



Fall 2021 Board Policies Update

OVERVIEW AND COMMENTS

The proposed new, revised, and replacement policies, administrative guidelines and forms included in this update have been thoughtfully prepared and reviewed by the Institute's legal counsel for statutory compliance. If you make changes, or substitute in their entirety policies or other materials of your own drafting, those materials should be reviewed by your legal counsel to verify compliance. The Institute does not review Academy-specific edits to update materials or Academy-specific policies for statutory compliance.

If a policy or guideline is marked as a revision, the changes have been marked in red (to add material) and crossed out (to delete material). As you review a revised policy or guideline, you may choose to accept one, many or all of the changes provided. If a policy or guideline is marked as a replacement, that means there have been enough changes made that justify a complete, clean replacement copy. As you review a replacement policy or guideline, you should also check the materials you have in your current policy or guideline to see if there is specific wording you want included in the replacement policy. If so, a copy of any wording to be added and where it should be inserted should be forwarded with the replacement policy or guideline when it is returned to the Institute office for processing.

If the Academy authors language and adds it to a policy template or deletes content that is not marked as a choice in the policy template, then these actions will constitute Academy-specific edits. If an Academy chooses not to adopt a policy or administrative guideline, the Academy is still obligated to follow applicable Federal and State laws relating to that topic.

Policies that are to be deleted from the policy manual require Board action to rescind the policy.

If s/he has not done so already, your Institute Associate will contact you in the near future to schedule an appointment to review this update and ensure you are current on this and previous updates. It is expected that all appointments will have been completed with the appropriate documents received for processing by **January 31, 2022**.

As the Update "season" gets underway, The Institute offers some suggestions for accessing the comprehensive policy services through your Institute Associate. While "in-person" consultation sessions are the preferred method for Institute Update "visits", the means by which you and your Institute associate accomplish this review should be mutually determined based on availability and level of comfort with the consultation process. Overall, health and safety are the primary concerns. Your Institute associate will be in contact with you soon to discuss these options with you and to schedule an appointment to review this update and ensure you are current on this and previous updates. Please consider the following options:

1. Schedule an appointment date/time to review the update materials during an in-person conference,
2. Schedule an appointment date/time to review the update materials via virtual meeting, such as Zoom Meeting or other electronic options, or

If you are not currently an administrative guidelines client, please ask your Associate or contact the Institute about this service. Administrative Guidelines help ensure that your Academy's policies and operating practices remain aligned. In addition, many useful and often invaluable forms are included with the Administrative Guidelines.

Academy-Specific Material

Though the Institute is happy to modify any policy to meet the unique needs of any Academy, if the Academy chooses to incorporate Academy-specific material into a new policy or guideline that has been proposed or to insert Academy-specific material into a current policy or guideline for which revisions have been proposed in an update issued by the Institute, then the Academy agrees to hold the Institute harmless for those Academy-specific edits. In addition, the Institute retains ownership of the text from the original policy template that remains in a policy to which Academy-specific material has been added. Academy-specific materials include the following:

- A. Materials from the Academy's existing materials that the Academy requests be incorporated during the drafting process;
- B. New materials that the Academy develops in their entirety and exclusive of the Institute; and
- C. Revisions or deletions that substantively depart from the Institute's templates.

Further, please note that the Institute does not generally recommend the use or incorporation of Academy-specific materials. The Institute will, at the request of the Academy, incorporate Academy-specific materials into the licensed materials, with the implicit understanding that the Academy bears all risks associated with the Academy's decision to request that such Academy-specific materials be incorporated. The Institute reserves the right to, but is not obligated to, advise the Academy to seek its own legal review of Academy-specific materials.

All questions about the policies and guideline updating service should be directed to the National Charter Schools Institute (NCSI) at 711 W. Pickard Street, Mount Pleasant, Michigan 48858 (phone 989-317-3510) or via email at boardpolicies@nationalcharterschools.org.

Notice Regarding Legal Accuracy

The Institute is vigilant in providing policy language to clients that has been vetted for accuracy by legal counsel. Should any question arise as to the legal compliance or accuracy of Institute materials, it is our expectation that the Institute's counsel will have the opportunity to assist in the resolution of such questions. Please notify the Institute if an issue arises in which such a review or assistance is necessary.

Emergency Resolutions 2020-2021

In April 2020, The Institute provided sample resolutions to allow Boards to delegate powers and discretion to School Leaders to comply with existing Executive Orders and state and local health and safety mandates related to COVID 19. Currently there are no Executive Orders relating to COVID 19 in effect and health issues are generally being handled on a local level. For that reason the prior sample resolutions are not appropriate to address any Academy specific local issues, existing or prospective, and The Institute recommends that Academies ***do not reutilize the sample resolutions*** provided for 2020-2021 for the 2021-2022 school year.

Legal Alerts

Included with this update are legal alerts. These alerts include:

1. Diversity, Equity, and Inclusion in Public Schools

2. Update on Title IX Implementation and Enforcement Under the Biden Administration
3. Regarding Academy Goals Requirements
4. U.S. Supreme Court Addresses Student Off-Campus Speech
5. Sixth Circuit Addresses Public Participation at Board Meetings
6. A Toolkit for Review and Adoption of Replacement Policy 5722 – Academy-Sponsored Student Publications and Productions

FALL 2021 UPDATE

BYLAWS AND POLICIES

Board Operating Policy 0100 – Definitions (Revised)

The definition of "Voting" has been revised to reflect the change in statute regarding allowable exceptions to "in person" voting at meetings of the Board. After December 31, 2021, only the military duty exception remains. The Board chair should only approve a request that complies with the law.

This revision should be adopted to maintain accurate policies.

Board Operating Policy 0167.3 – Public Participation at Board Meetings (Revised)

Revisions to this board operating policy are in line with the recent decision of the U.S. District Court for the 6th Circuit. Some of the optional language has been deleted, so as to remove the authority of the presiding officer at board meetings where public participation is permitted to regulate speakers on the basis of comments that are "abusive," "frivolous," and/or "harassing." These measures are intended to prevent academies from engaging in viewpoint discrimination for remarks that are oppositional in nature, perceived as hostile to the direction of the board and/or merely offensive. In addition, options (which were deemed acceptable regulations by the Court) have been added for preregistration, including prohibiting individuals from signing up to speak for others. Finally, there are options for academies who livestream meetings to determine whether or not they will facilitate public participation remotely.

These revisions and options should be considered for adoption.

Policy 3120 – Employment of Teachers and Administrators (Revised)

This policy has been revised to reflect recent changes in certification/licensure statutes and regulations. Outdated "highly qualified" language has been deleted.

Revisions to this policy should be adopted in order to maintain accurate policies.

Policy 5722 – Academy-Sponsored Publications and Productions (Replacement)

This replacement policy is proposed because of the wide variety of academy-sponsored student media that are present in academies today and due to the many technological advances that have occurred.

The policy, as before, provides several options available to the Board regarding the type of forum that will be provided and what level of review and regulation will occur. The language in the policy has been modified to encompass the newer online electronic forms of academy-sponsored student media. The policy provides four options to consider for the classification and regulation of such publications and production.

A toolkit has been provided to assist Academy staff in their review of the replacement policy and revisions to the administrative guideline.

The recommendations made in this policy should be carefully considered when addressing the evolving student media environment and language should be adopted that best fits the Academy's needs.

Policy 6114 – Cost Principles – Spending Federal Funds (Revised)

This policy has been revised to provide greater detail in allowability guidance for academies regarding expenditure of federal funds. There has been a significant increase in funding for academies through the third pandemic stimulus bill dubbed the American Rescue Plan, providing \$122 billion in Elementary and Secondary School Emergency Relief (or ESSER III) funds. While the policy has accurately referenced definitions and restrictions cited in various sections of 2 C.F.R. 200, greater specificity has been requested by program reviewers and auditors.

Revisions to this policy should be adopted in order to maintain accurate policies.

Policy 6152 – Student Fees, Fines, and Supplies (Revised)

This policy has been revised to provide the authorization to allow for online payment of fees, fines, and charges.

This revision is recommended for adoption if online payment is allowed.

Policy 7450 – Property Inventory (Revised)

A drafting note has been added to this policy noting the federal threshold of \$5,000 for differentiating between supplies/materials and a capital expenditure for equipment purchase. See the note on Policy 6114 - Cost Principles - Spending Federal Funds.

This policy may need to be revised if the Academy's current policy uses an equipment/inventory threshold higher than \$5,000.

Policy 8310 – Public Records (Revised)

This policy has been revised to comply with the obligation not to disclose the address of a student or an employee who provides the Academy with notice that they have received a participation card issued by the attorney general under the Address Confidentiality Program Act.

These revisions should be adopted in order to remain compliant with Michigan law.

Policy 8330 – Student Records (Revised)

This policy has been revised to reflect the change in federal rule (2021 Solomon Amendment: Subtitle C—General Service Authorities and Correction of Military Records SEC. 521). If the Academy issues student email addresses, it must release such email addresses to military recruiters as part of directory information, as requested, unless prohibited by student or parent request in writing.

This revision should be adopted in order to maintain accurate policies.

COMMENTS**Electronic Access to Your Board Policy Manual**

Since 2018, The National Charter Schools Institute has been providing boards and school leaders access to their Board Policy Manual via the platform known as EPICENTER. If your authorizer also uses EPICENTER for the collection of compliance documents, this is the same platform, but uses a different login. With the Spring 2021 Update, the Institute began transitioning board policies to a web portal called BoardDocs. The team at the Institute will discuss this transition during your update meeting. For more information on accessing your policies through EPICENTER and/or BoardDocs, please do not hesitate to contact our team via email at boardpolicies@nationalcharterschools.org or via phone at (989) 317-3510.

Legal Alerts

Diversity, Equity, and Inclusion in Public Schools

TO: National Charter Schools Institute Clients

SUBJECT: NCSI Legal Counsel

RE: Diversity, Equity, and Inclusion in Public Schools

FROM: Fall 2021

LEGAL ALERT

In June 2020, the Michigan Board of Education ("State Board") passed a *Resolution to Eradicate Racism and to Create More Equitable and Inclusive Schools for Black Children/All Children*. The resolution commits the State Board to "stand against any and all acts of racism, disrespect, violence, and inequitable treatment of any person" and concludes by promising "to provide leadership with the Michigan Department of Education to support local public schools and academies in their efforts to help eradicate racism and to create more equitable and inclusive schools for all children."

Six months later, President Biden echoed the State Board's commitment to advancing racial equity in *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*,² which he signed on his first day in office. In the Order, President Biden states it is the policy of his Administration that the "Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality." The Order continues, "The Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential."

In early June, 2021, the U.S. Department of Education (USDOE) "announced a series of actions it is taking to advance equity in education and ensure schools across the nation are serving all students."³ Included in the list of actions it is taking are (1) releasing a report highlighting the disparate impacts of COVID-19 on K-12 and postsecondary students in underserved communities,⁴ and (2) holding an Equity Summit Series over the coming months. The USDOE stated its actions aim to "encourage schools more broadly to reimagine their education systems and practices and infuse equity into all of their work, so that every student has access to rigorous, culturally responsive, and fulfilling instruction." U.S. Secretary of Education Miguel Cardona stated, "Our mission at the Department is to...reimagine our schools so that all students have their needs met. We must take bold action together to ensure our nation's schools are defined not by disparities, but by equity and opportunity for all."⁵

The First Installment of the Equity Summit Series occurred on June 22, 2021, and explored how schools and communities can reimagine school systems so that "every student has a voice in their school and classroom, particularly students from underserved communities, including communities of color, students with disabilities, and multilingual learners. The event [also featured] discussions on how all students can access a high-quality education responsive to their needs, and how schools can create more culturally and linguistically responsive and inclusive learning environments for all students."⁶

With the preceding as backdrop, it is no wonder several Institute clients have inquired whether The Institute intends to release a Diversity, Equity, and Inclusion (DEI) Policy. After much deliberation, The Institute has decided not to provide a generic or "model" DEI policy to its clients.⁷ This decision is based on the recognition that a meaningful policy needs to be uniquely tailored to each individual school community and a one-size fits all approach is not appropriate in this area.

Likewise, The Institute has decided not to draft a sample board resolution that could serve as an Academy's Statement on Diversity, Equity, and Inclusion. Instead, The Institute offers the following overview of the various topics that must be considered when a Board of Directors seeks to address

issues involving DEI within its workplace and educational environment. Additionally, below are a number of concrete steps that boards might take to confront the inequity present in their academies.

* * *

From the outset, it is important to recognize and affirm the vital role that Boards of Directors and their members play in setting the appropriate tone and commitment for their respective academies. To begin, boards are primarily responsible for approving policies and setting Academy priorities; in those capacities, they make decisions that affect how and what students learn and how that learning is measured, the level of professional development that is provided to teachers and other professional staff, and how funds are allocated. Boards also are responsible for hiring employees, including the School Leader, and holding their employees accountable for achieving the goals the Board sets for them. As such, it is absolutely critical that all board members are “on board” and committed to addressing inequity in their Academy before making a public commitment to actively pursue a diverse, equitable and inclusive school environment.

Based on a review of articles and related documents associated with addressing DEI in school settings, it is clear that many academies have chosen to issuing pronouncements concerning their intentions and commitments to confront head-on the difficult challenges presented by the racial inequity and diversity and inclusion issues outlined in the State Board’s June 2020 resolution, which is discussed above. While academies have been drafting “statements” and passing resolutions to signal their intention to tackle the topic of Diversity, Equity, and Inclusion and to show their “commitments” to creating a diverse, equitable and inclusion Academy for nearly a decade, more recently boards are committing financial resources and personnel to develop specific goals and to take concrete actions to achieve those goals, and to hold their administrators and staff accountable for reducing, and ultimately eliminating, the disparities in respect to the academic outcomes of students of color.

Before a Board tackles the difficult task of identifying what needs to done to address the DEI challenges present in its Academy, it may be helpful for the Board as a body to consider and develop a common understanding of why DEI is important in the first place. As noted, race, class, and ethnicity continue to be strong predictors of student achievement, college success, and successful life experiences. For this reason, it is important for Board members, administrators, and staff to identify barriers and obstacles to opportunity, interrupt their negative impact, and eliminate persistent disparities in student outcomes.

Given the long-term impact of race and racism on student achievement, including how instruction is delivered, discipline is imposed, and resources allocated – all topics within the purview of Boards of Directors– it is appropriate for Boards to verbalize, and then act upon, a commitment to implementing racial equity within their academies. Since leadership should start at the top, Boards of Directors have a vital role to play in signaling to its employees and stakeholders that students have an entitlement to a barrier-free learning environment aimed at counteracting the historical and contemporary impact of bias, prejudice, and discrimination that for generations has produced a predictability of learning outcomes based on race, ethnicity, class, socioeconomic status, sex (including sexual orientation and gender identity), cognitive/physical ability, English language fluency, and religion.

From their position of leadership and responsibility, Board members can shine a light on all forms of inequity in place in their community. By increasing awareness of systemic barriers that disadvantage students of color, Boards can motivate educators to adapt their instructional practices to respond more effectively to the needs and aspirations of all the children they serve. Recognizing the pervasiveness of these issues, Boards must galvanize a academy-wide commitment and involvement of all stakeholders, including students, parents/guardians, and other community members, to achieve their DEI goals.

In order to prepare for their leadership role, it is incumbent upon Board members to educate themselves and encourage administrators and staff to expand their racial consciousness, and to explore the unconscious biases that influence institutional and structural racism and impact student learning in schools. Such exploration can help individuals to become aware of their own individual biases, and to reflect on their personal life experiences to determine how those experiences have shaped their biases and how they have affected their interactions with others. By doing so, they can work to develop the ability to weigh and consider the perspectives of others, which is a critical first step to beginning to understand the experiences of various racial groups in your community and then identifying actions that can be taken to develop more equitable practices aimed at helping all students to reach their potential.

By participating in ongoing training concerning institutional racism and class bias in public schools, and engaging in courageous conversations about race, Board members can deepen their ability to create a more welcoming and culturally conscious Academy that has the tools necessary to challenge and change insensitive policies that serve to impede the success of students of color.

As the Board collectively educates itself it will inevitably seek out information about the racial demographics of staff and students and begin to demand data be disaggregated by race and other applicable categories. Such an examination of the data may invoke not only a better understanding of the community and relevant demographic data such as historical and current housing patterns (i.e., where persons of color reside in the community) and which schools students of color attend, but also achievement patterns related to which student groups participate in various programs, the racial make-up of classes, who is in special education, who participates in extracurricular activities and clubs, attendance patterns, graduation rates, and which students are disciplined and for which offenses. When analyzing such data, the Board should seek to identify academy-wide and building-wide trends, including the classes and activities that tend to be comprised of racially homogenous students.

Once the Board is sensitized to these issues it can begin to communicate to the School Leader and administrative leadership team the issues it wants addressed. It may also have a better sense of what will be needed to achieve success – e.g., whether the Academy will be best served by assigning related duties to existing administrators or hiring a new administrative position to oversee the Academy's DEI efforts (e.g., a Chief Diversity Officer, or Executive Director of DEI). Additionally, the Board may consider whether it should create a Board-level committee or request the School Leader to create an advisory committee/team to oversee Academy efforts to address DEI. Likewise, the School Leader might establish building-level committees/teams to foster local control and responsibility for achieving DEI results consistent with the Board's overarching goals. It is important when selecting members for such committees/teams to appoint not only a meaningful number of persons of color but also to ensure these individuals have prominent leadership roles on the committees/teams. The Board and administration may also find it beneficial to have an outside Equity Advisory Board helping to oversee and promote the Board of Directors overall DEI initiatives; such external oversight should include representatives of all stakeholders, including students, parents/guardians, and community members, in addition to administrators and professional staff.

Once its team is in place, the Board needs to charge the team with developing and implementing a plan to embed DEI thinking throughout the Academy and in all aspects of its operations.

One of the team's first tasks should be to gather baseline data (using equity surveys and climate assessments) to identify the experiences of racial groups in the school community. These assessments should include both workplace and educational cultures. Once the baselines are determined, the DEI committee/team will have its starting place from which it can progress monitor its efforts. The committee/team should be expected to regularly report to the Board of Directors on its successes and continuing obstacles.

Hopefully, the preceding demonstrates that a commitment to DEI involves more than simply adopting a statement or Board resolution or drafting a single policy; instead, it involves a review of all policies, procedures, and practices and the unintended consequences and outcomes that result from those policies, procedures, and practices.

Four areas of Academy operation require particular attention: curriculum, hiring, staff development, and student discipline. With respect to curriculum, the administration / DEI committee(s)/team(s) need to conduct a comprehensive review of the Academy's curriculum with the goal of identifying and removing the barriers that historically have caused under representation of students of color in Honors and A.P. classes and certain co-curricular and extracurricular activities. In particular, the committee/team should: (1) verify curriculum and instructional materials for all grades reflect diversity and include a range of perspectives and experiences, particularly those of historically underrepresented groups; (2) examine all curriculum materials for bias; and (3) design class instructional activities and extracurricular programs to provide opportunities for cross-cultural and cross-racial interactions that foster respect for diversity.

Inclusive teaching involves the use of curriculum and teaching practices that are designed to be effective in reaching every student. Correspondingly, it is critical that there is an academy-wide

commitment to promoting high academic standards and outcomes for all students while embracing and accommodating, as necessary, the differing characteristics of students.

Once the curriculum has been reviewed and appropriate changes adopted, the Board needs to ensure its staff can effectively implement the curriculum. To this end, the Board needs to make a long-term commitment to professional development aimed at developing both an awareness of the inequities that need to be overcome and the skills to deliver educational services that service to overcome them. In particular, instructional staff need to be trained to recognize and understand the range of needs and learning styles among students and to hone their skills in building and sustaining an inclusive classroom. Much of the training discussed above with respect to Board members is equally applicable to administrators and professional staff members and should be provided on a recurring (e.g., annual) basis.⁸

The other area of Academy operation that often requires a significant investment of time and resources in order to move the Academy along towards addressing its DEI issues is hiring. First, it is important that staff involved in the hiring process are exposed to research-based implicit bias training. Next, the staff need to be explicitly tasked with hiring and retaining a diverse workforce that more accurately reflects the Academy's student population. A key component to hiring a diverse workforce is ensuring the interview panels are made up of a diverse group of individuals. Additionally, the director of human resources or the human resources department should work to foster relationships with faculty at neighboring HBCUs and colleges/universities in the Midwest region with a higher number of Black, Indigenous, and People of Color ("BIPOC") students in their educational programs.

Equally important to hiring a diverse workforce is retaining that workforce. Many academies have found success in this area by creating professional mentorship programs for their new BIPOC certified/licensed staff and building administrators.

Another important role of the job of the director of H.R. or the H.R. department is to verify job descriptions use language that is inclusive and free from bias. When reviewing the job descriptions, the director of H.R./department of H.R. should confirm the stated job responsibilities listed include inclusion-related expectations that are appropriately outlined for prospective employees.

