

MEMORANDUM

To: CDS Board of Trustees

From: The CDS Board Executive Committee

Date: April 16, 2020

Re: Summary of major changes to the new proposed Board Bylaws

Our existing Board bylaws were last amended in 2011 and are overdue for review and update. The attached is the new set of bylaws that the Board will vote to approve at our next Board meeting. Because our bylaws were so outdated, this new set of bylaws were drafted from scratch to ensure legal compliance yet crafted to reflect the manner in which our Board currently operates. As a result, there is no correlation between the old bylaw section numbers and the section numbers in this new set of bylaws.

The major changes between our existing bylaws and these new bylaws are as follows:

- Article IV, Section 2 — addresses the “self-dealing transaction” requirements of Cal. Corp. Section 5233(a).
- Article IV, Section 4 — addresses the requirements of Cal. Corp. Section 5227, imposing limitations on “interested persons” serving on the Board.
- Article IV, Section 5 — imposes a limitation that no Trustee may serve more than a total of 12 years on the Board (previously, the bylaws provided that a former Trustee who already had served 2 terms could serve another 2 terms after taking a year off the Board but did not limit how many times a Trustee could return to the Board after taking a year off).
- Article IV, Section 6 — allows the Board to declare vacant the office of a Trustee who fails to attend three (3) consecutive Board meetings during any fiscal year, as permitted by Cal. Corp. Section 5221(a).
- Article IV, Section 8 — mirrors the requirements of Cal Corp. Code Section 5222(a)(3) that a Trustee can be removed by the Board at any time without cause by a simple majority vote. Previously, the bylaws provided that a Trustee can only be removed for cause by a 2/3 majority of the Board, which is inconsistent with current law.
- Article IV, Section 11 — changes the “Trustee Emeritus” designation to “Counsel Emeritus.” Under the California Corporations Code, anyone not having the right to vote cannot be considered a “Trustee.” As a result, legal counsel suggested changing our “Trustee Emeritus” designation to another designation that does not use the word “Trustee.” The new bylaws refer to “Counsel Emeritus” instead of “Trustee Emeritus” to reflect the fact that a person holding this title is available to the Board to provide their counsel and wisdom but is not a voting Trustee.
- Article V, Section 5 — adds language defining open and closed executive sessions, providing that the head of school shall be invited to open executive sessions but not closed executive sessions. Further specifies that closed executive sessions are for the sole purpose of discussing the Head of School's contract, compensation, or performance.

- Article V, Section 9 — mirrors the requirements of Cal. Corp. Code § 20 and 21 to allow the Board to hold meetings by conference call or electronic transmission.
- Article VI, Section 4 — incorporates the requirements of Cal. Corp Code Section 5212 regarding the formation and operation of Board committees. In particular:
 - All committees and their governing rules must be created by a majority vote of the Board;
 - All committee members must be appointed by a majority vote of the Board and vacancies likewise may only be filled by a majority vote of the Board.
 - All committees must keep minutes of their meetings;
 - Pursuant to the California Corporations Code, the Board may designate some of its power to one or more Board committees. However, these Bylaws limit the Board from delegating its power to any committee other than the Executive Committee. Members of the Executive Committee shall consist only of Trustees.
 - All committees except for the Executive Committee shall be advisory committees. All advisory committees must have a minimum of 2 Trustees and may also have any number of non-Trustees as members.
- Article VI, Section 4 — crafts language to describe the duties of our existing standing committees (i.e., the Executive Committee, the Committee on Trustees, the Finance Committee, the Advancement Committee, the Board Committee on Inclusion & Diversity, and the Audit Committee).
- Article VII, Section 2 — provides that Board officers shall hold their offices for 1 year terms and may be reelected to serve up to 6 years in an officer role, with the exception that the initial term for a Board Chair shall be 2 years, after which the Board may extend a Chair's term for additional one-year terms if approved by a vote of two-thirds of the Trustees.
- Article VIII (“Non-discrimination Statement”) — the IRS requires that tax-exempt organizations maintain a racially non-discriminatory policy. This policy statement mirrors the sample policy provided by the IRS. Please note that the IRS requires that the policy refer to only those protected classifications included.
- Article IX, Section 1 — although it is not required by law that amendments to bylaws be approved by a 2/3 majority, legal counsel advises that it is a best practice and it has been included here.
- Article IX, Section 4 — requires the Board to provide an annual report to Trustees within 120 days after the end of the fiscal year that contains certain information mandated by Cal. Corp. Code Sections 6321 & 6322.
- Article IX, Sections 5, 6 and 7 — these sections add a Whistleblower policy, a Joint Venture policy, and a Compensation policy to the bylaws. Inclusion of these provisions, while not required by the California Corporations Code, reflects best practices, as they are asked about in IRS Form 990, which the School is required to file annually.
- Article IX, Section 8 — prohibits partisan political activities because tax-exempt corporations are required to refrain from such activity.

- Article IV, Section 9 — adds a “Dedication of Assets” provision, which is important in order to receive an exemption from California Property tax under Cal. Rev. & Tax Code Section 214 because not all purposes that would qualify for tax-exempt status under Federal Internal Revenue Code Section 501(c)(3) would qualify for property tax exemption under the California code so it is important that the purpose meets the requirements for property tax exemption in California.
- These bylaws eliminate the term “*ex officio*,” which was a term used in the old bylaws to describe the fact that the Head of School and the PTTA President were entitled to have a voice but no vote. In 2015, the California legislature modified the Cal. Corp. Code to provide that nonprofit organizations may not have non-voting members and, thus, may not refer to non-voting participants as Trustees. Instead, Article V, Section 5 simply specifies that non-Trustees may be invited to Board and committee meetings and that the Head of School is invited to all meetings other than Closed Executive session meetings.

This is not an exhaustive list of all the changes made but rather a high level summary of some of the major changes. Trustees have a fiduciary duty to read over the new proposed bylaws in their entirety before voting to approve them, so please take the time to go through them before our upcoming Board meeting.