

COMMUNITY FUNDING QUESTION

Questions have arisen at several Board of Education meetings as to whether the District may accept donations to support a particular program

Following is the school attorney's reply to those questions:

Education Law § 1709(12) states that the board of education of a school district has the power:

To take and hold for the use of the said schools or of any department of the same, any real estate transferred to it by gift, grant, bequest or devise, or any gift, legacy or annuity, of whatever kind, given or bequeathed to the said board, and apply the same, or the interest or proceeds thereof, according to the instructions of the donor or testator.

Thus, school boards may accept gifts.

Gifts to Support a Specific Program

A school board may accept a gift for support of a specific program. However, in doing so, a school board may not abdicate its authority to determine whether or not to offer or continue to offer the particular program, or the manner in which the program is to be offered. *Appeal of DeMasi*, 18 Educ. Dep't Rep. 320 (1978). In *Appeal of DeMasi*, the Commissioner held that a school board may accept a gift of money to be used for a specific program, provided that the board does not delegate to a third party whether to offer the program, and does not delegate to the donor any control over the manner in which the program is offered. Those are discretionary determinations to be made by the board of education.

Although school boards may accept gifts, they are not required to do so, particularly when, in their view, the gifts would not contribute to the "overall welfare" of their district. See *Appeal of Baisch*, 40 Educ. Dep't Rep. 405 (2000). In addition, a school board may not accept a gift that imposes conditions that are contrary to law or district policy. *Appeal of DeMasi, supra*.

Gifts for Non-Contingent Items when on Austerity

When on austerity, a school district may expend funds on ordinary contingent expenses, including, but not limited to, the purchase of library instructional materials, interschool athletics, field trips, extracurricular activities, and the cafeteria or restaurant services, subject to overall and administrative caps. Education Law §2023(1).

Education Law § 2023(4) (d) specifically authorizes a board to increase the contingency budget to include grants or gifts in aid, as follows:

(4)(d) “Notwithstanding any other provision of law to the contrary, the trustees or board of education shall not be authorized to amend or revise a final contingency budget where such amendment or revision would result in total spending in excess of the spending limitation in paragraph (a) of this subdivision; provided that the trustees or board of education shall be authorized to add appropriations for:

(iii) the expenditure of gifts, grants in aid for specific purposes of for general use...in addition to that which has been previously budgeted.”

The Commissioner of Education has held a school district may accept donations to fund non-contingent expenses when on austerity. *Appeal of Baisch*, 40 Educ. Dep’t Rep. 405 (2000); *Appeal of Farrell*, 30 Ed. Dept. Rep. 81 (1980) and *Appeal of Cummings*, 33 Ed. Dept. Rep. 54 (1993). In *Appeal of Farrell*, the Commissioner notes that for a program funded by donations to be operated during austerity, all costs of a non-contingent activity must be “donated in advance” to the districts. *Supra*. Specifically, a board must possess the assurance that funds will be available to conduct a non-contingent activity before the activity begins. *Id*