It is also important that high quality staff, instructional supports, and facilities (e.g., learning environments and technology) are dispersed by taking into consideration racial equity and the H.R. department is required to regularly report to the Board and the DEI Advisory Committee/Team about the steps it is taking to meet the assigned equity goals.

One obstacle that needs to be addressed in the employment context is the potential tension between DEI initiatives and an employer's obligation to accommodate employees' religious beliefs – i.e., weighing religious freedom versus LGBTQ+ rights. As you may know, the U.S. Supreme Court has issued a few decisions in recent years, that recognize Title VII protects both an employee's "sincerely held religious beliefs" and a worker's gender identity/transgender status and sexual orientation. Thus, for LGBTQ+ employees, Title VII (and likely Title IX in the school setting) prohibits discrimination and harassment based on gender identity/transgender status and sexual orientation. On the other hand, employers must reasonably accommodate employees' religious observances, practices, and beliefs unless doing so would be an "undue hardship."⁹ Consequently there may be times the Academy can deny a requested religious accommodation because of the difficulty or expense associated with the proposed accommodation. Nevertheless, to avoid legal liability, it is imperative that the employer consider every accommodation independently, understanding the unique facts of the specific situation and knowing no "one-size-fits-all" response will achieve the balance needed for a harmonious and cohesive workforce. Therefore, when an employee requests a religious accommodation, the employer must consider it, but it may not be required to provide the specific solution requested, or even the employee's ideal accommodation, so long as the accommodation the employer selects is "reasonable."¹⁰

The preceding serves as an introduction to and an overview of the myriad topics that fall under the guise of Diversity, Equity, and Inclusion. When a Board of Directors determines it is time to begin to address issues involving DEI in their Academy, it is important the Board is prepared to offer more than mere lip-service to the endeavor; it must be prepared to allocate Academy's financial, capital and human resources to embrace the diversity within its school community (staff and students) while eliminating policies, structures, and practices that perpetuate inequities and contribute to disparities

among students with respect to access and outcomes, so all students are provided what they need to thrive and to have an equal opportunity to succeed.

This legal alert is intended as general information and not legal advice. No attorney-client relationship exists.

²Executive Order 13985. See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

³See <https://www.ed.gov/news/press-releases/department-education-announces-actions-advance-equity-education>]

⁴See <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>

⁵See <https://www.ed.gov/news/press-releases/department-education-announces-actions-advance-equity-education>]

⁶See <https://www.ed.gov/news/press-releases/department-education-announces-actions-advance-equity-education>]

⁷As always, The Institute will process and publish any policy and/or administrative guideline that a Board sends to it.

⁸One time diversity trainings have not been proven effective.

⁹An undue hardship in this context means any accommodation that would impose more than a *de minimis* or trivial cost on the employer's operations. This is a lower standard than is used for disability accommodations, even though similar terms used in the laws.

¹⁰Under no circumstances is the employer required to grant an accommodation that would eliminate one of the employee's essential functions.

Update on Title IX Implementation and Enforcement Under the Biden Administration

TO: National Charter Schools Institute Clients

SUBJECT: NCSI Legal Counsel

RE: Title IX Implementation and Enforcement Under the Biden Administration

FROM: Fall 2021

LEGAL ALERT

It has been a year since the United States Department of Education Office for Civil Rights (OCR) promulgated its Title IX regulations concerning the definition of sexual harassment and the procedures applicable to investigating and addressing allegations of sexual harassment under Title IX.¹ It also has been a year since the United States Supreme Court issued its decision in *Bostock v. Clayton County*, 140 S.Ct. 1731, 590 U.S. ____ (2020), in which the Court held that discrimination based on an individual's gender identity and sexual orientation are prohibited forms of sex-based employment discrimination under Title VII. In the intervening year, academics have awaited guidance from the U.S. Department of Education (USDOE) concerning whether Title IX's prohibition against discrimination "on the basis of sex" should be interpreted consistent with the Court's pronouncement in *Bostock*.

Initially, in the fall of 2020, the USDOE signaled in several documents that it would not apply the reasoning of *Bostock* in the Title IX context to prohibit discrimination based on an individual's gender identity or sexual orientation. In fact, Secretary of Education Betsy DeVos indicated that she interpreted Title IX to support the exclusion of transgender students from school areas (e.g., bathrooms and locker rooms) and involvement in sports that aligned with their gender identities.

Shortly after Secretary DeVos resigned in early January 2021, and in the final days of the Trump Administration, the USDOE's Office of the General Counsel issued a memorandum explicitly stating *Bostock's* reasoning and holding did not apply to Title IX.² As noted in the memorandum, however, this interpretation was contrary to a number of federal circuit court rulings that applied *Bostock's* holding to Title IX cases – see *Adams v. School Bd. Of St. Johns County*, 968 F.3d 1286 (11th Cir. 2020); *Grimm v. Gloucester County Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020) (the Fourth Circuit joins a "growing consensus of courts" holding that "Title IX can protect transgender students from school bathroom policies that prohibit them from affirming their gender.").

On January 20, 2021, after being sworn in as the 46th President of the United States, President Joe Biden signed *Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*.³ In the Executive Order, President Biden signals his Administration's intent to extend Title IX protections to transgender students. Specifically, the executive action affirms that gender identity and sexual orientation are protected classes under federal sex discrimination laws, including Title IX. The President further directs that within 100 days federal agencies must develop plans to ensure their policies and procedures protect individuals from sexual orientation and gender discrimination. With respect to educational environments, the Executive Order states: "Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports."

President Biden followed the January 20, 2021 general applicability pronouncement with a more specific order applicable to schools on March 8, 2021 – *Executive Order on Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*.⁴ In the Executive Order, the President states that it is his Administration's policy that "all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity."

To achieve this end, President Biden directs the USDOE, through Secretary of Education Miguel Cardona, in consultation with the Attorney General, to review existing regulations and other guidance that may be inconsistent with the Biden Administration's stated policy and report those findings to the Director of the Office of Management and Budget. The Executive Order expressly directs that the review encompass the 2020 Title IX regulation – "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" – 85 Fed. Reg. 30026 (May 19, 2020) – and directs the Secretary of Education to issue new guidance as needed to implement the Executive Order "as soon as practicable" and suspend, revise, rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding agency actions that are inconsistent with the stated purpose of the Executive Order.

The Executive Order further reiterates that LGBTQ+ individuals are protected under Title IX and acknowledges the disproportionate rates of sexual harassment and violence suffered by the LGBTQ+ community. To address such harassment/violence, the Executive Order requires educational institutions to provide "appropriate support for students who have experienced sex discrimination; and to ensure that their school procedures are fair and equitable for all."

Finally, the March 8, 2021 Executive Order directs Secretary Cardona to "account for intersecting forms of prohibited discrimination that can affect the availability of resources and support for students who have experienced sex discrimination, including discrimination on the basis of race, disability, and national origin."

On April 5, 2021, the Civil Rights Division of the U.S. Department of Justice (DOJ) published a three page memorandum (dated 3/26/2021) confirming that Title IX prohibits discrimination on the basis of sexual orientation and gender identity in educational settings, adopting the Supreme Court's reasoning from *Bostock*. This memorandum is significant because the DOJ is charged with coordination of the implementation and enforcement of Title IX by Executive agencies (including the USDOE). Based on the DOJ's 3/26/2021 memorandum, Federal agencies that implement and enforce Title IX are obligated to implement and enforce the Law's prohibition against sex-based discrimination on behalf of LGBTQ+ individuals. The DOJ further notified Federal Agency Civil Rights Directors and General Counsel that anti-LGBTQ+ discrimination falls within the scope of Title IX's protections, so schools should review and update their anti-discrimination policies and programs accordingly and as appropriate. The DOJ's conclusion that the *Bostock* holding applies to Title IX is based on the DOJ's consideration of the Title IX statutory text, Supreme Court case law, and circuit court case law. In particular, the DOJ states that the operative language from Title IX (prohibiting discrimination "on the basis of sex") is substantially similar to Title VII language prohibiting discrimination "because of sex." The DOJ expressly recognized that the Supreme Court repeatedly used these phrases interchangeably in *Bostock* and other cases. Thus, the DOJ concluded: "the best reading of Title IX's prohibitions on discrimination 'on the basis of sex' is that it includes discrimination on the basis of gender identity and sexual orientation." The DOJ also noted that federal courts routinely rely on Title VII interpretations to inform Title IX decisions.

The following day – April 6, 2021 – the Acting Assistant Secretary for Civil Rights at OCR issued a Letter that outlines the steps the USDOE plans to take to implement the 3/8/2021 Executive Order. The Letter begins by recognizing that LGBTQ+ students are subject to sexual harassment, including sexual violence, at significant rates. It then states that the Office for Civil Rights is undertaking a comprehensive review of the Department's existing regulations, orders, guidance, policies, and any other similar agency actions, including the amendments to the Department's Title IX regulations that took effect on August 14, 2020 (2020 Amendments) to determine whether any changes or additions to the Title IX regulations are necessary to fulfill the 3/8/2021 Executive Order and the Department's commitment to ensuring equal and nondiscriminatory access to education for students at all educational levels. The Acting Assistant Secretary states that the review will also focus on ensuring that students who have experienced discrimination based on sexual orientation or gender identity have their legal rights fully met.

While the Letter emphasizes that the Department's current Title IX regulations, as amended in 2020, remain in effect, it states that OCR plans to issue a question-and-answer document soon to "provide additional clarity about how OCR interprets schools' existing obligations under the 2020 amendments, including the areas in which schools have discretion in their procedures for responding to reports of sexual harassment." The Letter concludes by stating that ultimately OCR intends to publish in the

Federal Register a notice of proposed rulemaking to amend the Department's Title IX regulations. This document is significant because it reintroduces in an USDOE document the reference to sexual violence being a form of sexual harassment;⁵ a term that the prior Administration intentionally avoided using.

In order to facilitate its review of the existing rules and prepare to issue a public notice of rulemaking, the USDOE stated it would conduct public hearings in early June 2021, at which it would solicit the public's input (through oral or written comments) on issues of sexual harassment in school environments, including discrimination based on sexual orientation and gender identity.⁶

The USDOE followed up on its April 6, 2021 Letter by issuing a Notice of Interpretation on June 16, 2021, concerning The Department's Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*. The interpretation seeks to clarify the Department's enforcement authority over discrimination based on sexual orientation and discrimination based on gender identity under Title IX in light of the U.S. Supreme Court's *Bostock* decision. The interpretation is for the purpose of guiding the Department in processing complaints and conducting investigations.

By way of background, the Notice affirms that OCR has "long recognized that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sex discrimination." It continues, "OCR also has long recognized that Title IX prohibits harassment and other forms of discrimination against all students for not conforming to stereotypical notions of masculinity and femininity." The Notice then acknowledges that at times OCR has "stated that Title IX's prohibitions on sex discrimination does not encompass discrimination based on sexual orientation and gender identity." Thus, the purpose of the Notice of Interpretation is to clearly articulate the Department's conclusion that in light of *Bostock* it will interpret Title IX prohibition on sex discrimination to cover discrimination based on sexual orientation and gender identity.⁷ The explanation and rationale offered in the Letter for reaching this conclusion is consistent with the reasoning set forth in the DOJ's March 26, 2021 memorandum (see above).

The Biden Administration and the USDOE's repeated communications during the first six months of 2021 demonstrate a strong commitment to protecting individuals from sex-based discrimination resulting from the individual's sexual orientation or gender identity. Since the topic is not specifically addressed in the 2020 Amendments, OCR is compelled to follow the DOJ's 3/26/2021 interpretation that the *Bostock* holding applies to Title IX and not just Title VII. As such, academies should be prepared to take prompt and appropriate action when confronted by allegations of sex discrimination involving misconduct purportedly based upon a person's sexual orientation or gender identity. Further, it is imperative that boards of education contact local counsel when addressing requests by transgender students to access restroom or locker rooms aligned with their gender identities. Finally, it will be interesting to watch what action the Administration takes if complaints are filed with OCR by transgender student athletes residing in states that have prohibited them from participating on sports teams that align with their gender identities.⁸

This legal alert is intended as general information and not legal advice. No attorney-client relationship exists.

¹See Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, *et seq.*, and its implementing regulations at 34 C.F.R. Part 106.

²The memorandum goes on to state: (1) Title IX requires a recipient providing separate athletic teams to separate participants solely based on their biological sex, male or female, and not based on transgender status or homosexuality; and (2) Title IX requires a recipient providing "separate toilet, locker room, and shower facilities on the basis of sex" to regulate access based on biological sex.

³Executive Order 13988.

⁴Executive Order 14021.

⁵In more than one location in the Letter, the author states "all students should be guaranteed an educational environment free from discrimination on the basis of sex, including in the form of sexual harassment, which encompasses sexual violence, and discrimination based on sexual orientation or gender identity."

⁶The hearing took place on June 7-11, 2021. The USDOE promises to release transcripts of the testimony and feedback it received at the hearing.

⁷The USDOE's Acting Assistant Secretary for Civil Rights reiterated the Department's interpretation in her Letter to Educator that was issued on June 23, 2021 to celebrate the 49th Anniversary of the passage of Title

IX of the Education Amendments of 1972. Also on June 23, 2021, the U.S. Department of Justice Civil Rights Division (CRT) and the U.S. Department of Education Office for Civil Rights (OCR) jointly released a resource entitled "Confronting Anti-LGBTQ+ Harassment in Schools," which sets forth examples of the kinds of incidents that CRT and OCR can investigate.

⁸To date, the following states have enacted laws that prohibit transgender student athletes from playing on sports teams that correspond with their gender identities: Alabama, Arkansas, Florida, Idaho, Mississippi, Montana, Tennessee, and West Virginia. Additionally, the Governor of South Dakota issued two executive orders to limit participation in women's and girls' school sports teams to only people assigned female at birth.

Legal Alert Regarding School Goals Requirements

TO: National Charter Schools Institute Clients

SUBJECT: NCSI Legal Counsel

RE: Legal Alert Regarding School Goals Requirements

FROM: Fall 2021

LEGAL ALERT

Section 98b of the School Aid Act, effective July 31, 2021, requires schools to establish educational goals for the 2021-2022 school year **by September 15, 2021**. M.C.L. 388.1698b. More specifically, each school building leader, in conjunction with the teachers and school administrators of the school, must establish goals that the Academy expects to achieve by not later than the middle of the school year and goals it expects to achieve by not later than the last day of the school year.

The educational goals must comply with the following:

- The goals must include increased student achievement or validly and reliably measured growth in the aggregate and for all subgroups of students broken down by grade level, student demographics, and mode of instruction.
- The goals must include an assurance that the Academy shall select or develop a benchmark assessment(s) that is(are) aligned to state standards and an assurance that the Academy shall administer the benchmark assessment(s) to all students to determine whether students are making meaningful progress toward mastery of these standards.
- The goals must be measurable through the benchmark assessment(s) selected or developed by the Academy.
- For academies that provided instruction under an approved extended COVID-19 learning plan, the goals must correlate to the educational goals that were included in that plan.

MDE encourages academies to use existing goals generated in response to other legal requirements and has committed to provide a template for use in designing building level goals by September 3, 2021. Established goals should be maintained on file by the schools, publicly reported, and the results posted on the Academy's website.

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U.S. Supreme Court Addresses Student Off-Campus Speech

TO: National Charter Schools Institute Clients

SUBJECT: NCSI Legal Counsel

RE: U.S. Supreme Court Addresses Student Off-Campus Speech

FROM: Fall 2021

LEGAL ALERT

In a lengthy decision, the Supreme Court of the United States recently found that a Pennsylvania high school overstepped its authority when it suspended a student from the cheerleading squad for using social media (Snapchat) off-campus to criticize her exclusion from a spot on the varsity team and a private softball team. While the Court found the school's actions to be a violation of the student's First Amendment rights, it stopped well short of declaring that all off-campus speech is protected from school-based regulation – which had been the conclusion of the Third Circuit Court of Appeals.

After discovering that she did not make the varsity squad, and while shopping in a convenience store the following weekend, a student ("B.L.") took to social media to express her displeasure with the decision in two brief Snapchat posts – one of which included (now infamous) profanities. The posts were initially shared with her social media friends, who shared the posts with other friends, including the child of the cheerleading squad coach. This allegedly "upset" some team members and became a topic of chatter in a class taught by another coach. In response, B.L. was suspended from the JV squad for the upcoming year. This spurred the student and her parents to file suit in Federal Court.

After first granting a temporary restraining order and a preliminary injunction ordering the student's reinstatement to the squad, the trial court ultimately ruled in B.L.'s favor, determining that there was no substantial disruption at the school. Further finding that the discipline violated B.L.'s First Amendment rights, the court awarded nominal damages, attorneys fees, and ordered the school to expunge the discipline from her record. The decision was upheld on appeal, with the extraordinary pronouncement that schools within the Third Circuit were never free to discipline for off-campus speech, which was partially defined in the opinion as "speech that is outside school-owned, -operated, or -supervised channels." In essence, the Court of Appeals determined that since the speech here occurred off-campus, the standard handed down in the oft-referenced case of *Tinker v. Des Moines Independent Community School District* (speech that materially disrupts classwork or involves substantial disruption or invasion of the rights of others) simply did not apply.

This very narrow reading of *Tinker* is likely what prompted the U.S. Supreme Court to accept review to clarify, among other things, the application of the *Tinker* standard to student speech that occurs off-campus. In its June 23, 2021 opinion delivered by Justice Breyer in *Mahanoy Area School District v. B.L.*, 594 U.S. ____ (2021), the Supreme Court held that schools may have a special interest in regulating some off-campus student speech. However, that interest primarily exists only when the *Tinker* test is applied and in so applying finds that the student speech materially disrupts classwork or involves substantial disorder or invasion of the rights of others. However, unrestricted regulation of any speech that may relate to the school is unauthorized. In this case, the Court opined that the student's speech was not disruptive to the school environment and therefore was subject to First Amendment protection.

Despite media portrayals of a "victory" for the student, the truth is that this decision has not changed much of anything in student speech jurisprudence, nor did the court significantly advance our understanding of what schools can and cannot do with respect to student off-campus expression. In reality, the decision is a carefully worded affirmation that, especially in the present technology age, student expression away from school may have a disruptive impact at school. *Tinker* still has meaning and the onus remains with the school to show how that disruption is manifested.

For our purposes, it is not insignificant that the Court also affirmed a school's authority to apply discipline to extracurricular activities only. We recommend that all academies pay close attention to the language of these documents to assure that expectations for student conduct and the consequences for same are clearly delineated. That process should include careful review of and attention to off-campus speech in addition to the predictable onslaught of political expression fomented by the current culture wars, generally. To be sure, despite the Supreme Court's somewhat innocuous decision in *Mahanoy*, parents, and students will be more likely than before to challenge discipline for any off-campus expression.

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Sixth Circuit Addresses Public Participation at Board Meetings

TO: National Charter Schools Institute Clients

SUBJECT: NCSI Legal Counsel

RE: Sixth Circuit Addresses Public Participation at Board Meetings

FROM: Fall 2021

LEGAL ALERT

The U.S. Court of Appeals for the Sixth Circuit (Ohio, Michigan, Kentucky and Tennessee) recently confronted an Ohio school board's application of The Institute's policy on public participation at school board meetings. Given the current environment as academies prepare to return this fall facing difficult decisions around mask mandates and vaccinations as Covid lingers, the upheaval concerning "Critical Race Theory," and changing guidance on transgender students, the significance of this pronouncement cannot be understated.

In *Ison v. Madison Local School District*, the appellate court reviewed the propriety of several aspects of the District's application of an earlier version of Institute policy 0167.3 "Public Participation at Board Meetings." At issue were (1) the District's preregistration requirement (here, two business days prior to a meeting); (2) the Board's refusal to allow individuals to sign up speakers other than themselves; and, of greater import (3) the decision of the Board President to essentially "shut down" a speaker for expression of views against the District's gun policy (allowing certain staff members to be armed) which were deemed hostile and offensive.

The Plaintiff was originally precluded from speaking at a March, 2018 Board meeting when he failed to register by filling out a "public participation form" within two business days before that meeting. He ultimately did so and was thereafter recognized to speak at the May, 2018 meeting, where he made strong statements against what he believed to be the District's "pro-gun" agenda and for "threatening" school officials to punish student protesters (there had been a walk out during the school day to protest gun violence). He was interrupted in his remarks on two occasions, first for using the word "threatening" in relation to the Board and then to "stop putting words in [the Board's] mouth." Finally, the Board President asked Plaintiff to stop speaking and warned that if he continued, he would be escorted out by security. The speaker concluded his remarks (which lasted under three minutes) and was, in fact, calmly escorted from the room by security.

Plaintiff returned to speak in January, 2019 and attempted to sign up for himself and several others. At that time, the Board refused to recognize anyone other than the Plaintiff, since the others had failed to fill out their own forms.

