the Attorney General Annual Financial Report described in OAC 109:1-1-04.

All registrations must be completed via the [Ohio Attorney General's website](#). This website also includes a helpful registration guide and registration "tool tips" document.

### How Do State Ethics Laws Affect DSOs?

In addition to compliance with state and federal fundraising and tax laws and rules, education-related not-for-profits—and especially DSOs—are also subject to state ethics laws. Ohio's ethics laws prohibit certain transactions with public servants, including school district employees. Of particular concern to DSOs is a state statute that prohibits school district employees who receive compensation from the district for performance of supplemental duties, such as coaching or advising a cocurricular activity, from also accepting payment for the same services from any other person or group, including DSOs. R.C 2921.43(A)(1) and Ohio Ethics Commission Advisory Opinion No. 2008-1. Moreover, the same statute prohibits

any person or group from promising or giving compensation to a school district employee for any services provided by the employee in connection with a school-related activity. [Id.]

These restrictions severely limit the ability of DSOs to provide supplemental compensation in any form to coaches or activity advisors. But DSOs who seek to provide funding for coaches or advisors can still accomplish their goal through carefully structured donations to the school district. Ohio's ethics laws do not prohibit organizations from making gifts to school districts, but school districts may accept only gifts that are not subject to controls over their use. [Id.] Consequently, the district will retain discretion over how—and whether—to expend donated funds. Nevertheless, through cooperation with school district officials, DSOs can assist school districts with funding school programs and even major expenditures for equipment or facilities.

### Conclusion

Education-related not-for-profits face a multitude of compliance obligations. But help is available! Services such as ParentBoosterUSA provide tools and tips for following best practices for entity organization, bookkeeping, operations and risk reduction. Education-related not-for-profits and DSOs in particular should consider developing an ongoing relationship with a qualified attorney for assistance with interpreting board policies, obtaining DSO status and managing their compliance obligations.

### Additional Information

For more information, please contact [Lisa Burleson](#) at [lburleson@beneschlaw.com](mailto:lburleson@beneschlaw.com) or 614.223.9390 or [Russell Balthis](#) at [rbalthis@beneschlaw.com](mailto:rbalthis@beneschlaw.com) or 614.223.9344. Article authored by Sean Cooke.

<sup>1</sup> These statistics refer to Ohio not-for-profit organizations whose main activities are related to education but not focused on higher education. See *Internal Revenue Service, Exempt Organizations Business Master File (2013, May)*. The Urban Institute, National Center for Charitable Statistics maintains a searchable database that reflects this information. Users can access the database at <http://nccsdataweb.urban.org>

## Booster Clubs and Tax Exemption: Hard to Get, Easy to Lose



Marty Sweterlitsch



Jessica Angney

Booster clubs come in many shapes and sizes. They support everything from football teams to high school bands. Many support private athletic teams such as gymnastics teams operated by private gyms. The purpose of this article is to highlight common issues that arise under the federal income tax laws for these clubs, many of which seek or have obtained exempt status as charities under section 501(c)(3) of the Internal Revenue Code.

Booster clubs, like any other exempt entity, must comply with the requirements for maintaining tax exemption, including the requirement to annually file a form 990 information return or the online e-postcard 990-N. A form 990 is required if the organization's gross revenue for the tax year equals or exceeds \$50,000. Organizations with less gross revenue must file the 990-N. Failure to file the approved form 990 for three

consecutive years results in an automatic revocation of the organization's exempt status. This is statutory and not waivable. The organization must refile for exemption and the exemption will not be retroactive except under some very stringent standards.

Booster clubs are subject to audit by the IRS and, therefore, should maintain good financial and corporate records. If the organization is large, it is best to have an accounting firm conduct at least a financial review, if not a full audit, every few years, especially if the treasurer is a volunteer with limited financial experience. The Board should meet regularly, hold elections as provided under the organization's bylaws and keep accurate minutes of proceedings. This not only helps should an IRS auditor appear, but it also makes transition to new leadership easier.

