

Public School Academy Authorizing Bodies in Michigan: Chartering Authorities, Oversight Bodies And Fiscal Agents Framework For Oversight

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FOREWORD

Public School Academy Authorizing Bodies: Chartering Authorities, Oversight Bodies and Fiscal Agents is a discussion paper prepared by Dykema Gossett PLLC at the request of the four state public universities listed below. By chartering public school academies, the governing boards of our respective institutions have become public school academy authorizing bodies. Although each of our respective governing boards has developed its own process for authorizing and overseeing public school academies, many of the chartering methods and oversight procedures developed by our respective institutions are the same.

The purpose of this discussion paper is to provide you with a better understanding of how some university governing board authorizing bodies view their statutory and contractual oversight roles. In some respects the discussion is focused on the governing boards of state public universities as authorizing bodies. In most respects, the discussion is applicable to all authorizing bodies. While this discussion paper is not intended to be a definitive explanation of how public school academy authorizing bodies administer oversight, it does introduce the legal and regulatory framework of public school academy oversight.

The oversight of public school academies is a complex topic. The laws and regulations that generally apply to public schools also apply to public school academies. As with other public schools, the oversight of the state's public school academies is entrusted to several public and governmental agencies (including authorizing bodies). Accordingly, this discussion paper outlines the role public and governmental agencies have in relation to overseeing public school academies, and how these different regulatory roles may be coordinated with the statutory and contractual role of public school academy authorizing bodies.

We trust that the discussion paper will provide a better understanding of how some state public university authorizing bodies view their oversight role.

Central Michigan University
Eastern Michigan University
Ferris State University
Grand Valley State University

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I. INTRODUCTION.

Since August of 1994, Michigan's elementary and secondary public school system has added over one hundred new public schools commonly referred to as "public school academies" or "charter schools."⁽¹⁾ Under the Revised School Code ("Code"), each public school academy has an authorizing body.

There are three important roles authorizing bodies play in the establishment and monitoring of public school academies. First, authorizing bodies act as "chartering authorities" for public school academies, issuing contracts that establish the public school academies as public schools, and enabling the public school academies to receive state funding for the operation of public schools. Second, authorizing bodies perform certain oversight functions, including monitoring the actions of public school academies' boards of directors and their compliance with the contract and all applicable law. Third, authorizing

bodies act as "fiscal agents" for public school academies, receiving state school aid payments and forwarding those payments to the schools.

An authorizing body's role as "chartering authority," "oversight body" and "fiscal agent" raises many complex legal issues. To some extent, these roles have been interpreted and implemented differently among the various authorizing bodies that have elected to issue public school academy contracts. The purpose of this discussion paper is to outline and describe the various roles we believe authorizing bodies are performing -- first as the "chartering authority" for public school academies, second as an "oversight body" for public school academies, and third as a "fiscal agent" for public school academies.

This discussion paper is not written to address all possible legal and oversight issues facing authorizing bodies. In most cases, an authorizing body's legal responsibilities must be examined in the context of the statutory, regulatory or contract provision(s) at issue. In addition, we will not attempt to discuss or comment on what many would argue is the most important role played by the authorizing body -- being a mentor and information/educational resource for the public school academy. Although these roles may be important, the role of mentor and information/educational resource are roles that authorizing bodies are not *legally* required to perform. Accordingly, this discussion paper will focus only on the duties and responsibilities of authorizing bodies in their statutory roles as chartering authorities, oversight bodies and fiscal agents.

WHAT IS AN AUTHORIZING BODY?

The Code designates the governing boards of four different types of public educational entities as authorizing bodies, empowering them to issue contracts for the creation of public school academies subject to certain limitations. If one takes into account all of the governing boards of the existing public educational entities defined as authorizing bodies, there are approximately 600 *potential* authorizing bodies in the State of Michigan. The following outlines the four types of public school academy authorizing bodies:

School District Boards.

A K-12 local school district board may issue an unlimited number of contracts for public school academies located within the school district's boundaries. Each contract must require that all public school academy employees be included in the district's existing bargaining units, subjecting them to existing union contracts.

The controversial Noah Webster Academy, which was chartered by the governing board of a school district without a high school, would not be allowed to operate under revisions made to Part 6a of the Code. Under the Code, a school district must operate kindergarten through 12th grade before it is eligible to issue charters.

Intermediate School District Boards.

An intermediate school district board can only issue contracts for a public school academy located within the intermediate school district boundaries. Intermediate school district boards are permitted, however, to issue an unlimited number of contracts within the intermediate school district boundaries.

Community College Boards.

The Code defines "community college" to include community colleges organized under the Community

College Act and community colleges controlled by a federally recognized Indian Tribe. The board of a community college is authorized to issue unlimited contracts within the community college's district. A community college board, however, is prohibited from establishing public school academies within the boundaries of the Detroit Public Schools. As such, the Wayne County Community College Board of Trustees, which operates within the boundaries of the Detroit Public Schools, is prohibited from issuing public school academy contracts within the district's geographical boundaries.

Governing Boards of State Public Universities.