In his complaint, Plaintiff argued that the policy – and the Board's discretion in implementing it – was unconstitutionally vague and, more specifically, that the restrictions on "personally directed," "abusive," and "antagonistic" statements by public participants allowed for impermissible content-based constraints on protected viewpoint speech. *Editors note: As part of a 2018 review, NCSI had already removed "personally directed" and "antagonistic" from its template.*

While the District Court had granted summary judgment to the school on all claims, upon appeal, the Sixth Circuit took issue only with the Board policy as it was applied to Plaintiff's statements made during the May, 2018 presentation. Recognizing that board meetings with public participation are "limited public forums" for which regulation of speech must be generally unrelated to content and only through "time, place and manner" restrictions, the appellate court ruled that the policy's restrictions on "antagonistic," "abusive," and "personally directed" comments served to prohibit speech simply because it opposes (or "offends") the Board or others in the public in violation of the First Amendment. It is not insignificant that the Court

accessed video of the remarks and challenged the Board President's conclusions that the speech was hostile and abusive, noting that Plaintiff had in fact refrained from personal attacks or vitriol and was focused on his strong opposition to Board's policy on guns and questioning of the Board's motivation.

As such, the Court found not only that the restrictions on abusive, antagonistic and personally directed speech to be facially unconstitutional, but also that their application in this particular instance constituted impermissible viewpoint discrimination.

The Court did let stand the preregistration and "one person, one registration" components of the policy as permissible time, place and manner regulations.

As for Plaintiff's request that the entire policy be struck down as unconstitutionally vague in that the presiding officer's discretion in applying such terms as "reasonable decorum" and the aforementioned terms could "change from day to day," the Court disagreed and limited its decision to the specific invalidation of the terms "abusive," "antagonistic," and "personally directed." In upholding the District Court's grant of summary judgment on this over-arching claim, the Sixth Circuit panel noted that perfect clarity and precise guidance have never been required, even where such regulation restricts expressive activity to some extent.

In no uncertain terms, particularly in light of the current cultural and political divisions within our communities, school boards should be very cautious whenever regulating the content of an individual's speech since such regulation may constitute unlawful censorship or impermissible viewpoint discrimination in violation of the First Amendment. This decision, when seen in the context of the wider societal upheavals, makes it significantly more likely that such regulation will be challenged.

We urge all boards and educational leaders to carefully consider not only NCSI's current revisions to policy, but also to engage in meaningful discussions as to how to apply policy in your public forum if a board of education decides to permit public participation at all. Minimally, parameters and procedures should be discussed with Board counsel.

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TOOLKIT FOR REVIEW AND ADOPTION OF REPLACEMENT POLICY 5722 SCHOOL-SPONSORED STUDENT PUBLICATIONS AND PRODUCTIONS

TO: National Charter Schools Institute Clients

SUBJECT: NCSI Legal Counsel

RE: Toolkit for Review and Adoption of Replacement Policy 5722 - School-Sponsored Student Publications and Productions

FROM: Fall 2021

TOOLKIT

INTRODUCTION

In 2019, The Institute released Policy and Administrative Guideline 7544 – Use of Social Media, which address the use of social media in the school setting by school staff and, to a more limited extent, students. Shortly thereafter, The Institute issued a Toolkit to assist its clients as they navigated the numerous legal issues presented by the topic and to provide guidance to them as they worked through and selected among the myriad number of options presented in the two documents.

The 2019 Social Media Toolkit was the second Toolkit that The Institute developed for its clients; the first one – Toolkit for Development and Adoption of Policy 5722 – School-Sponsored Student Publications and Productions – was released approximately ten years earlier in 2009. With the completion of its first social media policy, The Institute decided to revisit and update Policy and AG 5722 in light of the many technological advances that have occurred since 2009 and which formed the impetus for the creation of the social media policy and guideline. As part of its Summer 2021 Update, The Institute is issuing a replacement policy and a revised administrative guideline concerning school-sponsored student publications and productions.

As with the original Toolkit concerning Policy 5722, this Toolkit seeks to inform and guide you as you take a fresh look at the types of school-sponsored student media that are present in your schools and modify your policy and administrative guideline accordingly.

OVERVIEW

Like its predecessor, this Toolkit presents an overview of applicable laws and cases that impact academies ability to engage in prior review and restraint with respect to school-sponsored student expressive activities. The Toolkit also provides relevant information concerning the options available to Boards of Directors and School Leaders when considering the adoption and/or amendment of their policies and/or guidelines related to school-sponsored student publications and productions. While school officials are generally familiar with student publications such as student newspapers and/or yearbooks and student productions that are broadcast on radio and television, replacement Policy 5722 goes further and encompasses the myriad of newer online electronic forms of school-sponsored student media outlined on page 1 of the Policy (e.g., students' school-related blogs, podcasts, and productions posted on Internet sites such as YouTube).

With the preceding in mind, The Institute urges its clients to carefully consider their options when addressing the evolving student media environment and adopt language that best fits their respective Academy's' needs and mission.

BACKGROUND AND LEGAL ANALYSIS

A. The U.S. Constitution and School Speech

The First Amendment of the United States Constitution provides "Congress shall make no law...abridging the freedom of speech, or of the press...." These prohibitions are applicable to the States and political subdivisions through the Fourteenth Amendment.

B. Student Speech

For our purposes, student speech can be divided into two categories:

1. **Pure Student Speech** (i.e., off-campus student speech and student-initiated speech that happens to occur on school premises). Pursuant to *Tinker v. Des Moines Independent School District* (1969), such speech must be tolerated by the school "unless school authorities have reason to believe that such expression will 'substantially interfere with the work of the school or impinge upon the rights of other students.'" Justice Abe Fortas wrote in *Tinker*, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."¹ The Court majority continued, "in our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect."

In later cases, the Court held that schools need not tolerate on-campus speech that is vulgar or lewd, such as sexually explicit language that is inappropriate in a school setting, *Bethel School District v. Fraser* (1986), or promotes illegal drug use, *Morse v. Frederick* (2007).

Recently, the Court considered a case involving whether school districts have authority to regulate off-campus student speech. In *Mahoney Area School District v. Levy*, Case No. 20-255 (2021), the Court reaffirmed a school's special interest in regulating on-campus student speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others," but concluded that the leeway the First Amendment grants to schools with respect to on-campus student speech is diminished when it comes to off-campus speech. In particular, the Court held that while the special characteristics that give schools additional license to regulate student speech do not always disappear when the speech takes place off campus, they are significantly curtailed. Consequently, students have broad First Amendment rights when it comes to off-campus speech; the Court noted that schools themselves have an interest in protecting a student's unpopular expression, especially when the expression takes place off school property, because America's public schools are the nurseries of democracy.² As such, the Court affirmed a student's right to engage in unfettered online speech/expression, using the student's personal cellphone, when it appears outside of school hours from a location outside the school, the student does not identify the school in the post and does not target any member of the school community with vulgar or abusive language, and the audience for the message consists of a private circle of the students' friends.

2. **School-Sponsored Speech** (i.e., student speech that a school affirmatively promotes as opposed to speech that the school merely tolerates). Pursuant to *Hazelwood School District v. Kuhlmeier* (1988), "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school" constitute "school-sponsored" speech over which the school may exercise editorial control, so long as its actions are "reasonably related to legitimate pedagogical concerns."

C. Identifying the Forum(s) Involved

In order to determine whether prior review and/or restraint (i.e., censorship/suppression) of student speech may occur, one needs to know the nature of the forum in which the speech occurs.

The U.S. Supreme Court recognizes three types of forums:

1. **Nonpublic Forum** – a forum reserved by the government for its intended governmental purpose (e.g., a journalism class that is limited to serving as a supervised learning experience for journalism students). The government can control access to a nonpublic forum “based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral” (i.e., restrictions on speech need only be “reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view”). Thus, school officials are entitled to regulate in a reasonable manner the content of student media that constitutes a nonpublic forum.

With respect to nonpublic forums, the U.S. Supreme Court ruled in *Hazelwood* that the First Amendment does not prohibit school officials from exercising editorial control over “the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” Legitimate pedagogical concerns are not confined to academic issues, but rather include the teaching by example of the shared values of a civilized social order, which consists of not only independence of thought and frankness of expression but also discipline, courtesy/civility, and respect for authority.

It is clear that nonpublic forum school-sponsored speech can be censored if it is “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audience.

If the Academy chooses **Option D** in the replacement version of Policy 5722, a nonpublic forum will be created for all school-sponsored student media published or presented in the Academy. The replacement policy specifies that student media related to classes that are not directly associated with student publications/productions are almost always nonpublic forums.

2. **Limited Public Forum**³ – a forum that the government opens “[1] for use by the public at large for assembly and speech, [2] for use by certain speakers, or [3] for the discussion of certain subjects.” A limited public forum is created when the government gives its property/resources “for indiscriminate use by the general public, or by some segment of the public” for assembly and speech. The government may also designate a forum for a limited purpose such as use by certain speakers or the discussion of specific topics. A school facility or property may be deemed to be a limited-purpose public forum if the school authorities, “by policy or practice,” open the facility or property for indiscriminate use by the general public, or by some segment of the community (e.g., student reporters/editors, members of a journalism class, or the student body in general). Like traditional public forums, the government may impose content-based restrictions on speech only if they are necessary to serve a compelling state interest and are narrowly tailored to that end.

If the Academy chooses **Options A, B or C** that are presented in the replacement version of Policy 5722, the Academy will be creating a limited purpose public forum for some, or all, school-sponsored student publications and productions. The primary difference between **Option B** and **Option C** is that **Option C** allows for limited prior review/restraint on the basis of four identified criteria for those student publications and productions identified as limited-purpose public forums. The significant difference between **Option A** and **Options B or C** is that **Option A** designates all school-sponsored student media to be limited-purpose public forums. Again, the replacement policy differentiates school-sponsored student media from student media that originates in classes that are not directly associated with student publications/productions. The latter are almost always nonpublic forums. Critically, when the Academy designates a student publication or production to be a limited-purpose public forum student journalists, content-creators, and performers are expected to exercise responsible editorial control over the content of the publication/production and to produce a final product that is consistent with professional journalism/theatrical/broadcast standards.

3. **Traditional Public Forum** – “a place, which by long tradition or by government fiat has been devoted to assembly and debate.” The village square, a street corner, or a public park

are examples of a traditional public forum. In a traditional public forum, “the rights of the state to limit expressive activity are sharply circumscribed.” The government may only enforce content-based restrictions if they are narrowly drawn to serve a compelling interest, and may enforce content-neutral time, place, and manner restrictions only if they are “narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” Public elementary and secondary schools are generally not viewed as traditional public forums.

None of the four options that are presented in Policy 5722 create a traditional public forum.

D. Factors for Determining the Forum Involved

Courts rely upon a two-part test to assess the type of forum at issue: (1) whether the school intended to create a limited-purpose public forum; and (2) the context in which the forum is found.

Courts consider the following factors when determining the nature of the forum:

1. Do the students publish/perform the publication (e.g., newspaper)/production as part of the High School curriculum? If yes, it points toward a nonpublic forum;
2. Do the students receive credits and grades for completing the course? If yes, it points toward a nonpublic forum;
3. Does a faculty member oversee the publication/production? If yes, it points toward a nonpublic forum. In answering this question, courts consider not only whether the expectation is that the faculty advisor exercises control over the student publication/production, but also whether such control is actually exercised;
4. Did the school deviate from its policy of producing the student media as part of the educational curriculum? In answering this question, courts consider the following:
 - (a) Whether the student newspaper allows the publication of letters to the editor and/or guest columns from persons outside the student staff. If yes, it points toward a limited-purpose public forum.
 - (b) Who has the right/authority to approve such columns and letters? If it is students instead of the faculty advisor/administration, it points toward a limited-purpose public forum.
 - (c) Whether the paper is distributed solely to the student/school population or whether it is distributed to the community as a whole, including whether portions of or the entire student publication is reprinted in the community’s general circulation newspaper. If it is the former (i.e., the distribution is limited to the school community), it points toward a nonpublic forum. If it is the latter (i.e., the distribution is to the general public), it points toward a limit-purpose public forum;
5. The degree of actual control/review the administration and the faculty advisor exercise. The more control (i.e., routine, systemic prior review) they exercise, the more it points toward a nonpublic forum;
6. Applicable written policy statements of the Board of Directors – In addition to looking at written policies, courts also examine curriculum guides, course descriptions, and the masthead of the publication to determine what the board’s intention is with regard to that medium. If the course descriptions or curriculum guidelines indicate that the purpose of the publication/production is to provide general news and not just serves as an educational tool, the court often will find a limited-purpose public forum exists. Other relevant factors are whether advertising revenue is generated by the publication/production, and if so, whether such revenue is used to cover the printing/production costs associated with the publication/production; and

7. The nature of the property at issue and its compatibility with expressive activity.

E. Intent is Critical

Courts generally recognize that the “government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a non-traditional forum to public discourse.” As such, courts will not presume a government converted a nonpublic forum into a limited public forum unless “by policy or by practice” the government demonstrated a “clear intent” to do so

1. Thus, as long as the school has not intentionally created a limited public forum by policy or by practice, school-sponsored student media is considered a non-public forum and the school may impose any “reasonable, non-viewpoint-based restriction on the students’ speech exhibited therein.
2. For example, a non-viewpoint-based restriction would be the prohibition of any articles about abortion in a school-sponsored publication; however, if school authorities forbid the publication of pro-choice articles but permit the publication of anti-abortion articles, such a decision would be subject to challenge in court, and it is unlikely the school would prevail.

F. Extent of Academy Control

The case law makes clear that courts will closely examine the nature of a publication when determining whether it is a nonpublic forum, or a limited-purpose public forum. In particular, they will examine whether the publication is prepared as part of a graded and credited class, and the level of actual review conducted by the faculty advisor and/or administration.⁴ Courts do not look favorably on situations where faculty advisors and/or administrations have refrained for years from engaging in any prior review of a publication and then suddenly exercise prior restraint when the publication addresses a controversial topic.

G. Not All Speech is Protected

Importantly, unprotected speech (such as defamation, libel, obscenity, and speech harmful to juveniles) falls outside the reach of the First Amendment and is not protected against prior review and restraint regardless of the type of forum that has been established pursuant to board policy and/or practice.

RECOMMENDED PROCEDURES FOR DEVELOPMENT AND ADOPTION OF A REPLACEMENT VERSION OF POLICY 5722

A. Involve All Academy Stakeholders

When revising Policy 5722, The Institute urges its clients to involve all Academy stakeholders. Boards of Directors should take an active role, as a committee of the whole, in the consideration and assessment of its options when adopting a replacement version of Policy 5722. It is **not** recommended that work on this issue be solely delegated to the Board’s policy committee. However, Boards may elect to establish a special committee to tackle the topic of student publications (even resurrecting the special committee it may have created to assist in development and adoption of Policy 7544 – Use of Social Media) in order to broaden the scope of the participants in the committee beyond those who normally make-up the Board’s policy committee; such a special committee could provide feedback and recommendations to the Board as a whole after studying the issues presented by school-sponsored student publications and productions.

As part of the process, the School Leader should be charged with carefully investigating and delineating the Academy’s current practices with respect to school-sponsored student publications and productions. Upon adoption of the replacement policy, the School Leader should promulgate a guideline that corresponds with the replacement policy (see revised AG 5722).

B. Recommended Process

The Institute recommends School Leaders use the following process as they work through this topic

and before they begin to consider the options listed in replacement Policy 5722:

Step 1. Identify what school-sponsored student publications/productions are currently being published/produced within the Academy (i.e., identify all school-sponsored student media that fall within the scope of Policy 5722).

When surveying current school-sponsored student media, it will be helpful to have a copy of the survey completed in 2009-2010 when this policy was last updated.

It would also be helpful to have a copy of the survey the Academy completed when it developed and adopted Policy 7544. The information gathered in that process may be of use in making sure you do not overlook any newer forms of student publications and productions.

Step 2. Determine the level of prior review/restraint that is currently taking place with respect to each of the school-sponsored student media. As noted above, reality may be different than the general understanding or expectation (i.e., what is currently contained in board policy) of the Board or School Leader. In conducting this analysis, the mission of each publication and production should be clearly delineated.⁵

The School Leader should solicit input/feedback on this topic from the various stakeholders before adopting a replacement policy. Consideration of community values and preferences about the balance between Freedom of Speech and tolerance for controversial subjects are an integral part of this process.

Step 3. Select the Intended Forum Applicable to Each School-Sponsored Student Publication/Production.

The greater the level of prior review and restraint that a Board authorizes the faculty and administration to exercise, the more it will need to confirm, by policy and by practice, that it is maintaining a nonpublic forum. If, on the other hand, the board is willing to sanction greater freedom to the students developing the publication(s)/production(s), the Board will want to affirmatively create a limited-purpose public forum.

(a) This subject engenders heated opinion by community members on both sides of the topic. For this reason, we recommend the public have an opportunity to provide feedback before the Board adopts one of the options.

(b) It is also important to recognize that, given the hallowed place the First Amendment has in American society, there are many organizations, including but not limited to the Student Press Law Center ("SPLC"), that will take up the cause of a student publication when a Academy decides to exercise prior review and restraint, when previously it had not done so. It is, therefore, absolutely critical – if the Academy intends to maintain a nonpublic forum – that it regularly and continually exercises its prior review authority with respect to a given publication/production and not let it slip into a situation where for years at a time there is no prior review, but when one specific topic comes up that is controversial, at that point in time the school staff and officials decide to suppress/censor it.

(c) The critical decision that must be made in developing the policy is whether the school-sponsored student publication(s)/production(s) are to be designated as nonpublic forums or limited-purpose public forums. There are strong arguments that can be raised in support of each.

C. The Case for Nonpublic Forums

A compelling argument in favor of the nonpublic forum option (**Option D** in the replacement version of Policy 5722) is that the Academy retains the right to determine the style and content of the school-sponsored student media and who has an opportunity to speak in the media, as long as it acts in a viewpoint neutral manner. Supreme Court Justice Byron White (writing for the majority in *Hazelwood*) expressly recognized the importance of permitting schools to retain control over the content of its school-sponsored student publications/productions:

A school must be able to set high standards for the student speech that is disseminated under its auspices – standards that may be higher than those demanded by some newspaper publishers or

*theatrical producers in the "real" world – and may refuse to disseminate student speech that does not meet those standards. * * **

In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school.

Justice White further wrote:

Educators are entitled to exercise greater control...of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school.

As such, "a school need not tolerate student speech that is inconsistent with its basic educational mission." Previously, the Supreme Court recognized in *Bethel School District v. Fraser* (1986), that schools must balance students' freedoms with the educational purpose of teaching good behavior to students: "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior." William Coats, the attorney who represented the Bethel School District in *Fraser*, echoed this sentiment: "School officials have the responsibility to maintain an atmosphere that is conducive to the school setting. Schools have to maintain order and control and school officials can teach students proper decorum in different settings."⁶

One difficulty with **Option D** is that academies need to consistently (i.e., routinely and systematically) exercise their right of prior review/restraint in order not to jeopardize a publication's/production's status as a nonpublic forum. So long as the Academy acts in a uniform manner in maintaining the nonpublic forum, it should be in a defensible position if challenged in court for some act of prior review and/or restraint. On the other hand, if a academy engages in arbitrary or sporadic prior review/restraint its practices may be subject to legal challenge.

Another argument regularly raised in opposition to academies maintaining nonpublic forums and engaging in prior review/restraint is that such an approach can be viewed as if the Academy's "heavy-hand" is preventing students from learning about the First Amendment Rights that they will be exercising after they leave school. David L. Hudson, Jr. articulated this argument as follows: "Many free-speech experts believe that students will not learn the lessons of democracy if they cannot experience firsthand the freedom to make their own choices. Therefore, school officials, politicians, teachers and parents should balance legitimate safety concerns with the constitutional right of freedom of speech."⁷

D. Limited-Purpose Public Forums

A primary argument in support of limited-purpose public forums (**Options A, B, and C** in the replacement version of Policy 5722) is that it demonstrates a respect for the First Amendment and a trust being extended to the members of the student body who are involved in the publication/production. Such an approach can, in turn, serve as an educational opportunity for students to learn about the responsibilities that come along with the rights afforded by the U.S. Constitution. Mark Goodman, a former Executive Director of the SPLC, summarized this rationale as follows: "One of the primary purposes of public education is to teach students the values of democracy. Students can only learn this lesson if they can operate in an environment that fosters the spirit of democracy."

Supreme Court Justice William Brennan (writing in dissent in *Hazelwood*) also raised this argument stating: "Such unthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees."⁸

Likewise, the Vision Statement for the national initiative entitled *First Amendment Schools: Educating for Freedom and Responsibility* (which is co-sponsored by the Association for Supervision and Curriculum Development (ASCD) and the First Amendment Center) expands upon this sentiment:

Today the need to sustain and expand our experiment in liberty is made more urgent by the challenge of living with our deepest differences in a diverse and complex society. The need to commit ourselves as a people to the rights and responsibilities that flow from the First Amendment has never been more vital – or more difficult. At a time in our history when we most need to affirm what we share as citizens across our differences, the ignorance and contention now surrounding the First Amendment threaten to divide the nation and undermine our freedom.