Fundraising is an area that can put exemption at risk. Fundraising programs that require parents or athletes to raise money in order to participate in the supported program and direct the monies raised by each family toward offsetting that child's cost of participating are considered private inurement and/or private benefit under IRS rules and are prohibited under federal income tax law. Benefits paid by booster clubs in the form of scholarships

are problematic if the so-called scholarship is dependent upon a parent's participation in the booster club or if the payment is based on the number of hours a parent or participant spends on fundraising efforts. Scholarships should be need or merit based, and fundraising should be for the benefit of the entire program. Practices such as crediting amounts raised by a participant toward dues or trip costs are practices that can result in a loss of tax exemption. Clearly any such "contributions" are NOT tax deductible to the donor.

Booster clubs are great tools for supporting youth sports, but they must be operated in conformity with tax rules if they are to remain tax exempt. Loss of tax exemption means that the organization will be subject to tax at the corporate rate on its net income regardless of source and donors, including the businesses that support the team. Supporters will also not be able to receive a charitable deduction for their contributions.

If you would like additional information about booster clubs and related legal requirements, please contact **Marty Sweterlitsch** at [msweterlitsch@beneschlaw.com](mailto:msweterlitsch@beneschlaw.com) or 614.223.9367 or **Jessica Angney** at [jangney@beneschlaw.com](mailto:jangney@beneschlaw.com) or 216.363.3620.

## Kids Count Data: Thinking About the Impact of Poverty-Related Data on Childhood Education



Lisa Burleson

The Kids Count Data Center, a project of the Annie E. Casey Foundation, recently released census-based data for 2013 reflecting some startling statistics about the impacts of poverty on childhood

education. The data that was released is broken down by several categories: nationally, regionally and statewide. Here are some of the statistics worth pondering as we consider the impact of family status on overall education in Ohio.

- Ohio ranked 24th out of all states on the 16 key indicators developed by the Kids Count Data Center.

- Ohio ranked 27th out of all states in terms of economic well-being.
- Ohio ranked 18th out of all states in terms of education.
- Approximately 15% of Ohio's population is in poverty, while approximately 24% of Ohio's children are in poverty (12% of them in extreme poverty).
- Approximately half (45%) of Ohio's children receive some form of free or reduced-price lunch at school, while approximately 20% of Ohio's children live in households that were food insecure at some point during the year.
- Approximately 4% of Ohio's children have been affected by foreclosure since 2007.
- Approximately 80% of 4th grade students who are eligible for or who receive free and

reduced-price lunch at school scored below proficient reading levels on standardized testing, while only approximately 50% of 4th grade students who are not eligible for free and reduced price lunch at school scored below proficient reading levels on standardized testing.

Realizing that we educate the "whole" child draws the need for understanding and appreciation for the various circumstances in which children and their families live in this state.

### Additional Information

For more information, please contact **Lisa Burleson** at [lburluson@beneschlaw.com](mailto:lburluson@beneschlaw.com) or 614.223.9390.

## Fund for Early Childhood Education Available to Private Child Care Providers

The final Ohio budget bill included 10 million new dollars in the first state fiscal year (July 1, 2013–June 30, 2014) and 20 million new dollars in the second state fiscal year (July 1, 2014–June 30, 2015) for a “new” early childhood education program. The new funding is going into the public preschool fund, but that fund now is available to three, four and five star-rated private child care centers (under the new “Step Up to Quality” rating tiers) for preschool children. This new program is referred to as the early childhood voucher program.

Because the investment is \$30 million and will not cover all preschoolers, guidelines about its expenditure still have to be worked out. The act charges the Early Childhood Advisory Council (ECAC) with this responsibility. By October 1, 2013, ECAC must make recommendations including, but not limited to, the administration and distribution of funding for the program. However, the Governor’s Office of 21st Century Education will make decisions on implementing the program.

## Helping the Needy: Who’s Doing What?

The Kasich administration is seeking information from thousands of Ohio’s not-for-profit and religion-based organizations to learn what services are being provided to the needy and where there are coverage gaps. The project’s working title is Mapping Ohio’s Compassion and it is being led by the Governor’s Office of Faith-Based and Community Initiatives. It ultimately will include an interactive website showing the location of not-for-profits in Ohio and what services they provide, as well as recommendations of best practices. For more information, please take a look at [this article in The Columbus Dispatch](#).

