PG-5.030: Allowable and prohibited uses of funds

Sec. 1. PURPOSE OF POLICY.

Through this policy, the Board of Directors (hereafter, the "Board") of Midland Academy Charter doing business as Midland Academy Charter (hereafter, the "School") shall address the legal requirements, as applicable, promulgated at:

(a) Texas Constitution, Article III, Sec. 51, 52 and 53;
(b) Texas Business Organizations Code ("Tex. Bus. Org. Code") Sections 3.101, 22.201, 22.221 and 22.235;
(c) Texas Property Code ("Tex. Prop. Code"), Chapter 163;
(d) Texas Education Code ("Tex. Ed. Code") Sections 12.104(b)(1), 12.107, 12.111(a)(10), 12.115(a)(2), 12.121, 42.168, 44.052, 45.105(b)/(c) and Chapter 48, Subchapters C and D;
(e) Texas Administrative Code, Title 19 ("19 TAC"), Sections 89.1125, 100.1033, 100.1043, 100.1047 and 100.1101;
(f) United States Code, Title 26, §501;
(g) Code of Federal Regulations ("CFR"), Title 2, Part 200 and Title 26, Part 1;
(h) *Standards for Internal Control in the Federal Government* promulgated by the Comptroller General of the United States;
(i) *Internal Control – Integrated Framework* issued by Committee of Sponsoring Organizations of the Treadway Commission;
(j) *Government Auditing Standards* (2018 Revision) promulgated by the U.S. Government Accountability Office; and
(k) *Uniform Grant Management Standards* promulgated by the Texas Comptroller of Public Accounts; and
(l) Financial Accountability System Resource Guide ("FASRG").

Additionally, through this policy, the Board shall address best practices adopted by public schools.

Sec. 2. AUTHORITY OVER FISCAL MATTERS.

Sec. 2.1. In accordance with state law, the Board has primary and ultimate authority over fiscal matters. If a matter or decision-making process is not addressed in this or other duly adopted policies of the Board, authority rests with the Board. In the event of a conflict between this policy and any other Board policy, such conflict shall be brought to the Board for resolution. Refer to the Board's Policy relating to its Authority Over Fiscal Matters (the "Controlling Policy") for requirements applicable to this policy.

Sec. 2.2. The Delegate, as defined in Sec. 3.2 of the Controlling Policy, shall report to the Board any business arrangement or transaction with an individual that is an officer, as defined in Sec. 5

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of the Controlling Policy, and any conflicted,[1] interested[2] or related[3] party, as defined in other Board policy or applicable law. The School and its officers may not enter into a business arrangement or conduct a transaction in such a manner so as to circumvent this requirement.

Sec. 2.3. As established in Sec. 4 of the Controlling Policy, where the Delegate is authorized to confer authority to a designee (as denoted by the phrase "or designee"), the Delegate may confer such authority to a single designee.

Sec. 3. APPLICABILITY OF POLICY.

Unless otherwise noted herein, this policy applies to the use of local, state and Federal funds regardless of the originating source of the funds.

Sec. 4. PRUDENT PERSON RULE.[4]

See Sec. 7 of the Controlling Policy.

Sec. 5. ABUSE AND WASTE PROHIBITED.

See Sec. 8 of the Controlling Policy.

Sec. 6. FIDUCIARY DUTY.[5]

As fiduciaries, the Board and officers, as defined in Sec. 5 of the Controlling Policy, have been entrusted with funds for the benefit of the School's students. Accordingly, School funds, property and other resources shall be used for the benefit of the School's students to provide elementary and secondary instruction and to implement the approved open-enrollment charter, [6] as amended.

Sec. 7. PROHIBITED USE OF PUBLIC FUNDS.[7]

The Board and officers, as defined in Sec. 5 of the Controlling Policy, may not pledge or use public funds to secure loans or bonds for any other organization, including a non-charter operation or out-of-state operation conducted by the charter holder or a related party[8] or use public funds to support an operation or activity not related to the educational activities of the School.