The key place to address this challenge is in our schools, the institutions most responsible for transmitting civic principles and virtues to each succeeding generation. Schools must not only teach the First Amendment; they must also find ways to model and apply the democratic first principles that they are charged with teaching. The rights and responsibilities of the First Amendment provide a much-needed civic framework for reaffirming and renewing the civic aims of education.

Recognizing the importance of student's First Amendment rights, to date, fifteen states (Arkansas, California, Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Nevada, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington) have adopted anti-*Hazelwood* laws, which expressly limit the amount of censorship permitted in public high schools.⁹

Some of the many reasons often referenced in support of such laws and the granting to students of control over the style and content of school-sponsored student media are:¹⁰

1. It will teach student the importance of the Constitution and Bill of Rights, and will encourage them to honor and embrace these ideals as they grow into mature adults;
2. It will teach student readers that tolerance of other viewpoints is expected;
3. It will provide a structured place for students to have a voice without having to resort to such alternatives as underground newspapers and websites established for the purpose of publishing censored materials;
4. It will demonstrate to students and the local community that the school not only teaches the concepts put forth in the Constitution and Bill of Rights but also puts them into practice; and
5. It will lessen the legal financial liability for content of the student media for the school and the administrator.¹¹

Additionally, creation of a limited-purpose public forum requires the Academy to ensure that the faculty advisor/instructor assigned to the class/activity takes proactive steps to educate the students, prior to publishing/producing their student media, about what is legally protected speech and what is unprotected speech (e.g., speech that is defamatory, libel, profane, obscene, or otherwise harmful to juveniles). The students participating in a limited-purpose public forum need to be taught to understand that with the privilege of freedom of expression and the press comes the responsibility to use those rights ethically and legally.

The primary argument against creation of a limited-purpose public forum for school-sponsored student media is that controversial topics may be addressed in the publication/production. As such, there is always a chance that a segment of the community/public will be displeased that such topics are being covered in a school-sponsored student publication/production.¹²

E. Post-Publication Consequences

Policy 5722 addresses prior review of a publication/production – i.e., it controls whether a school has authority to prevent the publication/performance of a student publication/production based on its content; it does not, however, prevent a school from imposing post-publication/production consequences upon students who cross the line into the area of inappropriate or unprotected speech. It simply allows the speech to occur and the consequences (i.e., discipline) to be imposed thereafter.

Overview and Explanation of Content and Options Presented in Policy 5722 and Related Recommendations

As you review the options presented in the template policy, we recommend you have copies of the following policies easily accessible – Policy 7544 – Use of Social Media,¹³ Policy 8315 – Information Management, and Policy 8330 – Student Records – so you can make sure any overlapping or related content is consistent among the documents.

Replacement Policy 5722 begins by defining “school-sponsored student media” and takes care to include all student publications regardless of medium. Additionally, given the expectation that Boards of Directors would always intend for classes to be non-public forums, the definition excludes student expression related to classes that are not directly related to student publications/productions.

The first set of options addresses whether the board intends to include various forms of online communication, including postings to Social Media, as forms of covered student publications. The Board can either select a blanket prohibition or adopt language that specifies various forms of online communication, which could expressly include postings to social media.

Similarly, the term student production is defined, and the Board will need to determine whether to include Social Media in the definition.

If the Board includes Social Media in either or both of the definitions concerning student publications and/or student productions, the board needs to include the language concerning complying with Policy 7544 – Use of Social Media and Policy 7540.02 – Web Accessibility, Content, Apps, and Services.

The Board next needs to select the appropriate options concerning the definition of academy community.

The following paragraph refers to the Children’s Internet Protection Act’s definition of material that is “harmful to minors.” The CIPA definition, which can be found in Policy 7540.03 – Student Technology Acceptable Use and Safety, provides the term means “any picture, image, graphic image file, or other visual depiction that – (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.”

The introductory section of the policy next turns to expressly stating that student expression related to classrooms and/or educational settings not otherwise associated with school-sponsored student publications/productions are nonpublic forums; meaning that such student expression is subject to being regulated for legitimate pedagogical school-related reasons. This section of the policy concludes by offering five options from which the board must select concerning setting limitations on the publishing or performance of nonpublic forum student expression.

The policy then next turns to the primary options that board will need to select – **Options A, B, C, or D**. You may notice that The Institute has reversed the options from what was presented in the original policy. This change was intentional because given the increasing use of online forms of communication – including Social Media – it seemed increasing unlikely that a school board would intentionally make all forms of school-sponsored student media a nonpublic forum. For this reason, the policy now begins with an option (**Option A**) that makes all school-sponsored student media a limited-purpose public forum that can be generally published/performed outside the school community. Under this option that are a few truly optional sections that a board may select or not.

Recognizing that many boards will not be comfortable with such a permissive option, the next two options (**Option B** and **Option C**) offer the Board the opportunity to designate some student publications/productions as limited-purpose public forums and others as nonpublic forums. The difference between **Option B** and **Option C** is **Option B** specifically designates certain student media to be limited-purpose public forums and respects the full meaning of such a designation, while **Option C** also specifically designates certain student media to be limited-purpose public forums but retains the authority for a school official to engage in limited and consistent prior review/restraint on the basis of four identified reasons. All other forms of school-sponsored student publication/production are designated as nonpublic forums, which

are subject to routine prior review and restraint. With respect to both **Option B** and **Option C**, the board will also need to select from one of five options concerning setting limitations on the publishing or performance of forum student expression – i.e., whether it may be published/performed solely to members of the school community or whether, under certain circumstances, it may be published/performed to the general public.

As noted above, the final option (**Option D**) is the most restrictive; it provides that all school-sponsored student media shall be a nonpublic forum. Again, however, the Board has five options from which to choose whether the student publications/productions may be published/performed solely to members of the academy community or whether, under certain circumstances, one or more of them may be published/performed to the general public.

Given the significance of the decisions that the Board will be making when it selects either **Option A**, **Option B**, **Option C**, or **Option D** (including the applicable internal options that apply to **Options B, C** or **D**), it may want to consult with local counsel to address any additional questions it may have concerning the First Amendment implications associated with each Option. This may be particularly true with respect to determining the type of forum the Board may want to apply to some of the newer mediums that may now make up a larger number of the school-sponsored student publications/productions. Following **Options A – D**, the policy turns to a few optional paragraphs. The first addresses who will be responsible for monitoring comments posted to Social Media that has been designated as school-sponsored student media. The second one addresses the board's ability to discipline a student who engages in impermissible publication/performance of unprotected speech.

The final set of options address advertising as it relates to school-sponsored student publications/productions. The Board must select one of the three main options offered.

Unlike the policy, the template administrative guideline does not contain a lot of options that “must” be selected. Instead, the AG offers the School Leader an opportunity to tailor the document to truly fit the Academy's current or intended practices. Nevertheless, there are a few places where an option has to be selected if the policy includes certain content. For example, if a school-sponsored student media is subject to prior review and restraint, the School Leader needs to designate which school official(s) or staff member will be responsible for conducting the review/restraint. The document also requires the School Leader provide some details concerning the timing associated with a publication/production being submitted for review and the timing by which the review will be completed.

The primary addition to the administrative guideline comes toward the end of the document (following the section that addresses the duties of faculty advisors and assistant advisors) where new language is offered that outlines a process for individual(s) to follow when monitoring comments posted to social media that has been approved for use as school-sponsored student media.¹⁴ The first set of options provide for either students or staff to monitor comments to verify they are age-appropriate, comply with rules for use of the forum, and do not contain unprotected speech. Comments that violate any of the preceding requirements will be removed. The AG also affords the person(s) removing the comment with the ability to impose further consequences on the offending poster – i.e., restricting, suspending, or terminating the individual's ability to post comments in the future. The guideline delineates specific procedures that must be followed if a person's right to post future comments is going to be restricted, suspended, or terminated. Finally, the AG sets forth optional language that addresses how students or staff charged with deciding whether to publish a submitted comment will fulfill this responsibility.

TRAINING

While the nature and scope of the professional development that is appropriate and necessary for staff related to this topic is beyond the purview of this Toolkit (which is focused on facilitating academies ability to tailor the template replacement Policy 5722 and revised AG 5722 to their respective needs and intentions), The Institute would be remiss if it did not at least briefly comment on the critical importance associated with training staff on the content of these two documents. In order for this policy and guideline to be effective, staff need to be trained on the applicable legal requirements associated with their roles in overseeing and implementing the policy and administrative guideline in the manner detailed in the documents and as intended by the Board. Local counsel may be of assistance in helping the Academy to develop its training materials.

As with so many policies and guidelines, the district's ability to enforce the terms of the documents and hold

staff and students accountable for appropriate student expression through school-sponsored student media, is dependent upon the staff and school officials being informed of and trained related to the requirements set forth in the policy and guideline. When establishing the training program, the School Leader should consider who needs to be trained, the scope of the training (i.e., the topics that all employees need to be trained on and subjects that are unique to specific categories of employees), and how often the training should take place.

This publication is intended as general information and not legal advice. No attorney-client relationship exists.

¹In *Tinker*, “[t]he record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred.”

²The Court acknowledged that academies retain a legitimate interest in regulating students’ off-campus speech when that speech involves serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers; or participation in other online school activities, and breaches of school security devices.

³Also known as “limited-purpose public forum” or “designated public forum.”

⁴While courts will consider the content of board policies, if the policy has not been uniformly enforced and implemented, the courts will rely upon the maxim that “actual practice” speaks louder than words in determining whether the government intended to create a limited public forum.

⁵In his 2007 publication entitled, “Prior Review in the High School Newspaper: Perception, Practices, and Effects,” Joe Dennis reports that some of the often-mentioned missions for high school newspapers are: forum for student expression; informational publication for student body; public relations tool for the school; venue for developing writing skills; and venue for developing critical thinking skills.

⁶Commonly cited reasons for engaging in prior restraint: (a) content deemed too mature for students; (b) content deemed too critical of administration; (c) content deemed too critical of students; (d) article deemed disruptive to the school’s educational mission; (e) article likely to be perceived embarrassing to the school; (f) article likely to generate bad publicity for the school; (g) article not well-researched/contained factual omissions; (h) grammatical errors contained in the article; and (i) public will mistakenly interpret the article as a school endorsement. From Joe Dennis’s publication entitled: “Prior Review in the High School Newspaper: Perceptions, Practices, and Effects” (2007).

⁷ “The Silencing of Student Voices: preserving free speech in America’s schools” [published by the First Amendment Center], p. 6.

⁸The Supreme Court first recognized students’ rights in *West Virginia v. Barnette* (1943). Specifically, Justice Robert Jackson stated that the Court must ensure “scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”

⁹Most journalism education groups in the country have condemned the practice of administrative prior review as both educationally and journalistically unsound.

¹⁰The following list is excerpted from Dianne Smith’s article entitled: “Advantages to Ending Prior Review and Censorship” in *Principal Leadership* (March 2001).

¹¹Specifically, courts have ruled that schools are responsible for the content of their student publications when administrators engage in prior review or other forms of content control but are not responsible for the content of those student publications that are not subject to prior review or censorship. Additionally, students may have more ability to reject advertisements than schools (because it is not considered state action).

¹²Justice Brennan (again writing in dissent in *Hazelwood*) looked at the issue of public discomfort with controversy and concluded that the censorship in *Hazelwood* was indefensible, and “aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the ‘mere’ protection of students from sensitive topics.”

¹³ For those Boards that did not initially elect to adopt Policy 7544 – Use of Social Media, The Institute encourages them to reconsider this decision; events that have transpired since the social media policy template was released two years ago have only heightened the need for boards to proactively address and state how they want their districts to use social media to communicate with stakeholders. Thus, while the Board is going through the above-described recommended process of surveying its diverse forms of school-sponsored student media, it could also use this as an opportunity to identify the various social media platforms that are currently in use throughout the Academy which is a critical step in developing and/or updating a social media policy.

¹⁴ If a Board selects **Option D** in the Policy (i.e., all student publications/productions are nonpublic forums), there should be no need to add the offered language because the Board will not be allowing comments to be submitted.

Fall 2021 Board Policies Summary Table

Board Policies

Board Operating Policy/ Policy No.	Policy Title	New/ Revise/ Replace/ Delete	Legally Required, Legal Content or Best Practice	Summary
Regular Spring Update				
0100	Definitions	Revised	Legally Required	<p>The definition of "Voting" has been revised to reflect the change in statute regarding allowable exceptions to "in person" voting at meetings of the Board. After December 31, 2021, only the military duty exception remains. The Board chair should only approve a request that complies with the law.</p> <p>This revision should be adopted to maintain accurate policies.</p>
0167.3	Public Participation at Board Meetings	Revised	Legally Required	<p>Revisions to this board operating policy are in line with the recent decision of the U.S. District Court for the 6th Circuit. Some of the optional language has been deleted, so as to remove the authority of the presiding officer at board meetings where public participation is permitted to regulate speakers on the basis of comments that are "abusive," "frivolous," and/or "harassing." These measures are intended to prevent academies from engaging in viewpoint discrimination for remarks that are oppositional in nature, perceived as hostile to the direction of the board and/or merely offensive. In addition, options (which were deemed acceptable regulations by the Court) have been added for preregistration, including prohibiting individuals from signing up to speak for others. Finally, there are options for academies who livestream meetings to determine whether or not they will facilitate public participation remotely.</p> <p>These revisions and options should be considered for adoption.</p>
3120	Employment of Teachers and Administrators	Revised	Legally Required	<p>This policy has been revised to reflect recent changes in certification/licensure statutes and regulations. Outdated "highly qualified" language has been deleted.</p> <p>Revisions to this policy should be adopted in order to maintain accurate policies.</p>
5722	Academy-Sponsored Publications and Productions	Replacement	Legal Content	<p>This replacement policy is proposed because of the wide variety of academy-sponsored student media that are present in academies today and due to the many technological advances that have occurred.</p> <p>The policy, as before, provides several options available to the Board regarding the type of forum that will be provided and what level of review and regulation will occur. The language in the policy has been modified to encompass the newer online electronic forms of academy-sponsored student media. The policy provides four options to consider for the classification and regulation of such publications and production.</p>

				<p>A toolkit has been provided to assist academy staff in their review of the replacement policy and revisions to the administrative guideline.</p> <p>The recommendations made in this policy should be carefully considered when addressing the evolving student media environment and language should be adopted that best fits the Academy's needs.</p>
6114	Cost Principles – Spending Federal Funds	Revised	Legal Content	<p>This policy has been revised to provide greater detail in allowability guidance for academies regarding expenditure of federal funds. There has been a significant increase in funding for academies through the third pandemic stimulus bill dubbed the American Rescue Plan, providing \$122 billion in Elementary and Secondary School Emergency Relief (or ESSER III) funds. While the policy has accurately referenced definitions and restrictions cited in various sections of 2 C.F.R. 200, greater specificity has been requested by program reviewers and auditors.</p> <p>Revisions to this policy should be adopted in order to maintain accurate policies.</p>
6152	Student Fees, Fines, and Supplies	Revised	Best Practice	<p>This policy has been revised to provide the authorization to allow for online payment of fees, fines, and charges.</p> <p>This revision is recommended for adoption if online payment is allowed.</p>
7450	Property Inventory	Revised	Legally Required	<p>A drafting note has been added to this policy noting the federal threshold of \$5,000 for differentiating between supplies/materials and a capital expenditure for equipment purchase. See the note on Policy 6114 - Cost Principles - Spending Federal Funds.</p> <p>This policy may need to be revised if the Academy's current policy uses an equipment/inventory threshold higher than \$5,000.</p>
8310	Public Records	Revised	Legally Required	<p>This policy has been revised to comply with the obligation not to disclose the address of a student or an employee who provides the Academy with notice that they have received a participation card issued by the attorney general under the Address Confidentiality Program Act.</p> <p>These revisions should be adopted in order to remain compliant with Michigan law.</p>
8330	Student Records	Revised	Legally Required	<p>This policy has been revised to reflect the change in federal rule (2021 Solomon Amendment: Subtitle C—General Service Authorities and Correction of Military Records SEC. 521). If the Academy issues student email addresses, it must release such email addresses to military recruiters as part of directory information, as requested, unless prohibited by student or parent request in writing.</p> <p>This revision should be adopted in order to maintain accurate policies.</p>

Board Policies

REVISED POLICY – FALL 2021

DEFINITIONS

Whenever the following items are used in these () bylaws and policies () bylaws, policies and administrative guidelines, they shall have the meaning set forth below:

Academy

The Public School Academy

Administrative Guideline

A policy-based statement, usually written, outlining and/or describing the means by which a policy should be implemented and providing for the management cycle of plan, act, and assess or evaluate.

Apps and Services

Apps and services are software (i.e., computer programs) that support the interaction of personal communication devices (as defined in Bylaw 0100) over a network, or client- server applications in which the user interface runs in a web browser. Apps and services are used to communicate/transfer information/data that allow students to perform actions/tasks that assist them in attaining educational achievement goals/objectives, enable staff to monitor and assess their students' progress, and allow staff to perform other tasks related to their employment. Apps and services also are used to facilitate communication to, from and among and between, staff, students, and parents, Board members and/or other stakeholders and members of the community.

Authorizer or Authorizing Body

The governing boards of four different types of public educational entities (school boards, intermediate school boards, community college boards, governing boards of state public universities), empowered to issue contracts for the creation of public school academies, subject to certain limitations. The Revised School Code designates the authorizer or authorizing body.

Board

The Board of Directors. (See Charter Contract Bylaws). Depending on context to the extent lawfully delegated, "Board" may refer to the Designee thereof.

Board Operating Policy

Rule of the Board for its own governance. (See Charter Contract Bylaws)

Charter Contract

The executive act taken by an authorizing body, authorizing a public school academy. Subject to the constitutional powers of the state board and applicable law, the charter contract is the written instrument executed by an authorizing body, conferring certain rights, franchises, privileges, and obligations on a public school academy.

Due Process

An established, rule-based procedure for hearing evidence, based on prior knowledge (a posted discipline code), notice of offense (accusation), and the opportunity to respond. Due process may require consideration of statutorily mandated factors, the right to counsel and/or confrontation or cross examination of witnesses, depending upon the situation.

Educational Service Provider (Educational Management Organization or Charter Management Organization)

An entity that enters in to a management agreement with a Public School Academy.

Educational Service Provider Employee

All employees of the Educational Management Organization, both certificated and non-certificated, working in the school who provide service to the Academy's program or administration.

Family Member

"Family member" means a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child; a person's child or child's spouse; or a person's parent or parent's spouse, and includes these relationships as created by adoption or marriage. (See Bylaw 0144.3)

Full Board

Authorized number of voting members entitled to govern the Academy, as established by the authorizer.

Information Resources

The Board defines Information Resources to include any data/information in electronic, audio-visual or physical form, or any hardware or software that makes possible the storage and use of data/information. This definition includes but is not limited to electronic mail, voice mail, social media, text messages, databases, CD-ROMs/DVDs, web sites, motion picture film, recorded magnetic media, photographs, digitized information, or microfilm. This also includes any equipment, computer facilities, or online services used in accessing, storing, transmitting or retrieving electronic communications.

Management Agreement

An agreement to provide educational, administrative, management, instructional services or staff to a Public School Academy.

May

The word used when an action by the Board, or its designee, is permitted, but not required.

Meeting

Any gathering attended by, or open to, all of the members of the Academy's Board of Directors. A meeting is held with the intent on the part of the members of the body present to discuss or act as a unit upon the specific public business of that body.

Parent

The natural, adoptive, or surrogate parent(s) or the party designated by the courts as the legal guardian or custodian of a student. Both parents will be considered to have equal rights, unless a court of law decrees otherwise and a copy of such order is on file with the Academy.

Personal Communication Devices

Personal communication devices ("PCDs") include computers, laptops, tablets, e-readers, cellular/mobile phones, smartphones, () telephone paging devices (e.g., beepers or pagers), () and/or other web-enabled devices of any type.

Policy

A general statement written by the governing Board that defines its expectations or position on a particular matter. A policy also authorizes appropriate action that must or may be taken to establish and/or maintain the Board's expectations.

President

The official leader of the Board. In addition to the responsibilities listed in "Duties of President," contained in the Charter Contract Bylaws and Articles of Incorporation, the President has the authority to sign, execute, and acknowledge, on behalf of the Board, all deeds, mortgages, bonds, contracts, leases, reports, and all other Board-approved documents.

Relative

The mother, father, sister, brother, spouse, parent of spouse, child, grandparents, grandchild, or dependent in the immediate household, as defined in the policy covering this subject.

School

The Academy or individual building of the Academy.