The governing boards of Michigan's state public universities have the ability to issue public school academy contracts. Unlike other authorizing bodies, state public universities may issue public school academy contracts on a statewide basis. The Code, however, establishes the following numerical limits on the combined total number of public school academy contracts that may be issued by all state public university governing boards:

YEAR TOTAL CONTRACTS

1997 100

1998 125

1999 and thereafter 150

The numerical limit was increased from 85 to 100 in 1997 after the State Board of Education ("*State Board*") submitted a comprehensive report on public school academies to the legislative education committees at the beginning of 1997.

The Code includes a provision that substantially restricts the role any one state public university has as the primary authorizing body for public school academies. In addition to the total numerical limitations for state public university public school academy contracts, the following Code language limits how many public school academy contracts any one state public university governing board can issue:

The total number of contracts issued by any 1 state public university shall not exceed 50% of the maximum combined total number that may be issued under this subdivision.

Pursuant to this limitation, all state public university authorizing bodies are limited to the following total number of public school academy contracts:

YEAR TOTAL CONTRACTS

1997 50

1998 62

1999 and thereafter 75

The designation of state public university governing boards as authorizing bodies for K-12 schools is a substantial expansion of the traditional role of Michigan's state public universities. Of the eligible state public university governing boards, eight (8)⁽²⁾ have actually issued public school academy contracts.

WHAT IS THE LEGAL RELATIONSHIP BETWEEN AN AUTHORIZING BODY AND A PUBLIC SCHOOL ACADEMY?

The legal relationship between an authorizing body and a public school academy is based on applicable law and the terms and conditions set forth in the contract. The relationship is a ***regulatory one*** - the authorizing body issues a contract to the public school academy, oversees the public school academy's board of directors compliance with the contract and all applicable law, and performs limited fiscal agent duties for the public school academy.

To fully understand the legal relationship between authorizing bodies and public school academies, it is important to remember that public school academies are:

- public schools
- part of the state's public elementary and/or secondary school system
- public bodies corporate
- non-profit public school academy corporations
- governmental agencies
- governmental entities
- administered and governed by public officials

Nothing in the Code suggests that once a public school academy is issued a contract, the public school academy becomes part of or affiliated organizationally with its authorizing body. Under the Code, public school academies are organized as public non-profit corporations whose operations and corporate structure are legally independent of the authorizing bodies. Most public school academy contracts issued by state public university authorizing bodies contain provisions emphasizing that the public school academies are not in any way a part of or affiliated contractually or organizationally with the state public university.

II. CHARTERING AUTHORITY FUNCTIONS.

In its most basic form, the term "charter" means a grant of authority given by the sovereign or state to certain persons or entities to exercise the rights and privileges associated with the grant. In many respects, a public school academy contract⁽³⁾ is like a charter.⁽⁴⁾ Under the Code, the Michigan Legislature has authorized the formation of public school academies, empowered existing educational public bodies to grant public school academy contracts, and determined the method by which such public school academies should operate. Similar to charters, the issuance of a public school academy contract comes with certain rights, privileges and obligations that do not apply to all persons or entities (*i.e.*, the legal authority to operate as a public school and receive state school aid funds).

WHAT KINDS OF "CHARTERING AUTHORITY" FUNCTIONS DO AUTHORIZING BODIES PERFORM?

Authorizing bodies, as issuers of public school academy contracts, perform several different "chartering authority" functions related to the establishment of public school academies including (a) reviewing and approving public school academy applications; (b) establishing the method of selection for public school academy board members; (c) issuing public school academy contracts; (d) reporting violations of applicable law to the public school academy board of directors and/or the governmental agency required by law to enforce and administer a particular statute or rule; and (e) enforcing and revoking public school academy contracts.

(a) Reviewing and Approving Applications.

The process for establishing a public school academy begins with the filing of a public school academy application. Pursuant to the Code, any person or entity can submit an application to create a public school academy. The application must meet the Code provisions and any other requirements established by the authorizing body. Most authorizing bodies have developed their own application form and established certain restrictions on when applications will be accepted, reviewed and approved. Although the Code does not require authorizing bodies to accept or review any applications, an authorizing body electing to receive and approve applications is responsible for ensuring that the applications approved meet the legal requirements set forth in the Code.⁽⁵⁾

(b) Establishing the Method of Selection for Public School Academy Board Members.

For each contract issued by an authorizing body, the Code requires that the authorizing body determine the manner, term and method of selection for the public school academy's board of directors. In establishing the manner, term and method of selection, authorizing bodies have the discretion under the Code to do the following:

- appoint the initial members of the public school academy's board of directors⁽⁶⁾;
- nominate, select and appoint subsequent members of the public school academy's board of directors;
- determine the length of term (including when the term of public office officially begins);
- establish the criteria and process for removing public school academy board members;
- require that persons appointed to serve as public school academy board members file an acceptance of public office form with the authorizing body;
- require that persons appointed to serve as public school academy board members take the constitutional oath of office⁽⁷⁾ and file written acknowledgment of the same with the authorizing body; and
- set bonding requirements for some or all public school academy board members.

