



Education foundations

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This fact sheet is designed to address the most frequently asked questions about education foundations. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

What is an education foundation?

Education foundations are created as a way to receive and distribute funds to augment, supplement or enhance the resources available to a school district. For example, donations made to an education foundation might be used to supplement existing programs, provide new and innovative ventures or establish a scholarship fund. Funds can be given to a foundation by individuals, families, groups, organizations and businesses.

Are there different types of education foundations?

Yes. There are two types of education foundations. The first type is created and managed by the district's board of education ("BOE education foundation fund"). The second type, which is more common, is created and managed as a legal entity separate and apart from the district's board of education ("independent education foundation").

BOE education foundation funds

How is a BOE education foundation fund created?

Pursuant to Ohio Revised Code (RC) section 3315.40, most educational service center (ESC) governing boards or city, local, exempted village or joint vocational school district boards of education may, by resolution, create an education foundation fund.

Are there any districts that cannot create education foundation funds?

Yes. A district may not create an education foundation fund if it has an outstanding emergency school assistance loan (RC 3313.483) or has received funds from the Ohio Facilities Construction Commission and the local share to be paid by the board of education has not yet been fully paid (RC 3315.42 and Chapter 3318).

Who manages and controls the fund?

A BOE education foundation fund is *not* a legal entity separate from the board of education. The education foundation fund is under the control of the board of education and maintained by the district's treasurer in the same manner as any other board fund. The fund is subject to the same accounting standards as all other funds maintained by the district treasurer.

A committee may be appointed by the board of education to administer the fund and make recommendations to the board for use of its resources. Individuals serving on the committee cannot be compensated but may be reimbursed for the actual and necessary expenses they incur in the performance of their official duties.

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For more information on this subject, please contact OSBA's Division of Legal Services

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How does the fund raise money?

A board of education may, by resolution, accept bequests, gifts or endowments given to the district for the education foundation fund. Acceptance cannot interfere with the board of education's management and control of schools. On an annual basis, the board may also direct the district's treasurer to pay into the education foundation fund an amount from the school district general fund not to exceed one-half of 1% of the total appropriations of the school district as estimated by the board at the time the resolution is adopted or as set forth in the annual appropriation measure.

Are contributions made to the BOE education foundation fund tax-deductible to the donor?

Yes. Since a BOE education foundation is not a legal entity separate from the board of education, contributions made to the BOE education foundation fund are deductible as charitable contributions to a political subdivision under section 170(c)(1) of the Internal Revenue Code.

May the board invest BOE education foundation funds?

Yes. Any income derived from the investment of moneys in the fund must be paid into the fund. A board is limited to investing BOE education foundation funds to those options that are available for public funds unless the board of education forms a trust for the investment of the funds. A board of education interested in creating a trust for this purpose is encouraged to work with its board counsel to draft the trust agreement.

Are there any restrictions on the use of the foundation funds?

Yes. Expenditures must be made for the operating or capital costs of any existing or new and innovative program "designed to enhance or promote education within the district or ESC, such as scholarships for students or teachers" (RC 3315.40). Money in the fund can be expended only by a resolution adopted by a majority of the members of the board.

Independent education foundations

How is an independent education foundation created?

Independent education foundations are charitable organizations set up and managed as a legal entity separate and apart from the district's board of education. Many independent education foundations are established as nonprofit corporations, in part because of the liability protection a corporation provides to its members, directors and officers.

To be legally recognized as a nonprofit corporation in the state of Ohio, an independent education

foundation must file initial Articles of Incorporation with the Ohio Secretary of State's Office. The articles must include the name of the foundation, the place in Ohio where the principal office of the foundation is to be located and the primary purpose for which the foundation is formed. The purpose(s) of the foundation as stated in the articles is the only purpose(s) for which the foundation may legally operate. The foundation is also required to designate a person or entity as its statutory agent (i.e. the person or entity that the foundation appoints to receive and accept service of process and all official notices and demands on the foundation's behalf.)

In addition to required filings with the Ohio Secretary of State's Office, an independent education foundation should adopt a code of regulations or bylaws setting forth the internal rules and procedures for the foundation and keep detailed corporate minutes of the foundation's meetings.