☐ **School Leader or** ☐ **Principal or** ☐ **Director or** ☐ **Superintendent or**
☐ Other

The administrator employed by the Educational Service Provider (or Board) who is responsible for the daily operations of the Academy and the implementation of the policies of the Board. The School Leader can delegate appropriate duties assigned by the Educational Service Provider (or Board). The School Leader must hold an appropriate school administrator certificate or permit.

Secretary

The chief clerk of the Board of Directors. (See Charter Contract Bylaws.)

Shall

This word is used when an action by the Board or its designee is required. (The words *will* and *must* also signifies a required action.)

Social Media

Social media are online platforms where users engage one another and/or share information and ideas through text, video, or pictures. Social media consists of any form of online publication or presence that allows interactive communication, including, but not limited to, text messaging, instant messaging, websites, web logs ("blogs"), wikis, online forums (e.g., chat rooms), virtual worlds, and social networks. Examples of social media include, but are not limited to, Facebook, Facebook Messenger, Google Hangouts, Twitter, LinkedIn, YouTube, Flickr, Instagram, Pinterest, Skype, and Facetime. Social media does not include sending or receiving e mail through the use of Academy-issued e-mail accounts. Apps and web services shall not be considered social media unless they are listed on the Academy's website as Academy-approved social media platforms/sites.

Student

A person who is officially enrolled in the Academy.

Support Employee

An employee who provides support to the Academy's program, professional staff, and Administration, whose position does not require professional certification.

Technology Resources

The Board defines Technology Resources to include computers, laptops, tablets, e-readers, cellular/mobile telephones, smartphones, web-enabled devices, video and/or audio recording equipment, projectors, software and operating systems that work on any device, copy machines, printers and scanners, information storage devices (including mobile/portable storage devices such as external hard drives, CDs/DVDs, USB thumb drives and memory chips), the computer network, Internet connection, and online educational services and apps.

Treasurer

The chief financial officer of the Academy. (See Charter Contract Bylaws)

Vice-President

The Vice-President of the Board of Directors. (See Charter Contract Bylaws)

Voting

The act of taking a vote at a meeting of the Board of Directors. Except to accommodate the absence of any member of the Board due to military duty or for any other purpose permitted by law, Board members must be physically present to have their vote officially recorded in the Board minutes.

Citations to Michigan Compiled Laws (MCL) are shown as MCL followed by the Section Number (e.g., MCL 380.1438). Citations to the Michigan Administrative Code are prefaced AC Rule (e.g., AC Rule R380.221). Citations to the Federal Register are noted as FR, to the Code of Federal Regulations as CFR, and to the United States Code as USC.

FOR BOARD APPROVAL

REVISED POLICY – FALL 2021

MEETINGS

0161 **Parliamentary Authority**

The parliamentary authority governing the Board of Directors shall be

() Robert's Rules of Order, Newly Revised

() _____

in all cases in which it is not inconsistent with statute, administrative code, or these bylaws,

() or the rules of order of this Board.

0162 **Quorum**

A quorum shall be a majority of the maximum number of Directors designated to the Academy Board by the Academy's bylaws, and no business shall be conducted in the absence of a quorum.

0163 **Presiding Officer**

The President shall preside at all meetings of the Board. In the absence, disability, or disqualification of the President, the Vice-President shall act instead; if neither person is available, any member shall be designated by a plurality of those present to preside. The act of any person so designated shall be legal and binding.

0164 **Call**

0164.1 **Regular Meetings**

The Board shall hold a meeting periodically on dates and at times and places determined annually by a resolution of the Board.

0164.2 **Special Meetings**

Special meetings of the Board may be called by the President or by any two (2) members of the Board provided there is compliance with the notice provision of the Academy Bylaws.

0164.3 **Emergency Meetings**

In the event of a severe and imminent threat to the health, safety, or welfare of the Academy, its personnel, or students, any member of the Board may call an emergency session provided the majority of the Board concur that delay would be detrimental to efforts to lessen or respond to the threat. Actual notice of any emergency meeting shall be attempted, but not required to other Board members.

0165 **Notice**

0165.1 **Posting Notice of Regular Meetings**

Within ten (10) days after the organizational Board meeting, the Board shall cause to be posted at the Board office and in other locations considered appropriate by the Board, a notice listing the date, time, and place of each regularly scheduled meeting of the Board. The notice shall contain the name and address of the Academy and its telephone number.

The notice shall also contain the following statement:

"Upon request to the _____, the Academy shall make reasonable accommodation for a person with disabilities to be able to participate in this meeting."

Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the estimated reasonable cost for printing and postage of each notice as shall be determined annually by the Board, the Academy shall send to the requesting party by first-class mail a copy of any notice required to be posted by these bylaws. The news media shall be entitled to receive, at their request, copies of such notices free of charge.

0165.2 **Change of Regular Meetings**

Within three (3) days after the Board adopts a resolution changing the date, time, or place of a regularly scheduled meeting, the meeting notice shall state the date, time, and place of the rescheduled meeting, as well as the name, address, and telephone number of the Academy. Said notice shall be posted on the front door of the Academy and such other place(s) as the Board may determine. Said notice shall be posted at least eighteen (18) hours before the rescheduled meeting.

M.C.L.A. 15.264, 15.266

0165.3 **Posting Notice of Special Meetings**

Said notice shall state the date, time, and place of such special meeting and the business to be transacted thereat, as well as the name, address, and telephone number of the Academy. A notice of any special meeting shall be posted at least eighteen (18) hours before said special meeting at the Academy office and such other places as the Board may determine. A copy of said notice shall be served upon each member of the Board.

0165.4 **Posting Notice of Emergency Meetings**

No notice of any emergency meeting shall be required.

0165.5 **Recess**

Any meeting of the Board may be recessed to another time and place. Any meeting which is recessed for more than thirty-six (36) hours shall be reconvened only after a notice stating the date, time, and place of the

recessed meeting as well as the name, address, and telephone number of the Academy has been posted on the front door of the Academy and such other place as the Board may determine for at least eighteen (18) hours prior to the time the meeting is to be reconvened.

M.C.L.A. 15.265, 380.1201(3)(4)

0165.6

Cancellation

Any meeting of the Board may be cancelled for appropriate purposes, which shall include, but not be limited to, inclement weather, lack of a quorum, or conflict with a special event relating to the Academy. If the cancelled meeting is a regular meeting it must be re-scheduled following all notice requirements set forth above.

M.C.L. 15.265, 380.1201(3)(4)

0166

Agenda

The Board President and/or ☐ **Educational Service Provider** ☐ **School Leader** shall prepare and submit to each Board member a written agenda prior to each regular meeting and each special meeting, unless otherwise directed by the Board. The agenda shall list the various matters to come before the Board and shall serve as a guide for the order of procedure for the meeting. Individual Board members may include items on the agenda upon the concurrence of the Board President.

The agenda of the regular monthly meeting or special meetings shall be accompanied by a report from the ☐ **Educational Service Provider** ☐ **School Leader** on information relating to the Academy with such recommendations as s/he shall make.

Each agenda shall contain the following statement:

"This meeting is a meeting of the Board of Directors in public for the purpose of conducting the Academy's business and is not to be considered a public community meeting. There is a time for public participation during the meeting as indicated in agenda item ____."

- [] Any person or group wishing to place an item on the agenda shall register their intent with the [] **Board President**; [] **Board Secretary**; [] **Educational Service Provider**; [] **School Leader** no later than _____ days prior to the meeting and include:

- () name and address of the participant;
- () group affiliation, if and when appropriate;
- () topic to be addressed.

Such requests shall be subject to the final approval of the [] **Educational Service Provider**; [] **School Leader** or the Board President.

Denial of the opportunity to have an item placed on the agenda will not preclude an individual or group from the opportunity to speak during the public participation portion of the meeting.

The agenda for each regular meeting shall be mailed or delivered to each Board member so as to provide proper time for the member to study the agenda. Generally, the agenda should be mailed no later than _____ days prior to the meeting, or delivered so as to provide time for the study of the agenda by the member. The agenda for a special meeting shall be delivered at least eighteen (18) hours before the meeting, consistent with provisions calling for special meetings.

The Board shall transact business according to the agenda submitted to all Board members in advance of the meeting. The order of business may be altered and items added to the agenda at any meeting by a majority vote of the members present.

0166.1

Consent Agenda

The Board of Directors may use a consent agenda to keep routine matters within a reasonable time frame.

The following routine business items may be included in a single resolution for consideration by the Board.

- A. minutes of prior meetings
- B. bills for payment
- C. hiring of personnel, if applicable
- D. resolutions that require annual adoption, such as bank signatories, Michigan High School Athletic Association membership, etc.
- E. resignations and leaves
- F. organizational matters
- G. _____

A member of the Board may request any item to be removed from the consent resolution and defer it for a specific action and more discussion. No vote of the Board will be required to remove an item from the consent agenda. A single member's request shall cause it to be relocated as an action item eligible for discussion. Any item on the consent agenda may be removed and discussed as a nonaction item or be deferred for further study and discussion at a subsequent Board meeting if the ☐ **Educational Service Provider** ☐ **School Leader** or any Board member thinks the item requires further discussion.

0167 **Conduct**

0167.1 **Voting**

All regular and those special meetings of the Board at which the Board is authorized to perform business shall be conducted in public. No act shall be valid unless approved at a meeting of the Board by a majority vote of the members elected or appointed to and serving on the Board who are authorized to vote (see Voting as defined in Bylaw 0100) and a proper record made of the vote. Meetings of the Board shall be public and no person shall be excluded therefrom. M.C.L.A. 380.1201

Unless specifically authorized by Michigan conflict of interest laws, any Board member's decision to abstain shall be recorded and be deemed to acquiesce in the action taken by the majority. Failure to vote, absent a statutory exception or other reasonable ethical basis, constitutes a breach of the Board member's duty as a public official. In situations in which a specified number of affirmative votes are required and abstentions have been noted, the motion shall fail if the specified number of affirmative votes have not been cast. In situations in which there is a tie vote and the abstention represents the deciding vote, the motion shall fail for lack of a majority. 184 Mich App 681, 684 (1990)

All actions requiring a vote

() shall be conducted by roll call

() may be conducted by voice, show of hands, or roll call

provided that the vote of each member be recorded. Proxy voting shall not be permitted. If a vote is not conducted by roll call, any member may request a roll call vote.

0167.2 **Closed Session**

The Board may () **by means of a roll call vote** meet in a closed session, one closed to the public, for the following purposes:

- A. to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic evaluation of a public officer, the ☐ **Educational Service Provider**, staff member, or individual agent, if the named person requests a closed hearing (a majority vote is required)

- B. to consider the dismissal, suspension, or disciplining of a student only if the student or student's parents request a closed hearing (a majority vote is required) (Also see Bylaw 0169, Student Disciplinary Hearings)
- C. to consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained (a two-thirds (2/3's) vote is required)
- D. to consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation (a two-thirds (2/3's) vote is required)
- E. to consider materials exempt from discussion or disclosure under State or Federal statute, including by way of example only, written opinions of legal counsel, and school safety plans (a two-thirds (2/3's) vote is required)
- F. to consider security planning to address existing threats or prevent potential threats to the safety of the students or staff. **(a majority vote is required)**

NOTE: Board input on the selection of a School Leader – item should be addressed in the Educational Service Provider contract with the Board.

0167.3 **Public Participation at Board Meetings**

In keeping with the confidential nature of closed sessions, no member of the Board shall disclose the content of discussions that take place during such sessions except as specifically permitted by law.

No Board member may record nor communicate by any means, electronic or otherwise, with party or parties outside such meetings regarding the substance of such meetings either during or after the course of such meetings.

MCL 15.267, 15.268

The Board of Directors recognizes the value of public comment on educational issues and the importance of allowing members of the public to express themselves on Academy matters.

To permit fair and orderly public expression, the Board shall provide a period for public participation at public meetings of the Board and publish rules to govern such participation in Board meetings and in Board committee meetings. The rules shall be administered and enforced by the presiding officer of the meeting.

The presiding officer shall be guided by the following rules:

- (). Public participation shall be permitted
- () as indicated on the order of business.

- () before the Board takes official action on any issue of substance.
- () at a time as determined by the presiding officer.
- (). Anyone with concerns related to the operation of the school or to matters within the authority of the Board may participate during the designated public participation portion (s)~~public portion~~ of a meeting.
- (). Attendees must register their intention to participate in the public participation portion of the meeting ~~upon their arrival at the meeting.~~
 - () upon their arrival at the meeting.
 - () within two (2) business days before the meeting.
 - () within _____ business days before the meeting.
- (). Individuals may not register others to speak during public participation.
- (). Participants must first be recognized by the presiding officer
 - () and will be requested to preface their comments by an announcement of their name;
 - () address;
 - () group affiliation, if and when appropriate.
- () Each statement made by a participant shall be limited to _____ minutes duration.
- () During the portion of the meeting designated for public participation, no participant may speak more than once on the same topic.~~No participant may speak more than once.~~
- () Participants shall direct all comments to the Board and not to staff or other participants.
- () The presiding officer may:
 - () interrupt, warn, or terminate a participant's session when they make comments that are repetitive, obscene, and/or comments that constitute a true threat (i.e., statements meant to frighten or intimidate one (1) or more specified persons into believing that they will be seriously harmed by the speaker or someone acting at the speaker's behest); prohibit public comments which are frivolous, repetitive, or harassing;
 - ~~() interrupt, warn, or terminate a participant's statement when the statement is too lengthy, personally directed, abusive, obscene, or irrelevant;~~

- () request any individual to stop speaking and/or leave the meeting when that person behaves in a manner that is disruptive of the orderly conduct and/or orderly progress of the meeting;
- () request the assistance of law enforcement officers in the removal of a disorderly person when that person's conduct interferes with the orderly progress of the meeting;
- () call for a recess or an adjournment to another time when the lack of public decorum so interferes with the conduct and/or orderly conduct of the meeting as to warrant such action;
- () waive these rules.
- () with the approval of the Board when necessary for the protection of privacy or the administration of the Board's business.
- () The portion of the meeting during which the participation of the public is invited shall be limited to _____, but the timeframe will be extended, if necessary, so that no one's right to address the Board will be denied.

() The Board may permit individuals to attend meetings remotely through live broadcast; however, public participation will be limited to those who are in attendance at the meeting site only. The Board is not responsible for any technology failures that prevent or disrupt any individual from attending remotely.

OR

() The Board permits individuals who attend meetings remotely to participate in public participation, subject to the same rules that apply to individuals who attend in person. The Board is not responsible for any technology failures that prevent or disrupt any individual from attending and/or participating remotely.

Tape-Audio or video recordings are permitted subject to the following conditions:

- A. No obstructions are created between the Board and the audience.
- B. No interviews are conducted in the meeting room while the Board is in session.
- C. No commentary, adjustment of equipment, or positioning of operators is made that would distract either the Board or members of the audience while the Board is in session.
- D. There is no disruption at the meeting.

The person operating the recorder should contact the School Leader prior to

the Board meeting to review possible placement of the equipment.

MCL 15.263(4)(5)(6), 380.1808

0167.4 **Administrative Participation**

The ☐ **Educational Service Provider** ☐ **School Leader** and those administrators directed by the ☐ **Educational Service Provider** ☐ **School Leader** shall attend all meetings, when feasible. Administrative participation shall be by professional counsel, guidance, and recommendation - as distinct from deliberation, debate, and voting of Board members.

0167.5 **Use of Electronic Mail**

Since E-mail is a form of communication that could conflict with the Open-Meetings Law, it will be used to conduct business of the Board only for the purposes of communicating:

- () messages between Board members or between a Board member and ☐ **Educational Service Provider** ☐ **Board** employee(s) which do not involve deliberating or rendering a decision on matters pending before the Board;
- () possible agenda items between the ☐ **Educational Service Provider/School Leader** ☐ **School Leader** and the Board President;
- () times, dates, and places of regular or special Board meetings;
- () a Board meeting agenda or public record information concerning items on the agenda;
- () requests for public record information from a member of the administration, school staff, or community pertaining to school operations;
- () responses to questions posed by members of the public, administrators, or school staff.

Under no circumstances shall Board members use E-mail to discuss among themselves Board business that is only to be discussed in an open meeting of the Board, is part of an executive session, or could be considered an invasion of privacy if the message were to be monitored by another party.

There should be no expectation of privacy for any messages sent by E-mail. Messages that have been deleted may still be accessible on the hard drive, if the space has not been occupied by other messages. Messages, deleted or otherwise, may be subject to disclosure under the Freedom of Information Act, unless an exemption would apply.

0167.6 **Use of Social Media**

Social Media, as defined in Bylaw 0100, shall not be used to conduct any form of Board business.

0168 **Minutes**

0168.1 **Open Meeting**

The Secretary, or a temporary secretary appointed by the presiding officer, shall designate a person to keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is called. These minutes must be approved by the Board and endorsed by the Secretary at the next meeting. The minutes shall include all roll-call votes taken at the meeting. Proposed minutes shall be available for public inspection not later than eight (8) business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than five (5) business days after the meeting at which the minutes are approved. The minutes shall be available for inspection at the School Leader's office and shall be available for purchase at a fee estimated by the business office to cover the cost of printing and copying.

The Board Secretary shall not include in or with its minutes any personally identifiable information on any student of the Academy which if released, would prevent the public body from complying with the Family Educational Rights and Privacy Act of 1974.

The official minutes shall be bound together by years and kept in the office of the Board of Directors, or kept by reasonably-appropriate electronic means.

Minutes of the preceding meetings shall be approved by the Board as its first order of business at its next meeting.

MCL 15.269, 380.1201

0168.2 **Closed Meeting**

The Board shall designate a person to keep separate minutes of each closed meeting of the Board. These minutes shall be retained by the Secretary of the Board, but shall not be available to the public. These minutes may be destroyed one (1) year and one (1) day after approval of the minutes of the regular meeting at which the closed session was approved.

MCL 15.267, 15.269, 15.270-71, 15.273

0168.3 **Committee Meetings**

Any Board committee, whether standing or appointed ad hoc, which exercises governmental or proprietary authority must comply with the Open Meetings provisions in 0168.1 and 0168.2, and Public Participation provisions in 0167.3. Committees that are empowered to take action, make recommendations or otherwise deliberate in place of the Board are subject to this requirement.

0169 **Student Disciplinary Hearings**

0169.1 **Closed Session Requested**

If a parent or student requests a closed hearing, a vote must be taken. The purpose of the closed session should be announced: "To consider a student disciplinary matter, pursuant to the request of the parent/guardian" **(NOTE: Do not use the name since that could identify the student)**. A majority vote is required to go into a closed session for this purpose.

Those invited into closed session should include the student, parent(s) and/or representative(s) and school administrator(s) bringing charges. Others may be admitted at Board discretion, if needed for the proceeding or at the request of student/parents.

Witnesses should be admitted when needed to testify. They should be asked to leave the closed session after testifying. Witnesses may be required to affirm that they will tell the truth.

The Administration should present a summary of the requested discipline and an overview of the incident(s) supporting discipline. The Administration may call and question witnesses as it determines appropriate. An administrator may testify as a witness to the results of his/her investigation of the incident and the student's past record.

The student, parent, or representative (only one (1)) should be allowed to ask the witness(es) questions related to issues reasonably related to the discipline. Additional questioning by the Administration, the student/representative and/or the Board may be allowed at the Board's discretion.

The student, parent, or representative may then present witnesses or statements to the Board. The Administration and/or the Board may ask questions of these individuals. The Board may allow additional questioning at its discretion.

When the presentation of evidence is concluded, the Board will deliberate. It may exclude both the Administration and the student and representatives, or allow both sides to remain. If the Board desires clarification of any testimony during its deliberation, it shall assure that both the Administration and the student and representatives are present to hear the information.

The Board shall not take any action in the closed session. To act on the discipline the Board must return to open session. This requires a majority vote.

During the open session the name of the student shall not be used in voting on the discipline, to protect student privacy under the Federal Family Educational Rights and Privacy Act. The student may be referred to by a Code Number or Pseudonym (i.e. Student A). Only the reference code shall be indicated in the Board minutes, NOT the student's actual name. The reference code shall be listed in the student's discipline file.

If, at any time during the hearing, the student, parent or authorized representative withdraws the request for a closed hearing, the matter shall proceed under the open hearing provisions.

0169.2 Open Hearing

If the student, parent or authorized representative does not request a closed hearing, the Board must still assure that the Family Educational Rights and Privacy Act is not violated.

The parents (or student if eighteen (18) or older) should sign an authorization to release student record information to allow discussion of the student's information in the public forum (Form 8330 F4). If the parents refuse to sign the authorization or information relating to other students must be presented at the hearing, it should be done anonymously by referring to students by Code Numbers or Pseudonyms. If this is not possible, then the Board may go into closed session to receive student identifiable information pursuant to a two-thirds (2/3's) roll call vote for the announced purpose of "Considering material exempt from discussion or disclosure by State or Federal law."