As part of its chartering agent responsibilities to establish a method of selection for public school academy board members, many authorizing bodies require questionnaires to evaluate and screen prospective nominees. In addition, some authorizing bodies conduct personal interviews with candidates, while others also require criminal background checks on prospective board members. Some authorizing bodies even provide board training seminars about the role and responsibilities of public

school academy board members.

(c) Issuing Contracts.

Once an authorizing body approves an application, the next step is to issue a contract. The definition of "contract" under the Code illustrates the nature of the authorizing body's "chartering" function:

"Contract" means the *executive act taken by an authorizing body* that evidences the authorization of a public school academy and that establishes, subject to the constitutional powers of the state board and applicable law, *the written instrument executed by an authorizing body conferring certain rights, franchises, privileges, and obligations on a public school academy, as provided by this part, and confirming the status of a public school academy as a public school in this state.*

A public school academy contract does not fall within the common understanding of the term contract, i.e., an arms length agreement between two parties. The nature of the relationship between the authorizing body and public school academy is in many ways analogous to the relationship that exists between governmental licensing agencies and third-party licensees. Although the contract is essentially a charter by definition, there are elements to the chartering process which are similar to a licensing type format:

(i) Approval of the Public School Academy Application. Although not specifically required, the Code implies that as a condition precedent to the issuing of the contract, the authorizing body will approve the public school academy application. This is similar to some licensing type scenarios where the licensing process begins with the filing and approval of an application by the licensing body.

(ii) Executive Act by the Authorizing Body. By definition, a public school academy contract means "an executive act taken by an authorizing body." Although the Code does not require that a public school academy board of directors *approve* the issuance of the contract, most authorizing bodies require the public school academy board of directors to approve the contract. This is similar to both the charter and license concepts which require that the recipient of the charter or licensee accept and agree to comply with the grant or permission bestowed upon them, respectively.

(iii) Contract Must Only Be Executed By The Authorizing Bodies. Unlike most two party contracts, the Code's definition of contract only requires that the document be *executed* by the authorizing body (although most contracts are also signed by an authorized representative of the public school academy indicating their willingness on behalf of the public school academy board of directors, to comply with the contract and all applicable law).

(iv) Issuance of Contract Grants Special Status To Public School Academy. The authorizing body's issuance of the contract gives the public school academy special privileges and obligations (i.e., to operate as a Michigan public school and receive state school aid funds). Similar to a license, a public school academy contract is "issued" by the authorizing body, as opposed to "entered into" by the authorizing body and the public school academy. However, as noted above, the grant of a public school academy contract is different than a license in that the issuance of a contract gives the public school academy the authority and privilege to carry out a governmental function (i.e., the operation of a public school).

(v) Contracts Revocation Authority. Under the Code, public school academy contracts can only be revoked by the authorizing body. The term "revocation" is a licensing term that would not typically apply in a standard two-party contract arrangement. Most public school academy contracts also include

some form of termination provision where, under certain conditions, either the public school academy board of directors or the authorizing body can terminate the contract.

(d) Reporting Responsibilities.

Under the Code, authorizing bodies are required to oversee public school academies' "compliance with the contract and applicable law." If public school academies violate their contracts, authorizing bodies usually report the violation to the public school academy board of directors for resolution. To ensure public school academies comply with applicable law, authorizing bodies also have a responsibility to report certain violations of applicable law to the governmental entity or agency responsible for administering and enforcing a particular statute or administrative rule.

(e) Enforcing and Revoking Contracts.

Another "chartering authority" function performed by authorizing bodies involves enforcing and revoking public school academy contracts. Under the Code, the Legislature has identified authorizing bodies as the public body responsible for ensuring that public school academies comply with the contract. Most public school academy contracts contain procedures that allow authorizing bodies to enforce the contract. If a public school academy fails to comply with the contract, the Code allows the authorizing body to revoke the contract. The term "revocation" implies that the contract is more like a charter than a typical two party agreement in that one party (*i.e.*, the authorizing body as the State's representative) has the authority to terminate the contract. The Code also includes specific conditions under which authorizing bodies may revoke contracts, and authorizing bodies are permitted under the Code to include additional revocation provisions in the contract.

WHAT KIND OF CHARTER DO AUTHORIZING BODIES ISSUE?

Authorizing bodies issue revokable charter contracts. Under the Code, these revokable charter contracts can be for an undetermined period of time. The majority of authorizing bodies, however, have issued non-renewable fixed term charter contracts (generally ranging in terms of 1 to 5 years). When a contract expires, authorizing bodies are under no obligation to renew a public school academy contract.

III. OVERSIGHT BODY FUNCTIONS.

WHAT DOES THE REVISED SCHOOL CODE MEAN BY "OVERSIGHT?"

