

**From:** Reaves, Brandynn [bareaves@fcps.edu]

**Sent:** Monday, March 09, 2015 3:46 PM

**To:** [REDACTED]

**Subject:** FOIA Response [REDACTED]/Herndon \$140/[REDACTED]

Dear [REDACTED]

Thank you for your e-mails received February 26 and March 4, 2015, in which you ask for "all supporting receipts, including employment contracts for supplemental personnel, associated with the expenditure of the \$140 collected from all the parents for Herndon HS marching band [REDACTED] payable to the parent group." The "parent group" is independent from FCPS, and none of the money paid to the "parent group" was paid to FCPS. Therefore, we do not have any documents responsive to your request.

Sincerely,

**Brandynn Reaves**

FOIA Officer/ Public Information Specialist

Office of Communications & Community Relations

Fairfax County Public Schools

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-----Original Message-----

From: Foster, John [mailto:jefoster@fcps.edu]

Sent: Thursday, April 02, 2015 11:56 AM

To: [REDACTED]

Cc: Lockard, Steven

Subject: March 16 e-mail

Dear [REDACTED]

I am Division Counsel for Fairfax County Public Schools ("FCPS"). [REDACTED]

[REDACTED] I want to reiterate that under FOIA, FCPS is only required to produce those documents that it prepares, or possesses. FCPS did not prepare the documents you requested and does not possess them. Quite simply, FCPS does not have any other documents to give you, and therefore has not violated FOIA.

I understand that you are unhappy with this answer and are unhappy with the independent booster organizations and their actions. As Dr. Lockard has previously told you, we are working to improve our relationship with booster organizations, and that process is ongoing.

Sincerely,

John E. Foster

Division Counsel

Office of Division Counsel

Fairfax County Public Schools

8115 Gatehouse Road<x-apple-data-detectors://1/0>

Falls Church, Virginia 22042<x-apple-data-detectors://1/0>

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John.Foster@fcps.edu<mailto:John.Foster@fcps.edu>

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, by and between the Fairfax County School Board which operates the Fairfax County Public Schools including (\_\_\_\_\_ School) ("FCPS") and \_\_\_\_\_ ("Booster Organization") provides as follows:

### I. Purpose

FCPS recognizes the contribution and support, which its athletics, extracurricular activities and educational programs receive from parents and members of the community through booster organizations.

Both FCPS and the Booster Organization agree that the Booster Organization may provide valuable assistance to both the school and the parent community by acting at the direction of FCPS to participate in the implementation of FCPS-sponsored activities that are part of the marching band program, including assisting in the collection and disbursement of student fees. The purpose of this Agreement is to specify terms and conditions under which a booster organization may provide that support to a school when requested to do so by the school principal.

### II. General Terms and Conditions

The assistance to be provided by the Booster Organization pursuant to this Agreement is limited to volunteer services relating to the implementation of FCPS-sponsored marching band activities provided to FCPS and performed under the supervision of FCPS staff. Such volunteer services may include ministerial acts pertaining to the collection and disbursement of student fees (hereinafter, "FCPS funds") that have been approved by FCPS pursuant to the current versions of Regulation 5922, Student Fees, and Notice 5922, Revenue, Tuition, and Fees – Student Fees. Generally, these fees will be for consumables and optional field trips.

Ministerial acts shall include only those actions that are performed at the direction of the school principal or the principal's designee, do not require independent decision making, and are in accordance with procedures set forth in FCPS directives or the current version of the FCPS Guidelines for Use of Band Booster Organizations in the Collection and Disbursement of Student Fees. Booster volunteers acting at the direction of the school principal or the principal's designee and in accordance with these guidelines shall be covered by the FCPS liability plan.

Both FCPS and the Booster Organization recognize that the Booster Organization is an independent entity and distinct from FCPS. This Agreement is not intended to regulate activities such as the Booster Organization's fundraising activities, its accounting for, or expenditure of, Booster Organization funds, and its implementation of Booster-sponsored activities (i.e., activities for which the booster is fully responsible for controlling and managing). The accountability and confidentiality requirements described in Sections III and IV below are intended to apply only to the Booster Organization's actions and records associated with providing volunteer services to FCPS

under this Agreement. Nothing in this Agreement shall be interpreted to affect or restrict the Booster Organization's status as a tax-exempt, charitable organization within the meaning of the United States Internal Revenue Code and the implementing Internal Revenue Service regulations, including the ability of the Booster Organization to assess and collect optional membership assessments/dues and to solicit and receive tax-deductible charitable donations.