In all other respects the hearing shall proceed as outlined under the Closed Hearing.

The Board must deliberate and act on the discipline in open session. The student, parents, administration and public will be allowed to be present. Students/parents who have not authorized disclosure to the public will not be mentioned by name during deliberations, but only by anonymous reference code. Any action must be by a vote of the Board in open session. If the student/parents have signed an authorization for public disclosure, then the student's name may be used in the motion and recorded in the Board minutes.

REVISED POLICY – FALL 2021 **EMPLOYMENT OF TEACHERS AND ADMINISTRATORS**

Reference: MCL 37.2101 et seq., 333.17901, 380.1229, 1230, 1230b, 1231, 1233, 380.1233b, 1237, 380.623,
~~20-USC-6319 & 7801~~

The Board of Directors recognizes it is vital to the successful operation of the Academy that the **[] Educational Service Provider [] School Leader** fill positions created by the Board with highly-qualified, competent personnel who meet all current state and federal certification, training, and education requirements.

The **[] Educational Service Provider [] School Leader** shall provide the Board with a list of the proposed staff that shows all current qualifications and licensing.

This section applies to teachers and administrators working at the Academy.

All staff are subject to a criminal history record check. See Policy 3121.

- []** Neither the Board nor the Educational Service Provider may employ immediate family members of Board members to work in any capacity within the Academy.
- []** Relatives of staff member(s) may be employed by the Board or the Educational Service Provider, provided the staff member(s) being employed is not placed in a position in which he/she would be supervised directly by his/her related staff member, or would supervise a related staff member.
- []** If a Board member wishes to apply for a position within the Academy, his/her resignation must be accepted by the Board prior to submission of an application, and such employment shall not conflict with the Academy's Charter.

A person employed as a School Leader or administrator must confirm that he/she has met, or is in the process of fulfilling, the appropriate educational or certification requirements established by the Revised School Code, Michigan Department of Education and applicable law.

Prior to hiring an applicant, the **[] Educational Service Provider [] School Leader** shall obtain from the applicant a signed Consent to Obtain Records (Form 3120-F2 or 3120-F4, as applicable) and shall obtain any records from the applicant's current or immediately-previous employer, including the applicant's personnel file (particularly any records relating to unprofessional conduct in which the applicant may have engaged). Any such records are to be reviewed prior to a recommendation for employment and may be disclosed to those individuals directly involved in evaluating the applicant's qualifications.

~~Requirements for Title I Teachers~~

~~All teachers hired for a Title I supported program must comply with the Michigan Department of Education's requirements for certification adopted under Michigan's approved ESSA plan. The **[] Educational Service Provider [] School Leader** will ensure that the Academy follows any best practice guidance issued by the Michigan Department of Education relating to appropriate staff placement, including Title I teachers.~~

REPLACEMENT POLICY – FALL 2021

ACADEMY-SPONSORED PUBLICATIONS AND PRODUCTIONS

The Board of Directors sponsors student publications and productions as means by which students learn, under adult direction/supervision, the rights and responsibilities inherent when engaging in the public expression of ideas and information in our democratic society.

For purposes of this policy, "academy-sponsored student media" shall include both student publications and productions. Academy-sponsored student media does not include student expression related to classes that are not directly associated with student publications/productions. The term "publication" shall include distribution, transmission, and dissemination of a student publication regardless of its medium. "Student publications" shall include any written materials, (including, but not limited to, banners, flyers, posters, pamphlets, notices, newspapers, playbills, yearbooks, literary journals, books, and t-shirts and other academy-sponsored clothing)

(), as well as material in electronic or on-line form (including, but not limited to, Apps and Services (as defined in Bylaw 0100, webpages/sites, web logs ("Blogs"), video or audio clips, () (postings of Social Media (as defined in Bylaw 0100), and newsletters of announcements transmitted by e-mail, () text, wireless broadcast, or other similar distribution/dissemination).

() The Board expressly prohibits the use of Social Media related to student publications.

The "term performance" shall include presentation and broadcast of a student production. "Student productions" shall include vocal, musical, and/or theatrical performance, impromptu dramatic presentation, or any electronic media (including, but not listed to, radio and television programs, videoblogs ("vlogs"), podcast,

() Social Media (as defined in Bylaw 0100), and other video or audio productions that are recorded for re-broadcast or broadcast in real time using any available broadcast technology).

() and other video or audio productions that are recorded for re-broadcast or broadcast in real time using any available broadcast technology). The Board expressly prohibits the use of Social Media related to student productions.

[DRAFTING NOTE: A Board should only select the following option if it selected either or both of the first options (above) under "student publication" or "student production."]

() Only Academy-approved social media (as defined in Bylaw 0100) may be used to host academy-sponsored student media, in accordance with Policy 7544. Academy-sponsored student media must also comply with Policy 7540.02. [END OF OPTION]

For purposes of this policy, "academy community" is defined to include students, Board employees (i.e., administrators, and professional and classified staff), parent/family members

() and other individuals who are

☐ invited by the ☐ School Leader ☐ Educational Service Provider

☐ authorized or otherwise permitted by the ☐ School Leader ☐ Educational Service Provider

to view a performance or receive directly from the Academy a publication

☐ and those who have been issued credentials to access the Academy's secure portal.

The following speech is unprotected and prohibited in all academy-sponsored student publications and productions: speech that is defamatory, libelous, obscene or harmful to minors (as that term is defined in Children's Internet Protection Action (CIPA)); speech that is reasonably likely to cause substantial disruption of or material interference with academy activities or the educational process; speech that infringes upon the privacy or rights of others; speech that violates copyright law; speech that promotes activities, products or services that are unlawful (illegal) as to minors as defined by State or Federal law; and speech that otherwise violates academy policy and/or State or Federal law. The Board authorizes the administration to engage in prior review and restraint of academy-sponsored publications and productions to prevent the publication or performance of unprotected speech.

Student expression relates to classrooms or educational settings not otherwise directly associated with academy-sponsored student publications/productions are nonpublic forums. As nonpublic forums, the content of such student expression can be regulated for legitimate pedagogical academy-related reasons. Academy officials shall routinely and systematically review and, if necessary, restrict the content of these student expressions prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker.

[DRAFTING NOTE: With respect to student expression related to classrooms or educational settings not otherwise directly associated with academy-sponsored student publications/productions, select Option 1, Option 2, Option 3, Option 4, or Option 5.]

☐ Option #1

☐ Nonpublic forum student expression may be published/performed outside the academy community (i.e., to the general public). ☐ See Board Policy 9160 – Public Attendance at Academy Events.

[END OF OPTION #1]

☐ Option #2

☐ While nonpublic forum student expression generally may be published/performed outside the academy community (i.e., to the general public), the following nonpublic forum student expression may only be published/performed to members of the academy community: _____ [identify] ☐ See Board Policy 9160 – Public Attendance at Academy Events.

[END OF OPTION #2]

[] Option #3

[] While ordinarily nonpublic forum student expression may only be published/performed to members of the academy community, the () School Leader () Educational Service Provider may authorize specific nonpublic forum student expression to be published/performed outside the academy community (i.e., to the general public). A teacher, student, or group of students who wish to have nonpublic forum student expression published/performed outside the academy community must submit to the () School Leader () Educational Service Provider a request for prior written approval for such publication/performance. () See Board Policy 9160 – Public Attendance at Academy Events.

[END OF OPTION #3]

[] Option #4

[DRAFTING NOTE: The Board should select either Option 2 or Option 3 if it has authorized the limited use of Academy-approved Social Media to publish/perform nonpublic forum student expression.]

[] While ordinarily nonpublic forum student expression may only be published/performed to members of the academy community, the following nonpublic forum student expression may be published/performed outside the academy community (i.e. to the general public): _____ [identify]. () See Board Policy 9160 – Public Attendance at Academy Events.

[END OF OPTION #4}

[] Option #5

[DRAFTING NOTE: The Board should select this option if it has prohibited the use of Academy-approved Social Media to publish/perform nonpublic forum student media, with the exception of nonpublic forum student media that is disseminated through Academy-approved Social Media that employs a secure portal that restricts access to members of the academy community through the use of a User ID and Password (or other form of biometric authentication security).]

[] Nonpublic forum student expression may only be published/performed to members of the academy community. () See Board Policy 9160 – Public Attendance at Academy Events.

[END OF OPTION#5]

[DRAFTING NOTE: PLEASE CHOOSE ONE (1) OF THE FOLLOWING FOUR (4) OPTIONS (A-D). The order in which the below four (4) options are listed is not meant to convey a preference or recommendation. Boards should select the option that best reflects their current practice or a new practice they wish to henceforth follow. As they consider the following options, Board and administrators are encouraged to consult the accompanying Toolkit for a discussion of the different types of forums - e.g., nonpublic forum and limited public forum.]

[] Option A

[Select if the Board intends to designate all academy-sponsored student media, to be limited-purpose public forums (i.e., not subject to prior review/restraint) and allows them to be generally published/performed outside the academy community. This is the most permissive of the options.]

[] The Board designates all academy-sponsored student media as limited-purpose public forums where students can address matters of concern and/or interest to their readers/viewers. All academy-sponsored student media may be published/performed outside the academy community. The student journalists, content-creators and/or performers involved in these publications/production have the right to determine the content of the student media.

[] The content may address general matters of public concern and is open to the public at large for comment at the discretion of the student journalists/content-creators/performers. Academy officials will not review or restrict the content of academy-sponsored student media prior to publication/performance, except with respect to unprotected speech.

() Each medium should provide a full opportunity for students to inquire, question, and exchange ideas.

() Content should reflect all areas of student interest and may include topics about which there may be dissent and/or controversy.

All academy-sponsored student media shall contain a notice to the reader/viewer that the material, while academy-sponsored, is student directed and not subject to prior review. Given all student publications and/or productions have been designated as limited-purpose public forums, the academy assumes no liability for their content. With editorial control comes responsibility. Student journalists, content-creators, and performers are expected to establish and enforce standards, for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards.

[END OF OPTION A]

[] Option B

[Select if the Board intends to identify specific academy-sponsored student publications/productions to be limited-purpose public forums (i.e., not subject to prior review/restraint), which may be published/performed outside the academy community. Academy-sponsored student publications/productions not listed are considered nonpublic forums and will be subject to routine and systematic prior review and restraint. This is the second most permissive option and only permits prior

review/restraint of nonpublic forums, and generally allows limited-purpose public forums to be generally published/performed outside the academy community.]

The Board designated the following official, academy-sponsored student media to be limited-purpose public forums:

[List all publications so designated:]

- A. _____
- B. _____
- C. _____

As limited-purpose public forums the student journalists, content-creators, or performers associated with the above-listed publications and/or productions may address matters of concern and/or interest to their readers/viewers. The student journalists, content-creators, and/or performers involved in the above-listed publications/productions have the right to determine the content of this student media.

[] The content may address general matters of public concern and is open to the public at large for comment at the discretion of the student journalists/content-creators/performers.

Academy officials will not routinely and systematically restrict content of the publications and/or productions listed above prior to their publication/performance, except with respect to unprotected speech.

- () Each medium should provide a full opportunity for students to inquire, question, and exchange ideas.
- () Content should reflect all areas of student interest and may include topics about which there may be dissent and/or controversy.

The above-listed publications and/or productions shall contain a notice to the reader/viewer that the material, while academy-sponsored, is student directed and not subject to prior review. Given the listed student publications and/or productions have been designated as limited-purpose public forums, the academy assumes no liability for their content, with editorial control comes responsibility. Student journalists, content-creators and performers are expected to establish and enforce standards for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards.

All other academy-sponsored student media including classroom and/or other curricular, co-curricular, or extra-curricular/club-related publications and/or productions, are nonpublic forums. As nonpublic forums, the content of these other student publications and productions can be regulated for legitimate pedagogical academy-related reasons. Academy officials shall routinely and systematically review and, if necessary, restrict the content of all academy-sponsored student media except for those publications/productions listed above, prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker. [DRAFTING NOTE: It is critical that the academy officials actually engage in prior review/restraint and not just "reserve" the right to engage in such review/restraint. If the academy officials fail to routinely and consistently exercise this authority, a court reviewing a student challenge to a

review/restraint may hold that this policy is not being implemented as written, and therefore the Board may be found to have lost the authority it attempted to preserve for its administrators. The Board shall provide academy officials with guidance and training in order to implement this duty of review/restrain effectively and legally.]

[DRAFTING NOTE: Select Option B1, Option B-2, Option B-3, Option B-4, or Option B-5.]

[] Option B-1

[DRAFTING NOTE: The Board should only select this option if it has prohibited all nonpublic forum academy-sponsored student publication/performance on Social Media, with the exception of nonpublic forum academy-sponsored student media that is disseminated through Academy-approved Social Media that employs a secure portal that restricts access to members of the academy community through the use of a User ID and Password (or other form of biometric authentication security).]

[] Nonpublic forum academy-sponsored student media may only be published/performed to members of the academy community.

[END OF OPTION B-1]

[DRAFTING NOTE: The Board should select either Option B-2 or Option B-3 if it has authorized the limited use of Academy-approved Social Media to publish/perform nonpublic forum academy-sponsored student media; as mentioned above, it is critically important that academy officials routinely and consistently exercise their limited authority to engage in prior review/restraint with respect to the publication/performance of all nonpublic forum academy-sponsored student media.]

[] Option B-2

[] While ordinarily nonpublic forum academy-sponsored student media may only be published/performed to members of the academy community, the following nonpublic forum student media may be published/performed outside the academy community (i.e., to the general public): _____ [identify] () high school newspaper [could substitute with the name of the publication] () high school yearbook _____
[insert name(s) of specific academy-sponsored student publication/production. () See Board Policy 9160.

[END OF OPTION B-2]

[] Option B-3

[] While ordinarily nonpublic forum academy-sponsored student media may only be published/performed to members of the academy community, the () School Leader () Educational Service Provider may authorize specific nonpublic forum student media to be published/performed outside the academy community (i.e. to the general public). A student or group of students who wish to have his/her/their nonpublic forum student media published/performed outside the academy community must submit to the () School Leader () Educational Service Provider a request for prior written approval for such publication/performance.

[END OF OPTION B-3]

☐ Option B-4

☐ While nonpublic forum academy-sponsored student media generally may be published/performed outside the academy community (i.e. to the general public), the following nonpublic forum student media may only be published/performed to members of the academy community: _____ [identify]. () See Board Policy 9160.

[END OF OPTION B-4]

☐ Option B-5

☐ Nonpublic forum academy-sponsored student media may be published/performed outside the academy community (i.e. to the general public). () See Board Policy 9160.

[END OF OPTION B-5]

[END OF OPTION B]

☐ Option C

[Select if the Board intends to identify specific student publications/productions to be limited-purpose public forums but wants to retain the authority to engage in limited and consistent prior review/restraint on the basis of four (4) identified reasons. Academy-sponsored publications/productions not listed are considered nonpublic forums and will be subject to routine prior review and restraint. This is the second most restrictive and permits some prior review/restraint involving what are otherwise limited-purpose public forums.]

The Board designates the following official, academy-sponsored student media to be limited-purpose public forums:

[List all publications so designated:]

A. _____

B. _____

C. _____

As limited-purpose public forums the student journalist, content-creators or performers associated with the above-listed publications and/or productions may address matters of concern and/or interest to their readers/viewers. The student journalists, content-creators and/or performers involved in the above-listed publications/productions have the right to determine the content of this student media. () While designated as limited-purpose public forums, the listed publications/productions are not intended to address general matters of public concern and are not open to public comment.

Academy officials will not routinely and systematically restrict content of the publications and/or productions listed above prior to their publication/performance; however, academy officials may review the content and reject an article/posting/publication/production due to one (1) of the following four (4) reasons:

- A. where poor grammar or writing is evident;**
- B. where a legitimate question of age appropriateness of the material exists;**
- C. where matters beyond the limited scope of the forum are included; and/or**
- D. where the content involves unprotected speech.**

[] The above-listed academy-sponsored student publications/productions, while limited-purpose public forums are not intended to address general matters of public concern and therefore are not open to public comment.

The listed publications and or production shall contain a notice to the reader/viewer that the material, while academy-sponsored, is student directed and subject only to limited prior review. Given the listed student publications and/or productions have been designated as limited-purpose public forums, the academy assumes no liability for the content beyond that covered by the academy officials' limited prior review, with editorial control comes responsibility. Student journalists, content-creators and performers are expected to establish and enforce standards for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards.

[DRAFTING NOTE: Select Option C-1, Option C-2, Option C-3, Option C-4, or Option C-5.]

[] Option C-1

[DRAFTING NOTE: The Board should only select this option if it has prohibited all academy-sponsored student publication/performance on Social Media, with the exception of academy-sponsored student media that is disseminated through Academy-approved Social Media that employs a secure portal that restricts access to members of the academy community through the use of a User ID and Password (or other form of biometric authentication security.)

[] Academy-sponsored student media may only be published/performed to members of the academy community.

[END OF OPTION C-1]

[DRAFTING NOTE: The Board should select either Option C-2 or Option C-3 if it has authorized the limited use of Academy-approved Social Media to publish/perform academy-sponsored student media; as mentioned below, it is critically important that academy officials routinely and consistently exercise their limited authority to engage in prior review/restraint with respect to the publication/performance of all academy-sponsored student media.]

[] Option C-2

[] While ordinarily academy-sponsored student media may only be published/performed to members of the academy community, the following student media may be published/performed outside the academy community (i.e., to the general public):
_____ [identify] () high school newspaper [could substitute with the name of the publication] () high school yearbook [could substitute with the name of the yearbook] () _____ [insert name(s) of specific academy-sponsored student publications/productions]. () See Board Policy 9160.

[END OF OPTION C-2]

[] Option C-3

[] While ordinarily academy-sponsored student media may only be published/performed to members of the academy community, the () School Leader () Educational Service Provider may authorize specific student media to be published/performed outside the academy community (i.e., to the general public). A student or group of students who wish to have his/her/their student media published/performed outside the academy community must submit to the () School Leader () Educational Service Provider a request for prior written approval for such publication/performance.

[END OF OPTION C-3]

[] Option C-4

[] While academy-sponsored student media generally may be published/performed outside the academy community (i.e., to the general public), the following student media may only be published/performed to members to the academy community: _____ [identify]. () See Board Policy 9160.

[END OF OPTION C-4]

[] Option C-5

[] Academy-sponsored student media may be published/performed outside the academy community (i.e., to the general public). () See Board Policy 9160.

[END OF OPTION C-5]

All other academy-sponsored student publications and productions, including classroom and/or other curricular, or extra-curricular/club-related publications and/or productions, are nonpublic forums. As nonpublic forums, the content of these other student publications and productions can be regulated for legitimate pedagogical academy-related reasons. Academy officials shall routinely and systematically review and, if necessary, restrict the content of all academy-sponsored student media except those publications/productions listed above, prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker. [DRAFTING NOTE: It is critical that the academy officials actually engage in prior review/restraint and not just "reserve" the right to engage in such review/restraint. If the academy officials fail to routinely and consistently exercise this authority, a court reviewing a student challenge to a review/restraint may hold that this policy is not being implemented as written, and therefore the Board may be found to have lost the authority it attempted to preserve for its administrators. The Board should provide academy officials with guidance and training in order to implement this duty of review/restraint effectively and legally.]

[END OF OPTION C]

[] Option D

[Select if the Board intends all academy-sponsored student media (i.e., publications/production) to be nonpublic forums - i.e., subject to routine prior review/restraint. This is the most restrictive option.]

[DRAFTING NOTE: for Options D-1 through D-5: It is critical that the academy officials actually engage in prior review/restraint and not just "reserve" the right to engage in such review/restraint. If the academy officials fail to routinely and consistently exercise this authority, a court reviewing a student challenge to a review/restraint may hold that this policy is not being implemented as written, and therefore the Board will be considered to have lost the authority it attempted to preserve for its administrators. The Board should provide academy officials with guidance and training in order to implement this duty of review/restraint effectively and legally.]

All academy-sponsored student media are nonpublic forums. While students may address matters of interest or concern to their readers/viewers, as nonpublic forums, the style and content of the student publications and productions can be regulated for legitimate pedagogical, academy-related reasons. Academy officials shall routinely and systematically review and, if necessary, restrict the type and/or content of all academy-sponsored student media prior to publication/performance in a reasonable manner that is neutral as to the viewpoint of the speaker. Legitimate pedagogical concerns are not confined to academic issues but include the teaching by example of the shared values of a civilized social order, which consists of not only independence of thought and frankness of expression but also discipline, courtesy/civility, and respect for authority. Academy officials may further prohibit speech that is grammatically incorrect, poorly written, inadequately researched, biased or prejudiced, vulgar, or profane, or unsuitable for immature audiences.

[DRAFTING NOTE: Select Option D-1, Option D-2, Option D-3, Option D-4, or Option D-5.]