Section 502(4) of the Code, MCL 380.502(4) (emphasis added), provides as follows:

(4) An authorizing body shall oversee, or shall contract with an intermediate school district, community college, or state public university to oversee, each public school academy operating under a contract issued by the authorizing body. ***The oversight shall be sufficient to ensure that the authorizing body can certify that the public school academy is in compliance with statute, rules, and the terms of the contract.***

Section 507(1) of the Code, MCL 380.507(1) (emphasis added), defines authorizing body oversight as follows:

(1) The authorizing body for a public school academy is the fiscal agent for the public school academy. A state school aid payment for a public school academy shall be paid to the authorizing body that is the fiscal agent for that public school academy, which shall then forward the payment to the public school

academy. *An authorizing body has the responsibility to oversee a public school academy's compliance with the contract and all applicable law. . . .*

The above mentioned Code sections are the only provisions that directly speak to authorizing body oversight duties. The second sentence in section 502(4) is rather ambiguous and offers little guidance about what "statutes" or "rules" authorizing bodies must monitor, when certification must be provided, or who actually receives and reviews the certification. Given that a public school academy receives the majority of its funding from the State, the first two sentences in section 507(1) must be read together. The second sentence of section 507(1), however, is fairly specific in what authorizing bodies are required to do with a public school academy's state school aid payments. The State Aid Act of 1979 ("*Act*") also contain similar language about an authorizing body's fiscal agent duties.⁽⁸⁾ Finally, the third sentence of section 507(1) provides a general statement requiring authorizing bodies to "oversee the public school academy's compliance with the contract and all applicable law."

WHAT KIND OF OVERSIGHT ARE AUTHORIZING BODIES PERFORMING?

In general, the kind of oversight being performed by authorizing bodies is typically outlined in the contract. For example, some university authorizing body contracts⁽⁹⁾ contain an Additional Terms and Conditions section requiring the public school academy board of directors to comply with specific statutes:

Approval of Condemnation. Public school academies are required by the Code to get authorizing body approval in advance of acquiring property under the Uniform Condemnations Procedures Act.

Authorization of Employment. With the approval of the authorizing body, public school academies can employ or contract with personnel, prescribe their duties and fix their compensation. This provision is identical to the language contained in section 506 of the Code.

Accounting Standards. Public school academies must comply with generally accepted public sector accounting principles. Through review of the public school academy quarterly financial statements and independent annual audits, the authorizing body is able to determine whether the public school academy is complying with this Code requirement.

Annual Financial Audit. Under the Code, public school academies are required to conduct an independent annual financial audit and submit the results of the audit to the authorizing body. These annual financial audits are usually reviewed by authorizing body to determine whether the public school academy is in compliance with public sector accounting principles. In addition, the authorizing body is also able to determine whether the public school academy is in compliance with the Act (including proper use and classification of expenditures and the avoidance of an operating budget deficit).

Reports to Authorizing Body. At the end of each academic period, each public school academy board of directors must provide the authorizing body with an assessment of student performances. This allows the authorizing body to ensure that the educational performance of students is being monitored by the public school academy board of directors. Public school academies are required by the contract to perform an objective evaluation of student performances. The authorizing body then reviews the report and evaluates whether each public school academy is fulfilling its educational objectives set forth in the contract.

Compliance with Part 6a of the Code. Public school academies must comply with Part 6a of the Code. This includes compliance with other statutory provisions specifically enumerated in Part 6a and listed in

the contract, including Section 8.3 (Open Meetings Act), Section 8.4 (Freedom of Information Act); Section 8.5 (Public Employees Relations Act); Section 8.6 (Prevailing Wage and Fringe Benefits on State Projects); Section 8.7 (Other Code provisions specifically noted in Part 6a); Section 8.8 (Michigan Public School Employees Retirement System); 8.10 (Intergovernmental Contracts Between Municipal Corporations); and 8.11 (Intergovernmental Transfer of Functions and Responsibilities).⁽¹⁰⁾

Compliance with State School Aid Act. With the exception of only a few sections, the public school academy's operation must comply with the entire Act.

Michigan Civil Rights Acts. Both the Michigan Handicappers' Civil Rights Act, MCL 37.1101 et seq. and Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq., apply to "educational institutions" which include public school academies.

Other State Laws. Public school academies are required by the Code and the contract to comply with all applicable state law.

Other Federal Laws. Public school academies are required by the Code and the contract to comply with all applicable federal law.

Statutory Grounds for Revocation. The authorizing body monitors the following: (i) the public school academy's ability to meet its educational goals identified in the contract; (ii) the public school academy's compliance with all applicable law (local, state and federal); (iii) the public school academy's compliance with applicable State Board rules; (iv) the public school academy's compliance with generally accepted public sector accounting principles; (v) the public school academy's ability to comply with other contract provisions; and (vi) whether the public school academy is paying for all requested and contracted services from ISDs and school districts.⁽¹¹⁾

Other Grounds for Revocation. The authorizing body monitors the following: (i) whether the public school academy is insolvent or adjudged bankrupt; (ii) whether the public school academy has insufficient enrollment to successfully operate as a public school academy; (iii) whether the public school academy is in default of any contract provision; (iv) whether the public school academy board of directors files amendments to its articles of incorporation without the authorizing body's approval; (v) whether the public school academy's conduct under the contract is grossly negligent, fraudulent or criminal; and (vi) whether applicants or public school academy board members or other school officials have provided false or misleading information in connection with the issuance of the contract.