### **III. Accountability of Funds Collected at the Direction of FCPS**

The Booster Organization understands that all collection and disbursement of FCPS funds is the responsibility of the school principal and that such funds must remain under control of the school. Accordingly, the school principal and his or her designee shall have decision making and supervisory authority over the collection and disbursement of FCPS funds. The school principal and his or her designee may direct the Booster Organization to perform ministerial tasks associated with the collection and disbursement of FCPS funds. In performing these tasks, the Booster Organization will adhere and agree to the following requirements:

1. Process receipts and disbursements of FCPS funds in accordance with FCPS policies and regulations and the current version of FCPS Guidelines for Use of Band Booster Organizations in the Collection and Disbursement of Student Fees.
2. Deposit FCPS funds in an FCPS controlled bank account and ensure receipts collected after normal banking hours are safely secured at the school site.
3. Adhere to FCPS internal control procedures for safeguarding the receipts and disbursements.
4. Obtain authorization from the school principal for all disbursements and provide proper supporting documentation.
5. Adhere to FCPS regulations for procuring goods and services and the current version of the FCPS Guidelines for Use of Band Booster Organizations in the Collection and Disbursement of Student Fees.
6. Work with the band director to obtain the written approval of the school principal for an annual budget, which estimates fund collections and planned disbursements for the academic year, before making any purchases with, or otherwise expending, such FCPS funds. Also, obtain the written approval of the school principal before implementing any deviations from such annual budget.
7. Prepare detailed lists of FCPS funds collected from students or parents, to include amount, type of fee, date and form of payment by student.
8. Keep accurate financial records in an FCPS system of all receipts and disbursements associated with FCPS funds and provide a detailed accounting report to FCPS staff on a monthly basis or upon request.
9. Refund monies to parents and/or students according to FCPS refund policy as

described in the current version of FCPS Guidelines for Use of Band Booster Organizations in the Collection and Disbursement of Student Fees.

#### **IV. Disclosure and Exchange of Information and Records**

For purposes of providing volunteer services under this Agreement, members of the Booster Organization performing this function shall be considered to be school volunteers and "school officials" as that term is defined by the Family Educational Rights and Privacy Act (FERPA), 20 U.S. C. § 1232g.

Booster Organization members involved in providing volunteer services under this Agreement shall hold any personally-identifiable student information, other than directory information, provided to them by FCPS staff as confidential. The current version of the FCPS Guidelines for Use of Band Booster Organizations in the Collection and Disbursement of Student Fees will summarize FCPS requirements for confidentiality of personally-identifiable student information.

Booster Organization officials shall promptly notify the school principal of any breach or wrongful disclosure of this confidential personally-identifiable student information.

Any request to release records containing confidential personally-identifiable student information to anyone other than FCPS staff or the parent of the student who is the subject of the record must be referred promptly to the school principal for action.

Records held by the Booster Organization pertaining to volunteer services provided under this Agreement, including confidential personally-identifiable student information pertaining to the collection, maintenance, or expenditure of student fees shall be considered FCPS records. Such records shall be maintained as required by FCPS directives and the current version of the FCPS Guidelines for Use of Band Booster Organizations in the Collection and Disbursement of Student Fees.

To the extent not otherwise available to FCPS on the FCPS systems/network or at the school site, the Booster Organization shall make such records available to FCPS upon request so that it may carry out its business operations, including, but not limited to, responding to disclosure requests under the Virginia Freedom of Information Act (VFOIA) §§ 2.2-3700 to 3714, the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. §1232g, court orders and subpoenas, investigations and audits. The Booster Organization shall produce requested documents (to the extent they exist) to FCPS staff within five (5) business days. FCPS will extend the 5-day deadline if doing so does not impair FCPS' ability to carry out its business obligations.

#### **V. Termination**

Either party reserves the right to terminate this agreement by providing 30 days written notice. Upon termination, the Booster Organization shall immediately forward the balance of all collected fees and copies of all FCPS records to the school principal.

In the event of noncompliance with the terms of this agreement, FCPS reserves the right to terminate this agreement immediately and require the return of all collected fees and copies of all records within three business days.