## 100 Cars for Good

Toyota is giving away up to 100 cars over 50 days to deserving not-for-profits. [More information can be found here](#). The deadline to apply is noon PT on August 5, 2013, or until 2500 applications are received, whichever comes first.



## Benesch Participates in Law Firm Challenge Benefiting Mid-Ohio Foodbank

Benesch’s Columbus office recently participated in the Columbus Bar Association’s Second Annual “Operation Feed: Law Firm Challenge” benefiting the [Mid-Ohio Foodbank](#). Our Columbus attorneys and staff collected 561 pounds of food, which will be distributed to individuals in Central Ohio who face hunger. More information on “Operation Feed” is available [here](#).

### Not-for-Profit Spotlight

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It involves thousands of teens nationwide in state-organized model government programs. The Youth in Government program seeks to build, encourage and strengthen life assets and character traits that will help teens become involved and responsible adults. All Youth in Government activities are designed with the following in mind:

- Providing leadership training and preparation to meet the needs of a democratic society.
- Stimulating interest and awareness of U.S. and state governments’ functions.
- Creating opportunities for civic engagement and awareness of prominent social issues.
- Developing self-confidence and self-expression while fostering tolerance and understanding of others’ point of view.
- Cultivating the application of moral and ethical values to public policy making.

The Ohio YMCAs’ goal is to have a small delegation from every county in Ohio represented at the 63rd YMCA Youth in Government program to be held April 3–5, 2014. Prior to the statewide program, adult advisors will meet at least monthly with the students to prepare, and students will have the opportunity to participate in a training weekend at YMCA Camp Willson.

For 2012–2013 program information or to view a video of the 62nd YMCA Youth in Government program, please visit the [Ohio YMCAs Youth in Government website](#). To learn more, please contact the State Youth in Government Director, Charlie Myers at [cmymers@ohioymcas.org](mailto:cmymers@ohioymcas.org).

## Events

### IRS Exempt Organization Phone Forums

The IRS is offering a number of free forums via phone over the coming months. Topics include, "Social Clubs: How to Qualify for and Maintain Tax-Exempt Status," "Exempt Organizations and Employment Tax" and "Stay exempt: A Guide for Charitable Organizations with Changing Leadership."

**RSVP:** [Please click here for more information, including dates and registration.](#)

### *The Chronicle of Philanthropy* Webinar

#### How to Win Government Grants in Tough Times

With budgets shrinking at all levels of government, competition among nonprofits for government grants is intense. That makes it more important than ever to learn what is essential to include in a grant proposal and how to set your organization apart from the competition.

Join *The Chronicle of Philanthropy* to learn how your organization can streamline its efforts to win support from federal, state and local governments.

**Date:** August 13

**Time:** 2:00 P.M.

**Cost:** Early bird: \$75; After July 30: \$96

**RSVP:** [Please click here for more information and registration.](#)

### Ohio Association of Nonprofit Organizations Annual Conference

#### Taking Charge of Change

Who will define the changes at your organization? The Ohio Association of Nonprofit Organizations is gearing up for an amazing not-for-profit conference where attendees will be energized and challenged to think outside the box.

Why you should attend:

- Hear from a global social entrepreneur
- Meet new funders
- Learn about the next generation of donors and volunteers
- Learn to become an enterprising organization and change your bottom line
- Learn about the latest in government regulations, healthcare laws and changes to Medicaid
- Celebrate not-for-profit peers who have achieved excellence

**Date:** September 26

**Location:** Columbus Athenaeum, 32 N. 4th St., Columbus, OH 43215

**Time:** 8:00 A.M.—3:45 P.M.

**Cost and Registration:** [Please click here for more information and registration.](#)

### Association of Fundraising Professionals Webinars On-Demand

The Association of Fundraising Professionals of Cleveland is offering a number of webinars on-demand through the organization's website. The webinars can be purchased and viewed at the registrant's convenience. Topics include, "Annual Campaign—Raising More Money with Fewer Resources," "Developing Major Gifts Donors Who Deliver" and "Getting your Message to the Media."

**Cost:** \$20 for AFP members; \$35 for nonmembers

**RSVP:** [Please click here for more information and registration.](#)



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