[] Option D-1

[DRAFTING NOTE: The Board should only select this option if it has prohibited all academy-sponsored student publication/performance on Social Media, with the exception of academy-sponsored student media that is disseminated through Academy-approved Social Media that employs a portal that restricts access to members of the academy community through the use of a User ID and Password (or other form of biometric authentication security).]

[] Academy-sponsored student media may only be published/performed to members of the academy community.

[END OF OPTION D-1]

[DRAFTING NOTE: The Board should select either Option D-2 or Option D-3 if it has authorized the limited use of Academy-approved Social Media to publish/perform academy-sponsored media; as mentioned above, it is critically important that academy officials routinely and consistently exercise their authority to engage in prior review/restraint with respect to the publication/performance of all academy-sponsored student media.]

[] Option D-2

[] While ordinarily academy-sponsored student media may only be published/performed to members of the academy community, the following student media may be published/performed outside the academy community (i.e., to the general public): _____ [identify] () high school newspaper [could substitute with the name of the publication] () high school yearbook [could substitute with the name of the yearbook] () _____ [insert name(s) of specific academy-sponsored student publications/productions]. () See Board Policy 9160.

[END OF D-2]

[] Option D-3

[] While ordinarily academy-sponsored student media may only be published/performed to members of the academy community, the () School Leader () Educational Service Provider may authorize specific student media to be published/performed outside the academy community, (i.e., to the general public). A student or group of students who wish to have his/her/their student media published/performed outside the academy community must submit to the () School Leader () Educational Service Provider a request for prior written approval for such publication/performance.

[END OF OPTION D-3]

[] Option D-4

[] While academy-sponsored student media generally may be published/performed outside the academy community (i.e., to the general public), the following student media may only be published/performed to members of the academy community: _____ [identify]. () See Board Policy 9160.

[END OF OPTION D-4]

[] Option D-5

[] Academy-sponsored student media may be published/performed outside the academy community (i.e., to the general public). () See Board Policy 9160

[END OF OPTION D-5]

[END OF OPTION D]

[END OF OPTIONS A THROUGH D]

[] Students () staff will monitor comments posted to social media platforms/sites that have been approved under Policy 7544 for use as academy-sponsored student media. Comments will be monitored to verify the age-appropriateness of the material, whether unprotected speech is involved, and whether there is compliance with posted rules for use of the forum and the platform/site's applicable terms of service. Comments that are not age-appropriate for the student-audience for the academy-sponsored publication, constitute unprotected speech, and/or violate the posting rules for the use of the forum and/or the platform/site's applicable terms of

service will be removed. The review of posted comments will be conducted in a viewpoint neutral manner, and consistent with State and Federal law.

- ☐ Students shall not be disciplined and/or retaliated against for exercising and/or asserting their free speech rights as defined in this policy. Nothing in this policy, however, restricts the Board's ability to impose post-publication/performance discipline related to a student engaging in the impermissible publication/performance of unprotected speech.

[DRAFTING NOTE: CHOOSE ONE (1) OF THE FOLLOWING THREE (3) OPTIONS RE: ADVERTISING.]

☐ Option #1

[Select if the Board intends to permit advertising in some or all academy-sponsored student media but requires an academy employee/official to pre-approve the advertisements.]

Advertising is permitted in

- ☐ all academy-sponsored student media
- ☐ the following academy-sponsored student publication/productions: [identify publications/productions]
-
-
-

Any advertisements must be consistent with Policy 9700.01 () AG 9700B.

Advertisements submitted for publication or inclusion in a production shall be reviewed by

- ☐ the class/activity advisor
- ☐ the () School Leader () Educational Service Provider
- ☐ academy officials

for a determination that they are appropriate for juveniles. The () School Leader () Educational Service Provider () Board retains the final authority to determine whether an advertisement is appropriate and will be included in a publication/production. Advertisements may be rejected for legitimate pedagogical academy-related reasons unrelated to the viewpoint of the advertiser (e.g., the advertisement encourages action that would endanger the health and safety of students).

[END OF OPTION 1]

[] Option #2

[Select if the Board intends to permit advertising in some or all academy-sponsored student media that are designated to be limited-purpose public forums, and the students involved in the specific publications/productions will be responsible for accepting or rejecting the advertisements.]

Advertising is permitted in

- () all academy-sponsored student media that have been designated as limited-public forums.**
- () the following academy-sponsored student media that have been designated as limited-purpose public forums: [identify publications/productions]**

Any advertisements must be consistent with Policy 9700.01 () and AG 9700B.

The students in the class(es)/activity(ies) associated with

- () all academy-sponsored student media that have been designated as limited-purpose public forums**
- () the above-listed student media**

will determine whether to include advertisements in the publications/productions. Acceptance or rejection of specific advertisements is within the control of the publication/production staff, which may accept those for activities, products, or services that are illegal for students and/or that violate State or Federal law.

[] The publication/production staff is encouraged to consider the age appropriateness of the ads they select.

[END OF OPTION 2]

[] Option #3

[Select if the Board intends to prohibit advertisements in all student publications/productions.]

Advertising is not permitted in academy-sponsored student media.

[END OF OPTION 3] [END OF OPTIONS RE: ADVERTISING]

General Prohibitions

Regardless of their status as non-public or limited-purpose public forums, the Board prohibits publications, productions, and advertisements that:

- A. promote, favor, or oppose any candidate for election or the adoption of any bond issue, proposal, or question submitted at any election;
- B. () fail to identify the student or organization responsible for the publication/performance;
- C. () solicit funds for non-academy organizations or institutions when such solicitation has not been approved by the Board.

FOR BOARD APPROVAL

REVISED POLICY – FALL 2021

COST PRINCIPLES - SPENDING FEDERAL FUNDS

Reference: 2 CFR. 200.344(b), 2 CFR. 200.403-.407, 200.413(a)-(c), 200.430(a), 200.431(a), [200.439\(b\)\(2\)](#),
200.458,
2 CFR 200.474(b)
34 CFR 76.707-.708(a), 75.703

The [] **School Leader** [] **Educational Service Provider** is responsible for the efficient and effective administration of grant funds through the application of sound management practices. Such funds shall be administered in a manner consistent with all applicable Federal, State and local laws, the associated agreements/assurances, program objectives and the specific terms and conditions of the grant award.

Cost Principles

Except where otherwise authorized by statute, costs shall meet the following general criteria in order to be allowable under Federal awards:

- A. Be necessary and reasonable for proper and efficient performance and administration of the Federal award and be allocable thereto under these principles.

To determine whether a cost is reasonable, consideration shall be given to:

1. whether a cost is a type generally recognized as ordinary and necessary for the operation of the Academy or the proper and efficient performance of the Federal award;
2. the restraints or requirements imposed by such factors as sound business practices, arm's length bargaining, Federal, State, local, tribal and other laws and regulations;
3. market prices for comparable goods or services for the geographic area;
4. whether the individuals concerned acted with prudence in the circumstances considering their responsibilities; and
5. whether the cost represents any significant deviation from the established practices or Board policy which may unjustifiably increase the expense.

While Federal regulations do not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, whether a cost is necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the Academy can demonstrate that the cost addresses an existing need, and can prove it.

When determining whether a cost is necessary, consideration may be given to:

1. the cost is needed for the proper and efficient performance of the grant program;
2. whether the cost is identified in the approved budget or application;
3. whether there is an educational benefit associated with the cost;
4. whether the cost aligns with identified needs based on results and findings from a needs assessment;
5. whether the cost addresses program goals and objectives and is based on program data.

A cost is allocable to the Federal award if the goods or services involved are chargeable or assignable to the Federal award in accordance with the relative benefit received. This standard is met if the cost: is incurred specifically for the Federal award; benefits both the Federal award and other work of the Academy and can be distributed in proportions that may be approximated using reasonable methods; and is necessary to the overall operation of the Academy and is assignable to the Federal award in accordance with cost principles mentioned here.

- B. Conform to any limitations or exclusions set forth in the cost principles in Part 200 or in the terms and conditions of the Federal award.
- C. Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the Academy.
- D. Be accorded consistent treatment. A cost cannot be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal award as an indirect cost under another award.
- E. Be determined in accordance with generally accepted accounting principles.
- F. Be representative of actual cost, net of all applicable credits or offsets.

The term "applicable credits" refers to those receipts or reductions of expenditures that operate to offset or reduce expense items allocable to the Federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the State relate to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate.

- G. Be not included as a match or cost-share, unless the specific Federal program authorizes Federal costs to be treated as such.
- H. Be adequately documented:

1. in the case of personal services, the ☐ **School Leader** ☐ **Educational Service Provider** shall implement a system for Academy personnel to account for time and efforts expended on

- grant funded programs to assure that only permissible personnel expenses are allocated;
2. in the case of other costs, all receipts and other invoice materials shall be retained, along with any documentation identifying the need and purpose for such expenditure if not otherwise clear.
- I. Be incurred during the approved budget period.

The budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to carry out authorized work and expend the funds awarded, including any funds carried forward or other revisions pursuant to the law. Prior written approval from the Federal awarding agency or State pass through entity may be required to carry forward unobligated balances to subsequent budget periods, unless waived.

Selected Items of Cost

The ☐ **Academy** ☐ **Educational Service Provider** shall follow the rules for selected items of cost at 2 C.F.R. Part 200, Subpart E when charging these specific expenditures to a Federal grant. When applicable, ☐ **Academy staff** ☐ **the Educational Service Provider** shall check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, Academy and program-specific rules, including the terms and conditions of the award, may deem a cost as unallowable and Academy personnel shall follow those rules as well.

The following rules of allowability must apply to equipment and other capital expenditures:

- A. Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.
- B. Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.
- C. Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity.
- D. Allowability of depreciation on buildings, capital improvements, and equipment shall be in accordance with 2 CFR 200.436 and 2 CFR 200.465.
- E. When approved as a direct cost by the Federal awarding agency or pass-through entity under Sections A-C, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.
- F. If the Academy is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment, the costs of such disposal or transfer are allowable.

Cost Compliance

The [] **School Leader** [] **Educational Service Provider** shall require that grant program funds are expended and are accounted for consistent with the requirements of the specific program and as identified in the grant application. Compliance monitoring includes accounting for direct or indirect costs and reporting them as permitted or required by each grant. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs, but may not be double charged or inconsistently charged as both.

Determining Whether a Cost is Direct or Indirect:

- A. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

These costs may include: salaries and fringe benefits of employees working directly on a grant-funded project; purchased services contracted for performance under the grant; travel of employees working directly on a grant-funded project; materials, supplies, and equipment purchased for use on a specific grant; program evaluation costs or other institutional service operations; and infrastructure costs directly attributable to the program (such as long distance telephone calls specific to the program, etc.). Direct costs may also include capital expenditures if approved by the Federal awarding agency or pass-through entity, as well as capital expenditures for special purpose equipment with a unit cost of less than \$5,000.

- B. Indirect costs are those that have been incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs.

These costs may include: general data processing, human resources, utility costs, maintenance, accounting, etc.

Federal education programs with supplement not supplant provisions must use a restricted indirect cost rate. In a restricted rate, indirect costs are limited to general management costs. General management costs do not include divisional administration that is limited to one component of the Academy, the Board, compensation of the School Leader, compensation of the chief executive officer of any component of the Academy, and operation of the immediate offices of these officers.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

1. Administrative or clerical services are integral to a project or activity.
2. Individuals involved can be specifically identified with the project or activity.

3. Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency.
4. The costs are not also recovered as indirect costs.

Where a Federal program has a specific cap on the percentage of administrative costs that may be charged to a grant, that cap shall include all direct administrative charges as well as any recovered indirect charges.

Effort should be given to identify costs as direct costs whenever practical, but allocation of indirect costs may be used where not prohibited and where indirect cost allocation is approved ahead of time by the Michigan Department of Education (MDE) or the pass-through entity (Federal funds subject to 2 C.F.R. Part 200 pertaining to determining indirect cost allocation).

Equipment and other capital expenditures are unallowable as indirect costs.

Timely Obligation of Funds

Financial obligations are orders placed for property and services, contracts and subawards made, and similar transactions that require payment. This term is used when referencing a recipient's or subrecipient's use of funds under a Federal award.

The following list illustrates when funds are determined to be obligated under the U.S. Department of Education ("USDOE") regulations:

If the obligation is for:

- A. Acquisition of property - on the date which the Academy makes a binding written commitment to acquire the property.
- B. Personal services by an employee of the Academy or Educational Service Provider - when the services are performed.
- C. Personal services by a contractor who is not an employee of the Academy on the date which the Academy makes a binding written commitment to obtain the services.
- D. Performance of work other than personal services - on the date when the Academy makes a binding written commitment to obtain the work.
- E. Public utility services - when the Academy receives the services.
- F. Travel - when the travel is taken.
- G. Rental of property - when the Academy uses the property.
- H. A pre-agreement cost that was properly approved by the Secretary (USDOE) under the cost principles in 2 C.F.R. Part 200, Subpart E - Cost Principles - on the first day of the project period.

Period of Performance

All financial obligations must occur during the period of performance. Period of performance means the total estimated time interval between the start of an initial Federal award when the

Academy is permitted to carry out the work authorized by the grant and the planned end date. The period of performance may include one or more funded portions or budget periods. The period of performance is dictated by statute and will be indicated in the grant award notification ("GAN"). As a general rule, State-administered Federal funds are available for obligation within the year that Congress appropriates the funds for. However, given the unique nature of educational institutions, for many Federal education grants, the period of performance is twenty-seven (27) months. This maximum period includes a fifteen (15) month period of initial availability, plus a twelve (12) month period for carryover. For direct grants, the period of performance is generally identified in the GAN.

In the case of a State-administered grant, financial obligations under a grant may not be made until the application is approved or is in substantially approvable form, whichever is later. In the case of a direct grant, a grantee may use grant funds only for obligations it makes during the grant period, unless an agreement exists with the awarding agency or the pass-through entity (e.g., MDE) to reimburse for pre-approval expenses.

If a Federal awarding agency or pass-through entity approves an extension, or if the Academy extends under C.F.R. 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal is issued, a distinct Period of Performance will begin.

For both State-administered and direct grants, regardless of the period of availability, the Academy shall liquidate all financial obligations incurred under the award not later than ninety (90) days after the end of the funding period unless an extension is authorized. Any funds not obligated within the period of performance or liquidated within the appropriate timeframe are said to lapse and shall be returned to the awarding agency. Consequently, the [] **Academy [] Educational Service Provider** shall closely monitor grant spending throughout the grant cycle.

REVISED POLICY – FALL 2021

STUDENT FEES, FINES, AND SUPPLIES

Reference: MCL 388.1904 [Suggested/Referred to, but not required]

Fees

The Board of Directors may assess certain fees to pay the costs for extra-curricular and noncredit activities. Such fees might be made for expendable items such as magazines, workbook materials, paperback selections, laboratory supplies, materials for clubs, independent study or special projects, transportation costs, and admission/participation fees for school-sponsored trips and activities.

If an eligible student enrolled in an eligible course offered by a career and technical preparation program does not complete the course, other than for reasons related to a family or medical emergency, the student shall repay to the Academy any funds expended by the Academy for the course that are not refunded by the career and technical preparation program, and may also be subject to such sanctions as are provided for in procedures prepared by the Academy administration.

No student, however, shall be deprived of participation in any mandatory school activity or required curriculum activity due to a lack of financial ability to pay. Fees will not be charged for such activities. Extra-curricular activities for which fees will be charged may not be used in determining credit or grades in any course.

A fee shall not exceed the combined cost of the service(s) provided and/or materials used. An accurate accounting of all fees collected and all fees expended shall be provided to the School Leader (or his/her designee) for each fee-based activity, at the conclusion of the activity, along with a record of the remission of any fees not expended.

Fines

When Academy property, equipment, or supplies are damaged, lost, or taken by a student, whether in a regular course or extra-curricular offering, a fine will be assessed. The fine will be reasonable, seeking only to compensate the Academy for the expense or loss incurred.

The late return of borrowed books or materials from the Academy libraries will be subject to appropriate fines. Failure to pay the fines may result in loss of privileges.

Any fees or fines collected by members of the staff are to be given to the _____ within twenty-four (24) hours after collection.

In the event the above course of action does not result in the collection of the fee or fine, the Board authorizes the ☐ **Educational Service Provider** ☐ **School Leader** to take the student and/or his/her parents to Small Claims Court for collection.

Supplies

The Academy will provide all basic supplies needed by the student to complete the required course curriculum. The student and/or his/her family may choose to purchase their own supplies if they desire to have a greater quantity or quality of supplies, or to conserve the

limited resources for use by others. The teacher or appropriate administrator may recommend useful supplies.

[] Payment

For convenience to families, the Board may enter into an agreement with one or more credit card/online payment processing vendors to facilitate online payment of fees, fines, and charges. Parents/guardians or students may elect but are not required to make payments online. Vendors will comply with all Board policies and procedures related to confidentiality and security of information transmitted electronically. Payees will be notified of any processing or other nominal fees that may be charged for use of an online payment system before the transaction is completed.

[END OF OPTION]

Students Experiencing Homelessness - McKinney-Vento Act

No fine or fee shall be charged to a student identified as a student experiencing homelessness unless it is determined that the student has the ability to pay the fee or fine and that its imposition does not create a barrier to the student's ability to enroll, or attend school, achieve academic success, or cause the student to be identified as experiencing homelessness. Any dispute regarding a fine or a fee that is imposed shall not delay the student's enrollment or serve as a barrier to enrollment by delaying the transfer of student records to another academy or school district if applicable.

Immediate enrollment notwithstanding fines or fees shall be extended to extra-curricular and co-curricular activities as well as to academic programming.

[] Students experiencing homelessness who are able to pay () fees or fines () fees or fines and refuse to do so [END OF OPTION] may be prohibited from participating in graduation ceremonies until paid. No such student shall be prevented from receiving his/her student records, including diploma if earned, and final transcripts.

REVISED POLICY – FALL 2021 **PROPERTY INVENTORY**

As steward of this Academy's property, the Board of Directors recognizes that efficient management and full replacement upon loss require accurate inventory and properly maintained property records.

The Board shall conduct and maintain a continuous inventory of all Academy-owned equipment and supplies in accordance with all applicable law.

For purposes of this policy, "equipment" shall mean a unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles which retains its shape and appearance with use, is nonexpendable, costs at least \$_____

☐ to replace

or

☐ as a single unit

and does not lose its identity when incorporated into a more complex unit. When defining supplies for inventory purposes, no items will be counted whose total value is less than \$_____. **[The Federal threshold for a supply designation is \$5,000 regardless of length of useful life, however, the Academy may set an early acquisition cost level for designation as supply. Capital expenditures with a unit cost of \$5,000 or more require prior written approval of the Federal awarding agency or pass-through entity.]**

The duty of the ☐ **Educational Service Provider** ☐ **School Leader** ☐ **Business Manager** shall be to ensure that inventories are recorded systematically and accurately and that property records of equipment are updated and adjusted annually by reference to purchase orders and withdrawal reports.

☐ Major items of equipment shall be subject to annual spot check inventory to determine loss, mislocation, or depreciation; any major loss shall be reported to the Board.

☐ Property records of consumable supplies shall be maintained on a continuous inventory basis.

☐ The _____ shall maintain a system of property records which shall show, as appropriate to the item recorded, the:

☐ description and identification;

☐ manufacturer;

☐ year of purchase;

☐ initial cost;

☐ location;

() condition and depreciation;

() evaluation in conformity with insurance requirements.

Equipment acquired under a Federal award will vest upon acquisition to the Academy, subject to the following conditions:

- A. The equipment shall be used for the authorized purposes of the award project during the period of performance or until the equipment is no longer needed for the purposes of the project.
- B. The equipment shall not be encumbered without the approval of the Federal awarding agency or the pass-through entity.
- C. The equipment may only be used and disposed of in accordance with the provisions of the Federal awarding agency or the pass-through entity and Board Policy and guidelines.
- D. Property records shall be maintained that include a description of the equipment, a serial number or other identification number, the source of funding for the equipment (including the Federal Award Identification Number (FAIN), title entity, acquisition date, cost of the equipment, percentage of Federal participation in the project costs for the award under which the equipment was acquired, the location, use, and condition of the equipment, and ultimate disposition data, including date of disposal and sale price of the equipment.
- E. A physical inventory of the property must be taken and results reconciled with property records at least once every two (2) years.
- F. A control system shall be developed to provide adequate safeguards to prevent loss, damage, or theft of the property. Any such loss, damage, or theft shall be investigated.
- G. Adequate maintenance procedures shall be implemented to keep the property in good condition.
- H. Proper sales procedures shall be established to ensure the highest possible return, in the event the Academy is authorized or required to sell the equipment/property.
- I. When original or replacement equipment acquired under a Federal award is no longer needed for the original project/program or for activities currently or previously supported by a Federal awarding agency, and except as otherwise provided by Federal statutes, regulations, or Federal awarding agency disposition instructions, the Academy shall request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment shall be made in accordance with the provisions of C.F.R. 200.313.