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1 Tex. Ed. Code §12.1054; 19 TAC §§ 100.1131 through 100.1135
2 19 TAC §100.1047(f)
3 Tex. Ed. Code §12.1166
4 Tex. Bus. Org. Code §22.221; Tex. Prop. Code §§ 163.004, 163.005 and 163.006; 2 CFR §200.303(a) and *Standards for Internal Control in the Federal Government* §8.03; 2 CFR §200.404; *Government Auditing Standards* §§ 6.23, 7.25, and 8.122; Uniform Grant Management Standards.
5 Tex. Ed. Code §§ 12.102(1), 12.107(a)(2) and 12.128(a)(2); 19 TAC §§ 100.1001(6), 100.1043(a), and 100.1063(b)/(c).
6 *See* 19 TAC §100.1001(15) for pertinent legal definition.
7 Tex. Ed. Code §§ 12.106 and 12.107(a)(5); Public funds means state funds as defined at 19 TAC §100.1001(8).
8 Tex. Ed. Code §12.1166

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Sec. 8. FUNDS TO SUPPORT INSTRUCTIONAL PLAN.

The Board and officers, as defined in Sec. 5 of the Controlling Policy, shall ensure that funds are used to support the implementation of the School's instructional plan.

Sec. 9. AUTHORITY TO OBLIGATE AND EXPEND.[9]

As established in the Board's Policy governing the Authorization for the Obligation and Expenditure of Funds, officers and employees shall not obligate or expend any funds without the Board's authorization, as set forth in the Adopted Budget, as amended.

Sec. 10. GENERAL REQUIREMENT.

Sec. 10.1. Recognizing that it is impractical to list every conceivable allowable use of funds and that a general framework is beneficial in guiding decisions regarding the use of funds, the School shall adhere to the general requirements set forth in this section prior to and when it obligates and expends funds.

Sec. 10.2. The Delegate and the School's officers shall ensure that a proposed use of funds:

(a) Is reasonable in its nature and amount;
(b) Does not exceed that which a prudent person would incur under the circumstances prevailing at the time the decision was made to incur the cost(s);
(c) Is ordinary and necessary to achieve the goals and implement the strategies and activities of the open-enrollment charter and instructional plan;
(d) Conforms to School's documented and established practices;
(e) Is generally or specifically allowed by applicable state or federal law, rule or other legal authority;
(f) Is not prohibited by applicable state or federal law, rule or other legal requirement; and
(g) Complies with Board policy and the administrative procedures adopted by the Delegate.

Sec. 11. GENERALLY AUTHORIZED EXPENSES.[10]

Sec. 11.1. In general, consistent with Sec. 8 of this policy and the Board's Policy relating to the Authorization for the Obligation and Expenditure of Funds, the School is authorized to obligate and expend funds for the following purposes.

(a) To compensate the Superintendent, teachers, janitors and other employees for employment services rendered.
(b) To pay the interest for short-term loans acquired to compensate employees.
(c) To purchase equipment, furniture, materials, software, supplies and vehicles.
(d) To pay for insurance premiums.

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[9] FASRG Module 1 and 2; Tex. Ed. Code §44.052
[10] Tex. Ed. Code §48.105(c)

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(e) To purchase real property for use as a school site pursuant to Board authorization.
(f) To purchase, build, repair and rent school buildings pursuant to Board authorization.
(g) As authorized by the Board, to acquire school buildings and real property by leasing through annual payments with an ultimate option to purchase.
(h) For other purposes necessary in the conduct of the School as determined by the Board including for the following purposes.
    (1) To develop and monitor a system of controls to ensure compliance with state and federal laws and rules.
    (2) To administer state and federal grants.
    (3) To conduct Board meetings and provide Board members with training.
    (4) To procure legal, audit and other professional services necessary for the proper administration and oversight of School.
    (5) To record, compile, maintain and report data on student attendance, student enrollment, staff, finances, grants and other functions, programs, services and activities as required by the state and federal governments.
    (6) To develop, maintain and update a charter instructional plan including conducting a comprehensive needs assessment.
    (7) To conduct periodic assessments of students to identify potential learning deficiencies and to measure the students' progress towards desired academic goals.
    (8) For the upkeep and repair of facilities and instructional and instructionally related materials and equipment in the classroom and library, of food service equipment, and of vehicles.
    (9) To provide breakfast and lunch meals and snacks to students pursuant to the guidelines and requirements of the Texas Department of Agriculture.
    (10) To conduct field trips as authorized by the Board.
    (11) For athletic and band equipment, instruments and uniforms.
    (12) To conduct graduation and award ceremonies recognizing the achievements of students and staff.
    (13) To conduct pre/post-employment physicals or drug testing and background checks.
    (14) For the research, development and maintenance of curriculum and innovative, new or modified instruction.
    (15) For in-service training or staff development for instructional and instructionally related staff conducted by a regional education service center, an outside consultant(s) or School employee(s).
    (16) To travel to conduct official School business.
    (17) For utilities and the maintenance of telecommunication and computer networks and systems.
    (18) To provide a safe and drug free school environment.
    (19) For memberships in civic and professional organizations that further the School's mission.

