

LEGAL CONSIDERATIONS FOR PTAS

I. **Liability**

PTAs are organized as unincorporated associations. The limitations on liability which exist with respect to officers, directors and shareholders of corporations do not apply to officers of unincorporated associations.

Congress passed the Volunteer Protection Act in 1997. The Act grants immunity for acts or omissions of volunteers within the scope of their responsibilities to a nonprofit organization. Liability remains essentially for grossly negligent, reckless, willful or criminal conduct. Other exceptions to immunity under the Act include damage resulting from a motor vehicle and misconduct occurring while under the influence of alcohol and drugs. The PTA may still be sued, but in theory, the volunteers are protected

Connecticut has a similar statute. Under the Connecticut statute, directors, officers, and trustees of non-profit tax exempt organizations enjoy immunity from liability, but only if they are acting in good faith and within the scope of their official functions. There is no protection when the damage or injury is caused by reckless, willful or wanton misconduct.

To benefit from these protective provisions, the organization must have qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code. Make sure that your PTA has received a favorable determination letter as to tax-exempt status under Section 501(c).

II. **Bylaws**

Know your bylaws. These are the rules pursuant to which a PTA functions. They are legally binding. Your local PTA by-laws must incorporate certain mandated sections of the National and State PTA bylaws. Contact the State PTA for current provisions. Be particularly aware of the rules regarding the quorum for meetings, nominating, and authority to sign checks and spend money.

Other bylaw considerations (the violation of which may jeopardize “501 (c) (3) status):

- 1) A PTA is non-commercial. A PTA may not promote the commercial activities of other organizations. PTAs should not endorse a product or a company, but may accept and acknowledge contributions of sponsors of PTA programs.
- 2) A PTA is non-partisan. The PTA may not support or oppose a political candidate. You may offer a forum for all candidates, or send out literature for all the candidates, but you cannot have just one or two candidates speak to the membership. A president should not support a particular candidate in his or her official capacity as President.

- 3) A PTA is non-sectarian. A PTA may not promote one religion.
- 4) A PTA may make charitable or educational gifts or donations, but may not solicit funds for another organization.

III. Insurance

PTAs maintain coverage. Make sure that it is in place each year and know the scope of coverage: i.e. directors and officers errors and omissions, personal injury, general liability, fidelity (recommended by the National PTA) for financial losses through fraudulent or dishonest acts, property coverage, etc. A rider may be necessary for special events. Afters coverage is also required; Afters coverage has been coordinated and improved with the District in recent years.

Typically, the District's liability insurance does not extend to the PTAs or their activities.

IV. Contracts

Before entering into a contract, consider:

Has the necessary funding been approved?

Are you authorized to sign the contract?

Are the terms clear?

Is the contract in writing?

Is the contract limited in time so as not to encumber future funds?

Are the signature and terms binding only on the PTA, and not the president or other individual?

V. Banking/Financial

501(c) (3) status. The favorable determination letter from the IRS should be maintained as part of the permanent record of the PTA and remains in effect unless revoked by the IRS.

Each PTA has a federal employer ID number for banking purposes. If the PTA annual gross number is over \$25, 000 the PTA need to make a Form 990 and Schedule A tax filing, which is due the fifth month after the close of the fiscal year. Tax returns can be made public. Consider the use of a professional accountant.

Work closely with the PTA Treasurer, who is legally responsible and authorized to take charge of the funds.

When setting up bank accounts provide the bank with the PTA's IRS Employer ID number. An individual's social security number may not be used.

Be meticulous in the care and handling of cash and checks.

Do not carry over large amounts of money from year to year, unless specifically earmarked for an ongoing project, as this could jeopardize the PTA's tax-exempt status.

The PTA is exempt from state sales tax. Exemption card may be required.

VI. Miscellaneous

Minutes - Keep accurate records of decisions and basis for decisions.

Communications - Multiple reviews of communications.

Events and activities - Consider: necessary municipal or other approvals, supervision, and safety, particularly for new events.

Afters - Accommodations for students and/or parents under federal and state law.

In a grey area, consult PTAC.

Be prudent and don't rush.

The foregoing is not intended to serve as legal advice, but rather is meant to anticipate possible legal issues that may arise.