REVISED POLICY – FALL 2021 **PUBLIC RECORDS**

Reference: MCL 15.231 et seq.
MCL 445.81 et seq.
Michigan Federation of Teachers v. University of Michigan, 481 Mich. 657 (2008)

The Board of Directors recognizes its responsibility to maintain the public records of this School Academy and to make such records available to residents of Michigan for inspection and reproduction.

The public records of this School Academy include any writing or other means of recording or retaining meaningful content prepared, owned, used, in the possession of, or retained by the School Academy, its Board, officers, or employees, subject to certain exemptions according to the Michigan Freedom of Information Act (FOIA). The Academy shall not disclose the confidential address of a student or of an employee who has provided proper notice of a participation card issued by the department of the attorney general under the Address Confidentiality Program Act.

Any person may make a written request for any public records of the School Academy. The person may inspect, copy, or receive copies of the public record requested. The School Academy shall respond to such requests within five (5) working days after receipt unless otherwise agreed to in accordance with the Freedom of Information Act.

An individual may purchase copies of the School Academy's public records upon payment of a fee. No original public record may be removed from the office in which it is maintained except by a Board officer or employee in the course of the performance of his/her duties. Neither the Board nor its employees shall permit the release of the social security number of an employee, student, or other individual except as authorized by law (see Policy 8350 and AG 8350).

Option #1

The Board authorizes the School Leader to provide, upon written request, enhanced i.e. immediate access to any public record which the School Academy has stored in an electronic database and is not confidential or exempt from disclosure by State or Federal statute. Such a record may be provided by means of a computer disk provided by the requestor, electronic mail, or a modem providing the requestor has paid the fee established for such transmission.

Option #2

The Board chooses not to provide for enhanced access to any of its public records.

[END OF OPTIONS]

[] The Board has determined that personal and confidential information provided to and retained by the School Academy on parents, students, staff and others will be considered exempt from disclosure pursuant to a Freedom of Information Act request, unless advised specifically by the School's Academy's legal counsel that the particular information must be released. Such personal and confidential information shall include home addresses, telephone numbers, e-mail addresses or website pages (e.g. My Space, Facebook), except as they are specifically related to

the operation of the ~~schools~~academy, or specifically authorized for release by the individual, or the parent/guardian if the individual is a minor.

Nothing in this policy shall be construed as preventing a Board member from inspecting in the performance of his/her official duties any record of this ~~School~~Academy, except student records and certain portions of personnel records.

The School Leader is authorized to dispose of correspondence on a daily basis including those transmitted by means of voice mail or E-mail, providing the message does not alter existing ~~School~~Academy records.

The School Leader is responsible for transmission of data contained in the single record student data base established by the Michigan Department of Education. Such transmission shall be in accordance with procedures established by the _____ Intermediate School District and the Center for Educational Performance and Information (CEPI).

The School Leader shall establish administrative guidelines to ensure proper compliance with the intent of this policy and the Freedom of Information Act.

FOR BOARD APPROVAL

REVISED POLICY – FALL 2021 **STUDENT RECORDS**

Reference: MCL 380.1135
Letter, April 6, 2004 Jeremy Hughes, Deputy Supt. Department of Education
34 CFR Part 99, 2002
Section 444 of subpart of part C of the General Education Provisions Act
Title IV of Public Law 90-247
20 USC, Section 1232f through 1232i (FERPA)
20 USC 1400 et seq., Individuals with Disabilities Education Improvement Act
20 USC 7165(b)
26 USC 152
20 USC 7908

In order to provide appropriate educational services and programming, the Board of Directors must collect, retain, and use information about individual students. Simultaneously, the Board recognizes the need to safeguard student's privacy and restrict access to student's personally identifiable information.

~~After June 26, 2021, if~~ If the parent or legal guardian of a student provides the Academy with notice that s/he/they have received a participation card issued by the attorney general under the address confidentiality program act, the Academy shall not disclose the confidential address of the student, regardless of any other provision of this policy. The **[] Educational Service Provider [] School Leader**, or his or her designee, shall develop a process to ensure that a student's participation in the address confidentiality program act is appropriately noted to avoid disclosure of this information to any person or entity.

Student "personally identifiable information" ("PII") includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or other information requested by a person who the Academy reasonably believes knows the identity of the student to whom the education record relate.

The Board hereby authorizes collection of the following student records, in addition to the membership record required by law:

- () observations and ratings of individual students by professional staff members acting within their sphere of competency
- () samples of student work
- () information obtained from professionally acceptable standard instruments of measurement such as:
 - () interest inventories and aptitude tests
 - () vocational preference inventories
 - () achievement tests
 - () standardized intelligence tests

- () _____
- () authenticated information provided by a parent or eligible student concerning achievements and other school activities which the parent or student wants to make a part of the record
 - () verified reports of serious or recurrent behavior patterns
 - () rank in class and academic honors earned
 - () psychological tests
 - () attendance records
 - () health records
 - () custodial arrangements

In all cases, permitted, narrative information in student records shall be objectively-based on the personal observation or knowledge of the originator.

Student records shall be available only to students and their parents, eligible students, and designated Academy officials who have a legitimate educational interest in the information, or to other individuals or organizations as permitted by law. The term "parents" includes legal guardians or other persons standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child). The term "eligible student" refers to a student who is eighteen (18) years of age or older or a student of any age who is enrolled in a postsecondary institution.

In situations in which a student has both a custodial and a noncustodial parent, both shall have access to the student's educational records unless stipulated otherwise by court order. In the case of eligible students, parents will be allowed access to the records without the student's consent, provided the student is considered a dependent under section 152 of the Internal Revenue Code.

An Academy official is a person employed by the [] **Educational Service Provider** [] **Board** as an administrator, supervisor, teacher/instructor (including substitutes), or support staff member (including health or medical staff and law enforcement unit personnel); and a person serving on the Board. The Board further designates the following individuals as entities as "school officials" for the purpose of FERPA:

- A. persons or companies with whom the Board has contracted to perform a specific task (such as an attorney, auditor, insurance representative, or medical consultant);
- B. contractors, consultants, volunteers or other parties to whom the Board has outsourced a service or function otherwise performed by the Board employees (e.g. a therapist, authorized information technology (IT) staff, and approved online Educational Service Providers).

The above-identified outside parties must (a) perform institutional services or functions for which the Board would otherwise use its employees, (b) be under the direct control of the Board with respect to the use and maintenance of education records, and (c) be subject to the requirements of 34 CFR 99.33(a) governing the use and re-disclosure of PII from education records.

Finally, a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his/her tasks (including volunteers) is also considered an "Academy official" for purposes of FERPA provided s/he meets the above-referenced criteria applicable to other outside parties.

"Legitimate educational interest" shall be defined as a "direct or delegated responsibility for helping the student achieve one (1) or more of the educational goals of the Academy" or if the record is necessary in order for the Academy official to perform an administrative, supervisory or instructional task or to perform a service or benefit for the student or the student's family. The Board directs that reasonable and appropriate methods (including but not limited to physical and/or technological access controls) are utilized to control access to student records and to make certain that Academy officials obtain access to only those education records in which they have legitimate educational interest.

The Board authorizes the administration to:

- A. forward student records, including any suspension and expulsion action against the student, on request to a school or school district in which a student of this Academy seeks or intends to enroll upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;
- B. forward student records, including disciplinary records with respect to suspensions and expulsions, upon request to a public school or school Board in which a student in foster care is enrolled. Such records shall be transferred within one (1) school day of the enrolling school's request;
- C. provide "personally-identifiable" information to appropriate parties, including parents of an eligible student, whose knowledge of the information is necessary to protect the health or safety of the student or other individuals, if there is an articulable and significant threat to the health or safety of a student or other individuals, considering the totality of the circumstances;
- D. report a crime committed by a child with or without a disability to appropriate authorities and, with respect to reporting a crime committed by a student with a disability, to transmit copies of the student's special education records and disciplinary records including any suspension and expulsion action against the student to the authorities and Academy officials for their consideration;
- E. release de-identified records and information in accordance with Federal regulations;
- F. disclose personally identifiable information from education records, without consent, to organizations conducting studies "for, or on behalf of" the Academy for purposes of developing, validating or administering predictive tests, administering student aid programs, or improving instructions;

Information disclosed under this exception must be protected so that students and parents cannot be personally identified by anyone other than representative of the organization conducting the study, and must be destroyed when no longer needed for the study. In order to release information under this provision, the Academy will enter into a written agreement with the recipient organization that specifies the purpose of the study. (See Form 8330 F14.) Further, the following personally

identifiable information will not be disclosed to any entity: a student or his/her family member's social security number(s); religion; political party affiliation; voting history; or biometric information.

(NOTE: Schools without Administrative Procedures should include the following.) This written agreement must include:

1. specification of the purpose, scope, duration of the study, and the information to be disclosed;
2. a statement requiring the organization to use the personally identifiable information only to meet the purpose of the study;
3. a statement requiring the organization to prohibit personal identification of parents and students by anyone other than a representative of the organization
4. a requirement that the organization destroy all personally identifiable information when it is no longer needed for the study, along with a specific time period in which the information must be destroyed.

While the disclosure of personally identifiable information (other than social security numbers, religion, political party affiliation, voting record, or biometric information) is allowed under this exception, it is recommended that de-identifiable information be used whenever possible. This reduces the risk of unauthorized disclosure.

- G. disclose personally identifiable information from education records without consent, to authorized representatives of the Comptroller General, the Attorney General, and the Secretary of Education, as well as state and local educational authorities. The disclosed records must be used to audit or evaluate a federal or state supported education program, or to enforce or comply with Federal requirements related to those education programs. A written agreement between the parties is required under this exception. (See Form 8330 F16)

[NOTE: the following sentence should be selected by schools with Administrative Procedures.] The Academy will verify that the authorized representative complies with FERPA regulations.

- H. request each person or party requesting access to a student's record to abide by the Federal regulations concerning the disclosure of information.

The Board will comply with a legitimate request for access to a student's records within a reasonable period of time but not more than forty-five (45) days after receiving the request or within such shorter period as may be applicable to students with disabilities. Upon the request of the viewer, a record shall be reproduced, unless said record is copyrighted, and the viewer may be charged a fee equivalent to the cost of handling and reproduction. Based upon reasonable requests, viewers of education records will receive explanation and interpretation of the records.

The Board shall maintain a record of those persons to whom information about a student has been disclosed. Such disclosure records will indicate the student, person viewing the record, information disclosed, date of disclosure, and date parental/eligible student consent was obtained (if required).

Upon written request by a student's parent or legal guardian, the Academy shall disclose to the parent or legal guardian any personally identifiable information concerning the student that is collected or created by the Academy as part of the student's education records.

If the Academy provides any personally identifiable information concerning the student that is collected or created by the Academy as part of the student's education records to any person, agency, or organization, then the Academy shall disclose to the student's parent or legal guardian upon his or her written request:

- A. The specific information that was disclosed.
- B. The name and contact information of each person, agency, or organization to which the information has been disclosed.
- C. The legitimate reason that the person, agency, or organization had in obtaining the information.

This information shall be provided without charge within 30 days after the Academy receives the written request and without charge to the parent or legal guardian.

The Academy is not required to disclose to the parent or legal guardian, even upon written request, any personally identifiable information concerning the student that is collected or created by the Academy as part of the student's education records and is provided to any person, agency, or organization in any of the following situations:

- A. Provision of such information to the Michigan Department of Education or CEPI.
- B. Provision of such information to the student's parent or legal guardian.
- C. Provision of such information to its authorizing body or to an educational management organization with which it has a management agreement.
- D. Provision of such information to or from its intermediate school board or to another intermediate school board providing services to the Academy or its students pursuant to a written agreement.
- E. Provision of such information to a person, agency, or organization with written consent from the student's parent or legal guardian or, if the student is at least age 18, the student.
- F. Provision of such information to a person, agency, or organization seeking or receiving records in accordance with an order, subpoena, or ex parte order issued by a court of competent jurisdiction.
- G. Provision of such information as necessary for standardized testing that measures the student's academic progress and achievement.
- H. Provision of such information that is covered by the opt-out form described above, unless the student's parent or legal guardian or, if the student is at least age 18 or is an emancipated minor, the student has signed and submitted the opt-out form referenced below.

Only "directory information" regarding a student shall be released to any person or party, other than the student or his/her parent, without the written consent of the parent; or, if the student is

an eligible student, the written consent of the student, except those persons or parties stipulated by the Board policy and Administrative Procedures and/or those specified in the law.

The Board shall exempt from disclosure directory information, as requested for the purpose of surveys, marketing, or solicitation, unless the Board determines that the use is consistent with the educational mission of the Board and beneficial to the affected students. The Board may take steps to ensure that directory information disclosed shall not be used, rented, or sold for the purpose of surveys, marking, or solicitations. Before disclosing the directory information, the Board may require the requester to execute an affidavit stating that directory information provided shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

Directory Information

Each year the [] **Educational Service Provider** [] **School Leader** shall provide public notice to students and their parents of the Academy's intent to make available, upon request, certain information known as "directory information." The Board designates as student "directory information":

- () a student's name;
- () address (except for students participating in the address confidentiality program act);
- () telephone number;
- () date and place of birth;
- () major field of study;
- () participation in officially recognized activities and sports;
- () height and weight, if member of an athletic team;
- () height and weight of an athletic team;
- () weight, if member of an athletic team which requires disclosure to participate;
- () dates of attendance;
- () date of graduation;
- () awards received;
- () honor rolls;
- () scholarships;
- () telephone numbers for inclusion in school or PTO directories;
- () school photographs or videos of students participating in school activities, events or programs;
- () _____

[NOTE: The following option should be selected if the Academy assigns Academy email accounts to students per 7540.03. *This option is provided to address potential confidentiality issues presented by Policy 7540.03 and is supported by Federal FERPA regulation 34 CFR 99.37(d).]

[] The Academy designates Academy-assigned email accounts as “directory information” for the limited purpose of facilitating students’ registration for access to various online educational services, including mobile application/apps that will be utilized by the student educational purposes () and for inclusion in internal email address books. Academy-limited purpose(s) and to any person or entity but the specific online Educational Service Provider and internal users of the Academy’s Education Technology.

The **[] Educational Service Provider [] School Leader** will also develop a list of uses for which the Academy commonly would disclose a student’s directory information and develop an opt-out form that lists all of the uses or instances and allows a parent or legal guardian to elect not to have his or her child’s directory information disclosed for 1 or more of these uses.

Each student’s parent or legal guardian will be provided with the opt-out form within the first 30 days of the school year. The form shall also be provided to a parent or legal guardian at other times upon request.

If an opt-out form is signed and submitted to the Academy by a student’s parent or legal guardian, the Academy shall not include the student’s directory information in any of the uses that have been opted out of in the opt-out form. A student who is at least age 18 or is an emancipated minor may act on his or her own behalf with respect to the opt-out form.

Parents and eligible students may also refuse to allow the Academy to disclose any or all of such “directory information” upon written notification to the Academy within _____ days after receipt of the Academy’s public notice.

Armed Forces Recruiting

The Board shall provide United States Armed Forces recruiters with at least the same access to the high school campus and to student directory information (names, addresses, Academy-assigned email addresses (if available) (except for students participating in the address confidentiality program act), and telephone listings of secondary students) as is provided to other entities offering educational or employment opportunities to those students. “Armed forces of the United States” means the armed forces of the United States and their reserve components and the United States Coast Guard.

If a student or the parent or legal guardian of a student submits a signed, written request to the Board that indicates that the student or the parent or legal guardian does not want the student’s directory information to be accessible to official recruiting representatives, then the officials of the school shall not allow that access to the student’s directory information. The Board shall ensure that students and parents and guardians are notified of the provisions of the opportunity to deny release of directory information.

Public notice shall be given regarding the right to refuse disclosure of any or all “directory information” including to the armed forces of the United States and the service academies of the armed forces of the United States.

A fee, not to exceed the actual costs incurred by the high school, for copying and mailing student directory information under this section, may be charged an official recruiting representative.

Directory information received under armed services authorization request shall be used only to provide information to students concerning educational and career opportunities available in the armed forces of the United States or the service academies of the armed forces of the United States. An official recruiting representative who receives student directory information under this section shall not release that information to a person who is not involved in recruiting students for the armed forces of the United States or the service academies of the armed forces of the United States.

Annually, the Board will notify male students age eighteen (18) or older that they are required to register for the selective service.

Requests to the Academy Records Officer shall be presented on a standardized form developed by the armed forces of the United States requesting access to a high school campus and a time for the access. Requests should bear the signature of the ranking recruiting officer of the armed service making the request.

Whenever consent of the parent(s)/eligible student is required for the inspection and/or release of a student's education records or for the release of "directory information", either parent may provide such consent unless stipulated otherwise by court order. If the student is under the guardianship of an institution, the School Leader shall appoint a person who has no conflicting interest to provide such written consent.

The Board may disclose "directory information" on former students without student or parental consent, unless the parent or eligible student previously submitted a request that such information not be disclosed without their prior written consent.

The Academy shall not sell or otherwise provide to a for-profit business entity any personally identifiable information that is part of a student's education records. This does not apply to any of the following situations:

- A. Providing the information to an educational management organization with which the Academy has a management agreement.
- B. Providing the information as necessary for standardized testing that measures the student's academic progress and achievement.
- C. Providing the information as necessary to a person that is providing educational or educational support services to the student under a contract with the Academy.

The parent of a student or an eligible student has the right to inspect upon request any instrument used in the collection of personal information before the instrument is administered or distributed to a student. Personal information for this section is defined as individually identifiable information including a student or parent's first and last name, a home or other physical address (including street name and the name of the city or town, unless a parent is prohibited from doing so due to a student's participation in the address confidentiality program act), a telephone number, or a Social Security identification number. In order to review the instrument, the parent or eligible students, must submit a written request to the building principal at least _____ work days before the scheduled date of the activity. The instrument will be provided to the parent within _____ business days of the principal receiving the request.

The ☐ **Educational Service Provider** ☐ **School Leader** shall directly notify the parent(s) of a student and eligible students, at least annually at the beginning of the school year, of the specific

or approximate dates during the school year when such activities are scheduled or expected to be scheduled.

This section does not apply to the collection, disclosure or use of personal information collected from students from the exclusive purpose of developing, evaluating, or providing educational products or service for, or to, students or educational institutions, such as the following:

- A. college or other postsecondary education recruitment, or military recruitment;
- B. book clubs, magazines, and programs providing access to low-cost literary products;
- C. curriculum and instructional materials used by elementary and secondary schools;
- D. tests and assessments used by elementary and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments;
- E. the sale by students of products or services to raise funds for school-related or education-related activities; and
- F. student recognition programs.

The Board may establish online access for the parents or the eligible student to the student's confidential academic and attendance record. To authorize such access, the parents or the eligible student must sign a release (see Form 8330 F10). This release shall remind the parents or eligible student that the account and confidential information about the student is only as secure as they keep their account information. Neither the **[] Board [] Educational Service Provider** nor its employees will be held responsible for any breach of this policy by the parent/eligible student or any unauthorized party.

The **[] Educational Service Provider [] School Leader** shall prepare Administrative Procedures to ensure that students and parents are adequately informed each year regarding their rights to:

- A. inspect and review the student's education records;
- B. request amendments if the record is inaccurate, misleading, or otherwise in violation of the student's rights;
- C. consent to disclosures of personally-identifiable information contained in the student's education records, except to unauthorized disclosures allowed by the law;
- D. challenge the Board's noncompliance with a parent's request to amend the records through a hearing;
- E. file a complaint with the United States Department of Education;

- F. obtain a copy of the Board's policy and Administrative Procedures on student records;

The ☐ **Educational Service Provider** ☐ **School Leader** shall also develop procedural guidelines for:

- () the proper storage and retention of records including a list of the type and location of records;
- () informing employees of the Federal and State laws concerning student records.

The Board authorizes the use of the microfilm process or electromagnetic processes of reproduction for the recording, filing, maintaining, and preserving of records.

No liability shall attach to any member, officer, or ☐ **Educational Service Provider** employees of this Academy specifically as a consequence of permitting access or furnishing student records in accordance with this policy and regulations.

Any entity receiving personally identifiable information pursuant to a study, audit, evaluation or enforcement/compliance activity must comply with all FERPA regulations. Further, such an entity must enter into a written contract with the Board of Directors delineating its responsibilities in safeguarding the disclosed information. Specifically, the entity must demonstrate the existence of a sound data security plan or data stewardship program, and must also provide assurances that the personally identifiable information will not be re-disclosed without prior authorization from the Board. Further, the entity conducting the study, audit, evaluation or enforcement/compliance activity is required to destroy the disclosed information once it is no longer needed or when the timeframe for the activity has ended, as specified in its written agreement with the Board of Directors. See Form 8330 F14 and Form 8330 F16 for additional contract requirements.