Employment Qualifications for Classroom Teachers. Each public school academy board of directors is required by the Code and the contract to hire or contract public school academy teachers who meet the certification requirements set forth in the Code.

Criminal Background Checks and Disclosure Statements. Each public school academy board of directors must comply with Code provisions concerning criminal background checks and disclosure statements.

The Academy Budget. Each public school academy board of directors must establish an annual budget and submit it to the authorizing body for review.

Security Procedures. Each public school academy board of directors is required by the Code to develop security procedures for their personnel, students and property.

Student Conduct and Discipline. Each public school academy board of directors is required by the Code to develop written student conduct and student discipline policies.

Professional Development of the Academy Faculty. Each public school academy board of directors is required under the Code to forward all new developments or innovations in teaching techniques or methods to the authorizing body for public dissemination.

Special Education. The Code requires that each public school academy board of directors comply with all special education provisions set forth in the Code.

Americans With Disabilities Act. Each public school academy board of directors must comply with the Americans With Disabilities Act.

Insurance. Each public school academy board of directors must secure and maintain insurance coverages in accordance with the requirements prescribed by the Michigan Universities Self-Insurance Corporation ("*M.U.S.I.C.*"), the Universities' self-insurer.⁽¹²⁾ In addition, all insurance policies must:

- (i) Be secured from an insurer licensed to do business in Michigan;
- (ii) Must list the authorizing body as an additional insured on the insurance policies;
- (iii) Contain provision notifying the authorizing body 30 days in advance of termination or cancellation;
- (iv) Be sent to the authorizing body (and reviewed for compliance with the contract);

Accreditation. Pursuant to the Act, each public school academy board of directors must satisfy accreditation requirements established by the State Board.

Deposit of Public Funds by the Academy. Under the Code, the public school academy board of directors must deposit or invest all surplus funds in financial institutions eligible to be depositories of surplus funds.

Equal Opportunity Policies. The contract requires that each public school academy board of directors establish and implement a written sexual harassment policy.

Lease or Deed for Proposed Single Site. The contract requires that each public school academy board of directors provide the authorizing body with a copy of the lease or deed for its proposed school building.

Occupancy and Safety Certificates. The contract requires that copies of the public school academy's fire, health and safety approvals for the school facility be provided to authorizing body.

WHAT IS AN OVERSIGHT AGREEMENT?

Some authorizing bodies incorporate oversight responsibilities into the contract, while others have a separate document called an "oversight agreement." These oversight agreements identify specific things that the public school academy board of directors and the authorizing body agree to do under the contract. Most of the oversight agreement provisions focus on financial and operational accountability. By having the public school academy board of directors submit information to the authorizing body, the authorizing body is in a better position to monitor and analyze whether a particular public school academy board of directors is complying with the contract and all applicable law. For example, some

authorizing body contracts include an Oversight Agreement which provides that the authorizing body may perform the following oversight functions:

Monitor the public school academy's financial and operational condition which may include:

- The University's chief financial officer may conduct a review of the public school academy's audited financial reports as submitted, including the auditor's management letters, and report to the authorizing body any exceptions as well as any failure on the part of the public school academy to meet generally accepted public sector accounting principles.
- Authorizing body may conduct a review of the records or operations of the public school academy to determine if the contract or applicable law has been violated.
- Authorizing body may conduct a meeting annually with the public school academy board of directors.
- Authorizing body may request periodic reports from the public school academy board of directors regarding any aspect of its operation, including, without limitation, the public school academy's performance in meeting its targeted educational goals.
- Authorizing body may request evidence that the public school academy board of directors has obtained the necessary permits and certificates of compliance to operate as a public school from the applicable governmental agencies, including without limitation, the Office of Fire Safety and the local health departments.

Revoke or Suspend Contract:

- Authorizing body may institute action pursuant to the terms of the contract to revoke or reform the contract if the public school academy board of directors violates the contract or any applicable law, or suspend the contract if the health and safety of students are at risk.

Provide Educational Support and Consultation to the Public School Academy:

- Authorizing body may determine whether the public school academy has failed to abide by or meet the educational goals as set forth in the contract.
- Authorizing body may provide supportive services to the public school academy as deemed necessary and/or appropriate by the authorizing body.
- Authorizing body may evaluate whether the Michigan educational assessment program(s) ("MEAP"), other standardized tests, or other assessment programs selected by the public school academy board of directors are appropriate for the public school academy's student population, goals and programs.