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(20) For any other specifically identified purpose, function, activity, program or service authorized by the Board through the adoption of the School's annual operating budget and charter instructional plan including any amendments thereto.

(21) For other purposes determined by the Board to be in the best interest of School's students.

Sec. 11.2. For any proposed obligation or expenditure of public funds under Sec. 11.1(h)(20)-(21) of this policy that may appear to be a violation of the Texas Constitution,[11] the Board and Delegate may seek legal counsel to ascertain if a board resolution is necessary to meet the following requirements:

(a) Identify the public purpose, amount, fund source, return benefit to the School and control(s) for the proposed expense:[12] and

(b) Certify that:

(1) The statutes and regulations applicable to the fund source to be used allow and do not otherwise prohibit the proposed expense;[13]

(2) The predominant purpose of the proposed expense is to accomplish a public purpose[14] and not to benefit private parties;[15]

(3) The proposed expense shall provide a clear, public benefit in return;[16] and

(4) Sufficient control shall be retained over the expense to ensure that the public purpose is accomplished, and a return benefit is received.[17]

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[11] See Texas Constitution Art. III, §§ 44, 50, 51, 52(a), and 53 and Art. XI, §3.

[12] Attorney General of Texas Opinion No. GA-0076, GA-0743, KP-0099 and KP-0204.

[13] *See* Tex. Att'y Gen. Op. No. GA-0743 (2009) at 2 ("The public purpose served by the expenditure must be an authorized public purpose of the political subdivision.").

[14] *See* Tex. Att'y Gen. Op. No. GA-0743 (2009) at 2 ("The public purpose served by the expenditure must be an authorized public purpose of the political subdivision."). Thus, to meet this requirement, the Board must reasonably find that the activity to be supported by the proposed expense will yield the return benefit claimed and that said benefit serves the purposes of the open-enrollment charter.

[15] *See* Tex. Att'y Gen. Op. No. GA-0076 (2003) at 6 ("An expenditure to accomplish a public purpose is constitutional even though it incidentally benefits a private interest.").

[16] *See* Tex. Att'y Gen. Op. No. KP-0099 (2016) at 5 ("In utilizing this test to evaluate public expenditures, Texas courts have suggested that … (3) what constitutes an adequate return benefit depends on a variety of specific circumstances but is called into doubt if there is such a gross disparity in the relative values exchanged as to show unconscionability, bad faith, or fraud.").

[17] *See* Tex. Att'y Gen. Op. No. GA-0076 (2003) at 7 ("The school district must place sufficient controls on the expenditure to ensure that its public purpose is accomplished. Contractual terms may provide sufficient control of some expenditures. […] Controls such as application requirements and limits on travel expenditures may be established by the board's exercise of rule-making power.").

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Sec. 12. GENERALLY PROHIBITED EXPENSES.

In general, the School is prohibited from obligating and expending funds for the following purposes.

(a) Alcoholic beverages.
(b) Any good or service for personal benefit or use.
(c) Entertainment, including amusement, diversion, and social activities.[18]
(d) Field trips that are not part of a teacher's lesson plan or that do not meet the instructional objectives of the charter instructional plan.
(e) Fines and penalties levied against individuals.
(f) Gifts, including donations.

Sec. 13. AUTHORIZED USES OF FUNDS FOR SPECIAL PROGRAMS.[19]

In addition to the general requirement and generally authorized expenses enumerated above, the School may use and may allow the use of state funds pertaining to the educational programs established under Tex. Ed. Code Chapter 29 and other state law for the authorized purposes.

Sec. 14. INDIRECT COST LIMITATION.[20]

The Delegate or designee may use and may only allow the use of state funds provided for the educational programs under Sec. 13 of this policy for indirect costs up to the maximum allowed by state law.

Sec. 15. AUTHORIZED USES OF FUNDS FOR FEDERAL PROGRAMS.

The Delegate or designee may use and may allow the use of federal funds for those purposes authorized by federal law and rule and the approved grant application, as amended.

Sec. 16. DOCUMENTATION REQUIRED.[21]

The Delegate or designee shall prepare or cause to have prepared records for all uses of funds. All recorded uses of funds shall adequately demonstrate compliance with this policy and applicable legal requirements.

