

Background:

1. Sara M. Asmussen, Ph.D.
2. New Dawn Charter High School
3. New Dawn Charter High School is a transfer school serving over-aged and under-credited high school students who have failed at more traditional school settings. Students graduate from New Dawn with a Regents Diploma. Students range in age from 15 to 21; 37% are special needs students; 7% have an ELL status; 83% are free and reduced lunch; and all are high risk.

Submission:

4. Federal Regulation Citation: 200.318(c)(1): *The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*
5. Policy: The Board of Trustees shall conduct or direct the affairs of the School and exercise its powers subject to the applicable limitations of the Education Law, Not-for-Profit Corporation Law, the NY Nonprofit Revitalization Act, the School's charter and its bylaws. The Board delegates aspects of the management of School activities to others, so long as the affairs of the School are managed, and its powers are exercised, under the Board's ultimate jurisdiction. The overarching goals of this Conflict of Interest Policy and Procedure are to ensure increased fiscal transparency, prevent private benefit, and provide enforcement mechanisms and remedies in the event there is a conflict of interest. To these ends, the following policies will be strictly enforced:
  - Not more than 40 percent of the people serving on the New Dawn Charter High School's Board of Trustees may be comprised of: (a) people being compensated by the School for services rendered to it within the previous 12 months, whether as a full-time or part-time employee, independent contractor or otherwise; or (b) any sister, brother, descendant, spouse, partner, sister-in-law, brother-in-law, daughter-in-law, son-in-law, mother-in-law or father-in-law of any such person. While the individuals listed above may serve on the Board, none of them are considered to be Independent Directors.
  - Trustees or employees of any external organization shall hold no more than 40 percent of the total seats comprising the Board of Trustees.
  - Every Trustee has the right to participate in the discussion and vote on all issues before the Board or any Board Committee, except in the event the matter involves: (a) a "related party transaction" (see below) and the trustee is deemed a Disqualified Person (see below); (b) a conflict of interest, (c) the Audit Committee if the Trustee is not an Independent Director; or (d) any other matter at the discretion of a majority of the Trustees.
  - An Independent Director is defined as an individual who has not been involved in (a) any paid position with the school for at least three years, (b) compensation of \$10,000 or more from the School in the last three years, and (c) any work for an organization which has received money from the school.

- A Disqualified Person is a trustee who is the related party or has a conflict of interest in the transaction being discussed. This person must recuse him/herself from participating in any discussion or vote and must not influence any other person who is involved in the discussions and votes.
  - The Board of Trustees and the employees of the School shall not engage in any “related party transactions,” except as approved by the Board. "Related party transaction" means a transaction to which the School is a party and in which one or more of the Trustees (or family members listed above) has a material financial interest. Notwithstanding this definition, related party transactions are allowed but are subject to the Board's general standard of care as outlined in the procedures section.
  - Any Trustee (or family member) having an interest in a contract, other transaction or program presented to or discussed by the Board of Trustees for authorization, approval, or ratification shall make a prompt, full and frank disclosure to the Board of his or her interest prior to its acting on such contract or transaction. Such disclosure shall include all relevant and material facts known to such person about the contract or transaction, which might reasonably be construed to be adverse to the Board's interest. A person shall be deemed to have an "interest" in a contract or other transaction if he or she is the party (or one of the parties) contracting or dealing with the School, or is a Trustee or has a significant financial or influential interest in the entity contracting or dealing with the School.
  - Trustees representing any not-for-profit corporation proposing to do business with the Charter School shall disclose the nature and extent of such business propositions.
  - No Trustee or employee of a for-profit corporation having a business relationship with the Charter School shall serve as voting member of the Board of Trustees for the duration of such business relationship, provided, however, that this provision shall not apply to the following: (a) Individuals associated with a partnership, limited liability corporation, or professional corporation, including but not limited to doctors, accountants and attorneys; (b) Individuals associated with an educational entity (including but not limited to schools of education) some of whose faculty may be providing paid services directly or indirectly to the New Dawn Charter High School; (c) Individuals associated with a bank, insurance, mutual fund, investment bank, stock brokerage, financial planning, or other financial services organization.
  - In no instance shall a Trustee or employee of a for-profit educational management organization having a business relationship with the Charter School serve as a voting member of the Board of Trustees for the duration of such business relationship.
  - Trustees shall avoid at all times engaging in activities that would appear to be unduly influenced by other persons who have a special interest in matters under consideration by the Board. If this occurs, a Trustee shall write a letter disclosing all known facts prior to participating in a Board discussion of these matters, and the Trustee's interest in the matter will be reflected in the Board minutes.
  - In the event that a related party transaction is approved, the Board must keep complete documentation on the decision and the comparables. There must be documentation showing that there is no excess benefit to approving the related party transaction.
  - “Excess Benefit” is defined as a benefit given to a disqualified person that exceeds the value of the service provided.
  - Trustees shall make all appropriate financial disclosures whenever a grievance of conflict of interest is lodged against them.
  - No Trustee shall use his or her position with the Charter School to acquire any gift or privilege worth \$50 or more that is not available to a similarly situated person, unless that gift is for the use of the Charter School.
  - Charter School Trustees or employees may never ask a subordinate, a student, or a parent of a student to work on or give to any political campaign.
  - Either the IRS or NYS could levy severe penalties if excess benefit due to a conflict of interest or related party transaction occurs. These penalties could be to the School as well as individual Trustees.
6. Procedure: Any individual can report a conflict of interest or a related party transaction using the procedures outlines below. Please note, the existence of either of these types of transactions does not mean there was wrong doing, but does mean that certain procedures must be taken before the transaction can be approved.