Some authorizing bodies also require the public school academy to submit certification of continuing compliance with the contract and all applicable law. Provided that the authorizing body verifies the certification is accurate based on other information known by the authorizing body, these certificates of continuing compliance are one appropriate method for authorizing bodies in the monitoring of a public school academy's compliance with the contract and all applicable law. In addition, public school academies agree to perform all of the following Compliance Certification Duties:

- Submit quarterly interim financial reports to the chief financial officer of the University.
- Report any litigation or formal proceedings alleging violation of any applicable law by the public school academy to the University legal counsel for the authorizing body.
- Upon request, provide copies to authorizing body's designee of all information submitted to the Department of Education or State Board.
- Provide copies of all board meeting minutes to authorizing body's designee no later than ten days after such minutes are approved.
- Submit within thirty (30) days to the authorizing body's designee, copies of insurance policies evidencing all insurance required by the contract, and proof of naming of University as additionally insured.
- Submit to authorizing body's designee, following review and approval by the public school academy board of directors, a copy of the public school academy's lease or deed for its school facilities.
- If the public school academy board of directors enters into a management agreement to contract out its administrative and educational personnel, the public school academy board of directors must submit to authorizing body's designee a copy of the proposed management agreement. The management agreement must be reviewed by authorizing body's designee prior to approval and execution by the Academy Board.
- Submit to authorizing body's designee, copies of all fire, health and safety approvals required by law for the operation of a school.
- Submit to authorizing body's designee upon finalization of dates and times, a description of how the public school academy board of directors will provide notice of the application process and enrollment period to persons most likely to be interested in the public school academy. In addition, the public school academy board of directors must set forth the date for the holding of a random selection drawing if such a drawing becomes necessary.

DO OVERSIGHT RESPONSIBILITIES DIFFER AMONG DIFFERENT

TYPES OF AUTHORIZING BODIES?

Although the Code makes no distinction among oversight responsibilities for different types of authorizing bodies (*i.e.*, all authorizing bodies are required to oversee public school academies they authorize and the schools' compliance with "the contract and all applicable law"), the contracts issued by authorizing bodies vary in terms of what oversight functions will be performed by the particular authorizing body. Accordingly, oversight as *implemented* by the authorizing bodies varies depending upon the particular requirements of each authorizing body contract.

DO OTHER PUBLIC BODIES OR AGENCIES OVERSEE PUBLIC SCHOOL ACADEMIES?

With respect to public school academies, the Michigan Constitution and applicable state law has given several public bodies and agencies overlapping oversight responsibilities:

- Public School Academy Board of Directors
- Authorizing Bodies
- Intermediate School Districts
- Michigan Department of Education
- Superintendent of Public Instruction
- State Board of Education
- Other State Agencies (*e.g.*, Consumer and Industry Services - Office of Fire Safety, local health departments, Michigan Attorney General's Office, Family Independence Agency, Civil Rights Commission, etc.)

Several public educational bodies and public agencies are directly responsible for ensuring a public school academy's compliance with applicable law. For example, both the Michigan Department of Education and intermediate school districts play integral parts in assuring that public school academies are complying with applicable law, including issues ranging from special education requirements to the correct use of pupil membership accounting rules. The Department of Education, Superintendent of Public Instruction and the State Board are required by law to perform oversight of public school academies under various provisions of the Code and the Act. In addition, the State Board has both constitutional and statutory authority to oversee public school academies because such entities are "public schools."

In reviewing a particular statute or rule, the first question that should be asked is, "*what public body or agency is responsible for administering or enforcing the particular statute or rule at issue?*" In most cases, the statute or rule will specifically identify the responsible public body or agency.

WHO HAS PRIMARY OVERSIGHT RESPONSIBILITY FOR PUBLIC SCHOOL ACADEMIES?

A public school academy's board of directors has the primary oversight responsibility to ensure that the school operates in compliance with the contract and all applicable law. By comparison, the authorizing bodies' responsibilities focus on monitoring whether the persons serving as members of the public school academy's board of directors are actually carrying out their public responsibilities.

If a public school academy is in violation of a specific law, the first governmental body responsible for identifying and correcting the violation is usually the public school academy board of directors. Under the Code, a public school academy is organized as a non-profit corporation that is administered under the direction of a board of directors. These board members are public school officials. Failure on the part of the public school academy's board of directors to correct a violation of applicable law may mean: (i) the public school academy and/or its board members are subject to fines and penalties and other actions assessed by the public entity or agency entrusted to enforce the particular statute or rule; (ii) the State Board of Education may withhold state school aid funds from the public school academy; and (iii) the authorizing body may initiate revocation proceedings to revoke the contract.

The level of oversight performed by the public school academy board of directors is also significantly different than an authorizing body's oversight. Under the Code, the public school academy is administered under the direction of the public school academy's board of directors. In turn, most public school academy boards delegate the day to day management of the school to other public school officials and employees (*e.g.*, principals, teachers and staff).

By contrast, authorizing bodies are not responsible for overseeing the public school academy employees

or the operations of the management company contracted by the public school academy board of directors. Under the Code, authorizing body oversight responsibilities are limited to monitoring whether the public school academy board of directors has carried out its public responsibility to comply with the contract and all applicable law.

DO AUTHORIZING BODY OVERSIGHT RESPONSIBILITIES SUPERSEDE

OVERSIGHT PERFORMED BY OTHER PUBLIC BODIES AND AGENCIES?

With the exception of Part 6a of the Code, no other statute or administrative rule requires authorizing bodies to *administer* or *enforce* any laws or regulations that apply to public school academies. The laws that apply to public school academies specifically provide that the public school academy board of directors, or some other public educational bodies or agencies, have primary responsibility to administer and enforce such laws.