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[18] FASRG, Update 17 (2020) Module 2, §2.2.2.1 (Social Activities).
[19] Tex. Ed. Code Chapters 29 and 48.
[20] Tex. Ed. Code §§ 48.102(h), 48.104(k), 48.105(b), 48.106(c) and 48.110(i).
[21] Tex. Ed. Code §§ 12.1052 and 12.115(a)(2); 19 TAC §§ 100.1022(c)(1)(vi), 100.1032(2)(P) and 100.1203(a)(2)

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Sec. 17. MONITORING AND OVERSIGHT OF BUDGETARY AUTHORIZATION.[22]

The Delegate or designee shall regularly monitor and oversee the use of funds through the review and approval of purchase requisitions, purchase orders, payment authorizations, travel authorization requests, travel reimbursement forms, receiving reports, itemized vendor invoices and receipts, and any and all other such original record deemed appropriate and necessary to ascertain if a proposed or actual use of funds constitutes an allowable cost. The Delegate or designee shall document monitoring and oversight activities.

Sec. 18. USE OF RESTRICTED PHILANTHROPIC FUNDS.

If a donor restricts a contribution or School implies or states a specific purpose for its fundraising effort(s), the Delegate or designee may only use or allow the use of the contribution(s) received for the restricted purpose. See Board Policy relating to Fundraising and Gift Acceptance.

Sec. 19. REPORT TO THE FINANCE COMMITTEE.[23]

Within ten (10) business days after each calendar month, the Delegate or designee shall provide to the Board's Finance Committee a comparison of actual expenses to budgeted expenses, as amended, and provide a statement accounting for any variances exceeding ten percent (10%). In the statement, the Delegate or designee shall disclose any corrective measures undertaken to address any and all variances exceeding ten percent (10%). The Finance Committee Chair shall report to the Board any findings under this section.

Sec. 20. TRAINING AND UPDATES.[24]

The Delegate or designee shall properly train officers and employees on the requirements of this policy and any administrative procedure(s) adopted to implement this policy. Additionally, the Delegate or designee shall keep officers and employees informed of any changes to this policy and related requirements.

Sec. 21. ADMINISTRATIVE PROCEDURES.[25]

The Delegate shall formally adopt administrative procedures as reasonably necessary to properly administer this policy and to adhere to applicable law and rule. In doing so, the Delegate shall not

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[22] Tex. Ed. Code §12.115(a)(2); 2 CFR §200.303(a), U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*, 4.02 and 4.05.

[23] FASRG (Update 16) Module 2, §2.3.2.8.

[24] 2 CFR §200.303(a), U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*, 4.02 and 4.05.

[25] Tex. Ed. Code §12.115(a)(2); FASRG Module 2; 2 CFR §200.303. Consistent with 19 TAC § 100.1033(b)(14)(C)(iv), the Board has the final authority to adopt policies governing charter school operations, including authorizing the Delegate or designee to adopt an administrative procedure to implement this policy. Moreover, as set forth in School's Articles of Incorporation and Bylaws and in accordance with Tex. Bus. Org.

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adopt, and is prohibited from adopting, an administrative procedure that conflicts with applicable law or this policy. Accordingly, the Delegate shall confer with the Board or legal counsel before deviating from the requirements set forth in this policy. In the event that a deviation from this policy becomes necessary, the Delegate shall either recommend an amendment to this policy or the Board's approval of a specific deviation, including the purpose, scope and duration of the requested deviation.

Sec. 22. DATE ADOPTED AND EFFECTIVE.

As set forth in the pertinent minutes to the meeting of the Board, the Board adopted this policy on 09/20/2022 and became effective on 09/20/2022.

Sec. 23. RETENTION.[26]

This policy shall be retained until superseded, expired or discontinued and for five (5) years thereafter.

Sec. 24. CERTIFICATION.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to Allowable and Prohibited Uses of Funds, as originally adopted by the Board on 09/20/2022, which Policy is in full force and effect and has not been revoked or amended.

_____

Ptin Name:_____,
Secretary

_____

Date Certified

Code §§ 3.101 and 22.201, the Board is the School's governing authority and, as such, manages and directs School's business and affairs through Board actions, resolutions and policy.

[26] Tex. Ed. Code §12.1052; 19 TAC §100.1203; *See* Record Number GR1000-38 and GR1025-25 in Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition (Effective April 17, 2016) adopted by the Texas State Library and Archives Commission at Texas Administrative Code, Title 13, §7.125(a)(1).

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