Finally, an independent education foundation should procure an Employer Identification Number (EIN). Since an independent education foundation is a separate and distinct legal entity from a school district's board of education, it is inappropriate for an independent education foundation to use the district's EIN. An independent education foundation may apply for an EIN online at www.irs.gov, by telephone, mail or fax at no cost to the foundation. If an online application is completed, the information is validated during the online session and an EIN is issued immediately.

Some independent education foundations are established under an existing community foundation. The advantages to such an approach include the savings in time and expense associated with seeking independent nonprofit corporate status and the security of operating under an established management system.

Who manages and controls the fund?

The fund operates under the foundation's board of directors. In Ohio, a corporation must have at least three directors, but many independent education foundations have significantly more. The directors should be members of the community who are willing to take an active role in fundraising, fund management and consideration of program expenditures. The foundation's board of directors should consider appointing an executive director who will be responsible for the day-to-day operations of the fund.

May school board members or district employees serve on an independent education foundation's board of directors?

Many independent education foundations have a representative of the district or a school board

member (or both) who serves as an ex officio member of the independent education foundation's board. An ex officio board member serves by virtue of his or her office or position and usually is not included for purposes of quorum or voting. Allowing district representation on the foundation's board can help ensure that the foundation, although separate and distinct from the board of education, will work closely with the district in addressing its needs.

How does an independent education foundation raise money?

The independent education foundation may accept bequests, gifts or donations given to the foundation. Independent education foundations frequently identify prospective donors, organize fundraising events and offer other opportunities for parents, alumni, faculty, staff and community members to make donations in support of the foundation's mission.

Are contributions made to an independent education foundation tax-deductible to the donor?

Contributions are tax-exempt only if the independent education foundation applies for and receives recognition from the IRS as a 501(c)(3) tax-exempt organization. IRS publication number 557, "Tax Exempt Status for your Organization," provides information about IRS tax exemptions for nonprofit organizations and may be obtained online at <http://links.ohioschoolboards.org/47935>. If IRS determines that a nonprofit organization is tax-exempt, IRS issues a tax-exempt determination letter that should be preserved with the foundation's records.

Some contributions that are made to an independent education foundation require acknowledgement from the foundation before the donor may claim a tax deduction. For a review of those requirements, see <http://links.ohioschoolboards.org/46496>.

Is an independent education foundation required to register with the Ohio Attorney General's Office as a charitable organization?

Ohio law requires certain charitable organizations that intend to solicit contributions in Ohio to register and submit annual financial reports, and accompanying fees, to the Ohio Attorney General's Office. Independent education foundations should complete an account online at <http://charitableregistration.ohioattorneygeneral.gov>. After the account is created, the system prompts the user to provide basic information about the foundation and its activities. Based on these answers, the system will ask for any information that is needed to meet the registration requirements.

Are there any restrictions on the use of an independent education foundation's funds?

Yes. Independent education foundations that qualify for section 501(c)(3) status may lose their tax-exempt status if a substantial part of their activities is attempting to influence legislation (i.e. "lobbying"). In determining whether lobbying activities are more than an insubstantial part of the foundation's activities, courts and IRS consider a variety of factors, including the time and expenses devoted by the foundation to lobbying activity in relation to the organization's overall exempt activities.

501(c)(3) organizations are also prohibited from using their net earnings to benefit a foundation board member or any other private individual. Independent education foundations should ensure that they are operating exclusively for exempt purposes by serving public rather than private interests. Independent education foundations may establish scholarship programs, as long as the programs use predetermined objective and nondiscriminatory qualifiers as their selection criteria and are not set up to benefit a board member or other specific private individual.

Is there anything an independent education foundation must do to maintain its status?

Yes. A nonprofit corporation must file a Statement of Continued Existence every five years with the Ohio Secretary of State's Office to remain in good standing.

Tax-exempt organizations also are required to file an annual information return known as IRS Form 990 (or Form 990-EZ). The Form 990 requires comprehensive reporting of the organization's income and expenditures. Small tax-exempt organizations whose gross receipts are less than or equal to \$50,000 may submit Form 990-N, also known as the e-Postcard (filed electronically). If the independent education foundation has gross receipts that are less than \$200,000 and their total assets are less than \$500,000, the organization may file the 990-EZ. The forms must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. Special rules are in place regarding application for and granting of filing deadline extensions.

As mentioned above, the foundation may also need to submit annual financial reports and fees to the Ohio attorney general's office.

The information contained in this fact sheet is designed to provide authoritative general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.