A good example to illustrate this point is the Fire Safety Code. The Fire Safety Code applies to all schools (both public and non-public). The Fire Safety Code is administered and enforced by the Office of Fire Safety under the supervision and direction of the State Fire Safety Board. If a particular public school academy fails to comply with the Fire Safety Code, an authorizing body has no statutory authority under the Fire Safety Code to force the public school academy's compliance. Pursuant to the Fire Safety Code, enforcement of the statute is the responsibility of the State Fire Safety Board.

This does not mean, however, that authorizing bodies do not have any influence over public school academies who violate the Fire Safety Code. On the contrary, *authorizing bodies, as part of their chartering authority, may force the public school academy to comply with the statute's requirements or face possible contract revocation proceedings.* Furthermore, several contracts contain provisions allowing authorizing bodies to suspend public school academy contracts in the event that the health and safety of students is at risk. If an authorizing body determines that a public school academy's facility poses a significant health or safety risk to students, the authorizing body may suspend or initiate revocation of the public school academy's contract.

The distinction, however, between enforcing the Fire Safety Code and enforcing a public school academy contract should not be overlooked. ***Authorizing bodies do not enforce the Fire Safety Code and other statutes. Instead, authorizing bodies require compliance with the Fire Safety Code and other statutes through their ability to revoke the public school academy's contract.***

With respect to the Fire Safety Code example, if an authorizing body discovers that a public school academy is in violation of the Fire Safety Code (*e.g.*, the school's FM-40 final occupancy approval form expires), the authorizing body should first inform the public school academy's board of directors and the Office of Fire Safety about the violation. In addition, the authorizing body should notify the Superintendent of Public Instruction that the school's FM-40 final occupancy approval form has expired. [\(13\)](#) If the public school academy's board of directors has questions regarding the application of the Fire Safety Code, it is the responsibility of the public school academy board of directors to discuss and work out fire safety issues with the Office of Fire Safety or the Superintendent of Public Instruction's office. If a Fire Safety Code violation exists, it is the responsibility of the Office of Fire Safety to investigate and prosecute the matter. In addition, if a public school academy board of directors fails to comply with the Fire Safety Code, it is the Office of Fire Safety that has jurisdiction to enforce the statute and prevent further use of the school building.

This is not to say that authorizing bodies do not play an important role in assuring that the public school

academies are complying with applicable law. ***By requiring compliance in the contract and reporting violations of applicable law to the public school academy board of directors and the public body or agency responsible for administering the particular statute or rule at issue, authorizing bodies assure that the public school academies are complying with the contract and all applicable law.***

Other state and local agencies also have primary oversight responsibilities on a variety of matters, including but not limited to, local health codes, civil rights, special education, teacher certification, child abuse and law enforcement issues.

***DO OTHER REVISED SCHOOL CODE PROVISIONS APPLY
TO PUBLIC SCHOOL ACADEMIES?***

Yes. Attached under Tab A is a list of other Code provisions (*i.e.*, non-Part 6a provisions) that apply to public school academies. These statutory provisions apply to public school academies in one of three ways: (i) the statutory provision specifically includes public school academies; (ii) the statutory provision references another statute that specifically applies to public school academies (*e.g.*, the State School Aid Act); or (iii) the statutory provision applies to all public schools.

***WHAT PROVISIONS OF THE STATE SCHOOL AID ACT APPLY
TO PUBLIC SCHOOL ACADEMIES?***

Public school academies are defined as "districts" under the Act. With the exception of seven provisions [\(14\)](#), the entire Act applies to public school academies.

WHAT OTHER STATE LAWS APPLY TO PUBLIC SCHOOL ACADEMIES?

See Attachment C for a listing of some state laws that apply to public school academies.

WHAT FEDERAL LAWS APPLY TO PUBLIC SCHOOL ACADEMIES?

See Attachment D for a listing of some federal laws that apply to public school academies.

IV. FISCAL AGENT FUNCTIONS.

WHAT ARE AUTHORIZING BODIES' "FISCAL AGENT" RESPONSIBILITIES?

Both the Code and the Act require authorizing bodies to act as the "fiscal agent" for the public school academy board of directors. As fiscal agents, authorizing bodies' responsibilities are limited to receiving and forwarding state school aid funds from the Michigan Department of Treasury to the public school academy. Determinations about whether or how much state school aid a public school academy will receive is determined by the Michigan Department of Education.

***ARE AUTHORIZING BODIES RESPONSIBLE FOR MANAGING
AND OVERSEEING A PUBLIC SCHOOL ACADEMY'S FINANCES?***

Pursuant to the Code and the Act, the authorizing body acts as the "fiscal agent" of the public school academy for the limited purposes of receiving state school aid funds. Other provisions of the Code and

the Act provide that the public school academy board of directors is responsible for the daily management and oversight of the public school academy. This daily oversight includes the adoption of the budget, receiving and disbursing school funds, retaining a certified public accountant to perform an independent annual financial audit, etc. By contrast, the authorizing body has no authority to manage the financial aspects of the school or approve expenditures made on behalf of the school.