- In the event a Trustee is aware that a conflict of interest or a related party transaction is upcoming, (s)he should immediately notify the Board Chair in writing of the existence of such a transaction. Written notification must include: (a) the conflict of interest/related party transaction, (b) the involved parties, and (c) the actual components of the conflict or related party.
- Comparable services or bids will be determined as outlined in the Financial Policy and Procedures. That is, there are to be two bids for any service in the amounts of \$10,000 to \$25,000; three bids for any service greater than \$25,000. These comparables must be kept on file and must be reflected in the Board minutes.
- The Board of Trustees must keep thorough records on any decision regarding a conflict of interest/related party transaction. The Board secretary will ensure that the transaction: (a) is disclosed to the Board during an open meeting; (b) has been presented and discussed in light of comparable bids for products or services; (c) was discussed in light of the excessive benefit clause; (d) was voted on after the Trustee who will benefit recuses him/herself from the discussion; and (e) is completely documentation about why the decision was reached and ensuring this reasoning and decision is recorded in the Board minutes.
- In the event a Trustee (or Trustees) believes that there is excessive benefit or who believes that there are better options, this Trustee (or Trustees) must vote “no” and have this memorialized in the minutes of the Board.
- All Trustees must complete, sign, and submit their annual Board Disclosure Statements that are due with the Annual Report by August 1 of every year.
- The Audit Committee, which will consist of Independent Directors only, will be responsible for the adoption, implementation, and assure compliance to the Conflict of Interest Policy.
- In the event that any individual or Trustee finds the a conflict of interest or a related party transaction was approved by the Board prior to the relationship being brought to light, the following steps are to be taken by the person who detected the problem: (a) an immediate written report to the Board Chair and the Chair of the Audit Subcommittee about the supposed conflict which includes details about the transaction, the people involved in the conflict, and why (s)he believes there is a conflict; (b) the Chairs must respond within 15 days to the accusation and a special Board meeting may be called depending on the situation; (c) Trustees must discuss some remedy, if in fact there was a violation of the conflict of interest policy, and this must be documented in Board minutes; and (d) there must be a resolution of the situation which could include asking the member to resign, dissolution of the contract, and full disclosure to the authorizer.
- The accountants will annually report any conflicts and/or related party transactions on IRS forms 1023 and 990. The Board of Trustees will vote on these prior to submission and the vote will be reflected in the minutes of the Board.
- Any violation of the Conflict of Interest Policy could result in the IRS and/or NYS levying penalties on both the School and individual Trustees. In order to be protected from the penalty, a Trustee must have voted ‘no’ to the transaction and this must be in the Board minutes.

7. Other: (e.g. comments/suggestions): The section highlighted I am just not sure about. I am afraid to take it out since it was included in our highly vetted original Policy, but I think it needs legal eyes under the new law to take a look at it.