# Guidelines for the Use of Marching Band Booster Organizations in the Collection and Disbursement of Student Fees



## B. Optional FCPS-Sponsored Activities including Field Trips and Camps

FCPS may charge student fees for FCPS-sponsored activities that are optional. FCPS-sponsored optional activities consist of any activities and events as determined by the local principal that: (a) occur during the school day and involve FCPS students, property, or personnel; (b) are recommended for an FCPS class or otherwise relate to the curriculum; (c) use FCPS resources, including property and personnel, or (d) are supervised by FCPS staff. For example, the spring and summer marching band program is not required as part of the marching band program but it is still an FCPS-sponsored program. The following criteria should be considered by the local principal to determine whether an activity is an FCPS sponsored activity:

- Does the student activity occur during the school day?
- Is the student activity required or recommended for an FCPS class or otherwise relates to curriculum?
- Are FCPS resources and communications being used?
- Is FCPS staff supervising the activity in the course of their FCPS job duties?
- Is the activity being announced or advertised as an FCPS or school activity?

## C. Booster-Sponsored Activities

Booster-sponsored activities are activities, as determined by the local principal, for which the Booster Organization has accepted full responsibility for controlling and managing the activity. This includes all purchasing, planning, selling, accounting, financial obligations, and complying with all federal, state and local laws and ordinances for that activity. In connection with any booster-sponsored activity, the Booster Organization must notify parents that the activity is not sponsored by FCPS. Additionally, such booster-sponsored activities may not occur during FCPS instructional time, be advertised as FCPS sponsored, or use FCPS field trip forms or permission slips and be supervised by FCPS staff. Fees charged by the Booster Organization for such booster-sponsored activities shall not be considered FCPS funds.

## III. Use of Boosters to Collect, Manage, and Disburse Student Fees for FCPS-Sponsored Activities

All student fees charged by FCPS for FCPS-sponsored activities, whether required or optional, constitute FCPS funds. The principal of each school is responsible for the collection, management, and disbursement of such FCPS funds within his or her individual school, and must ensure that an accurate record is kept of all receipts and disbursements. Each principal is also responsible for complying with the audit and financial reporting requirements for such funds, as discussed further below.

A principal may opt to designate a school staff member to act, under the principal's supervision, as the school finance officer or central treasurer for such FCPS funds. Principals also may oversee school staff members and Boosters, in the performance of ministerial tasks associated with the collection, management, and disbursement of FCPS funds generated from student fees and FCPS-sponsored activities and events. Principals

# Guidelines for the Use of Marching Band Booster Organizations in the Collection and Disbursement of Student Fees



public depository in the Commonwealth of Virginia (see attached list)  
<http://www.trs.virginia.gov/documents/ops/Report.pdf> under the school's name and with FCPS' tax identification number (the "FCPS School Account").

All student fees, whether collected by school staff or by the Booster on behalf of FCPS, must be deposited into the FCPS school account. Deposits must be made on a weekly basis, at a minimum. Funds being temporarily held for deposit must be secured at the school site.

It shall be the duty of each principal and the Booster Organization to ensure that students and parents are informed of the FCPS student fees charged separate from any optional booster dues/assessments. Where feasible, students and parents should be requested to make payment of FCPS student fees by separate checks, made payable to the local school.

FCPS funds must be accounted for in separate ledgers in a FCPS system based on the type of activity that show the amount billed and collected by student. Those records must be maintained according to the recordkeeping practices set forth in these guidelines.

## D. Refund Policy

Prior to collecting any fee, clear instructions must be provided in writing on any contractual or other limitation that would prevent or limit a family's ability to receive a refund in the case of cancellation of a trip or activity, or the students' withdrawal from the program or from school. The refund policy must identify a cut-off date for request for refunds, fixed costs that may not be refunded, and costs that may be refunded. For example, if airline tickets are nonrefundable if canceled less than two weeks prior to the trip, the refund policy for that trip must include that information.

## E. Returned Checks

The Commonwealth of Virginia allows a returned check fee of up to \$50. Parents paying by check must be notified before the check is accepted of the returned check fee and collection method. With principal approval, an FCPS-approved returned check collection service may be used to assist in collecting these fees.

## F. Uncollected FCPS Funds and Student Obligations

To preserve confidentiality of student and families' financial information, any communication regarding the collection of unpaid fees must be sent directly to the family involved. Communications must not be sent in such a way as to inform other families of a particular family's payment status. For example, it is not permissible to send an email to all trip participants listing the names of students who have paid and those who have not.

Any student fees payable to FCPS that remain unpaid at the end of a program school year should be reported by the Booster to the school's finance office for appropriate actions, which actions may only be taken by the school. Rules governing student

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

#### **§ 2.2-3714. Violations and penalties.**

In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.