As part of its oversight functions, however, many authorizing bodies monitor the financial conditions of public school academies they authorize by reviewing annual audit reports, examining quarterly financial statements, and ensuring that the public school academy board of directors adopt and follow a balanced budget.

WHAT DO THE CODE AND THE ACT SAY ABOUT

AUTHORIZING BODIES' FISCAL AGENT RESPONSIBILITIES?

Revised School Code

The Code requires authorizing bodies to act as the public school academy's fiscal agent for purposes of state school aid funds. MCL 380.507. Nothing in the Code or the Act, however, requires or permits authorizing bodies to determine the amount of state school aid to be received by the public school academy, or whether a particular public school academy is eligible to receive such payments.

Many authorizing body contracts contain a separate section dealing with fiscal agent issues. For example, some authorizing body contracts include a Fiscal Agent Agreement which is a three party agreement setting forth in more detail the responsibilities of the public school academy, authorizing body and the Michigan Department of Treasury. Under the Fiscal Agent Agreement, authorizing body is required to do the following:

a. Record keeping. Keep accurate records concerning all transactions related to the receipt, disbursement, allocations and application of state school aid funds and other funds received, deposited or transferred for the benefit of the public school academy. Such records must be available for public inspection under reasonable circumstances.

b. Reporting. Send to the public school academy by August 1 of each year a written report dated as of June 30 of each year summarizing all fiscal agent activities performed on behalf of the public school academy.

The Fiscal Agent Agreement requires the public school academy board of directors to pass a resolution designating the proper account to which authorizing body should forward state school aid funds. Although the Fiscal Agent Agreement does not go into detail regarding this resolution, the process usually work as follows:

The public school academy's board of directors passes a resolution at a duly noticed public meeting specifically requesting that authorizing body forward the public school academy's state school aid payments to a specific financial institution and directing that a particular board member or the school administrator transmit to the authorizing body specific instructions about the transfer. The public school academy board member or school administrator then sends a letter (attached to the authorizing resolution) to that includes (i) the name and address of the public school academy's financial institution; (ii) the financial institution's ABA wire transfer number; (iii) the public school academy's account number; and (iv) the name of a contact person at the financial institution. Authorizing body keeps the

public school academy's resolution/letter on file and informs the public school academy that such resolution remains in effect until changed or superseded by a subsequent public school academy resolution.

State Aid Act- Foundation Grants and Transitional State School Aid Payments

Section 20(6) of the Act, MCL 388.1620(6), provides in part that state school aid funds for a particular public school academy shall be allocated to its authorizing body for forwarding to the public school academy. This language is identical to the language included in section 507(1) of the Code.

Under former sections of the Act, new public school academies were entitled to receive transitional state school aid. In order for the Michigan Department of Education to process payments to new public school academies, the Act required that authorizing bodies for new public school academies submit estimated pupil counts to the Michigan Department of Education. MCL 388.1620c. ⁽¹⁵⁾

From an oversight perspective, transitional state school aid payments created two specific problems for authorizing bodies. First, authorizing bodies had no way of accurately measuring the estimated pupil count of a start-up public school academy. Most pupil count estimates were projections provided to the authorizing body by the public school academy applicant and were based on the number of inquiries or applications the public school academy had received prior to the start of the academic year. Given that most public school academies are in need of start-up funds, the tendency to overestimate the pupil count was likely to occur. The danger in overestimating the pupil count is that the public school academy will eventually have to return excess funds received from future state school aid payments. If the amount of student enrollment is drastically overestimated, there is a greater risk that the public school academy will be in a difficult financial situation from the onset of its operation.

A second problem related to predicting whether a new public school academy would actually open its doors and conduct classes. In the past, the Michigan Department of Education had issued transitional state school aid payments to several public school academies prior to the public school academies securing all the necessary fire, health and safety approvals required for their physical facilities.

WHAT OTHER FISCAL AGENT ACTIVITIES DO AUTHORIZING BODIES PERFORM?

Over the past four years, authorizing bodies have *voluntarily* performed additional fiscal agent activities with respect to the following transactions:

Direct State Aid Intercept Agreements

Many commercial lenders will not lend money to public school academies unless the State, the public school academy and its authorizing body agree that the lender can directly receive from the authorizing body a portion of the public school academy's state school aid payments to cover the cost of the loan. In consultation with lenders and other state agencies, some authorizing bodies have developed what are referred to as "State Aid Intercept Agreements" as a result of these transactions. A standard agreement is recommended to (i) avoid having to review each particular lender's version of this agreement; and (ii) assure that such transactions are in compliance with the public school academy's contract.

Michigan Municipal Bond Authority Program

As part of their statutory powers, public school academies are authorized to "incur temporary debt in accordance with section 1225 [of the Code]." MCL 380.504a(e). Under section 1225 and subsequent

amendments to its implementing legislation, the Michigan Municipal Bond Authority ("*MMBA*") can make short term loans to public school academies who agree to issue notes pledging a portion of their prospective state school aid payments to pay for such loans.

As fiscal agents for the public school academies, authorizing bodies have been asked by MMBA and the public school academies borrowing money from MMBA to allow MMBA to make direct state aid intercepts of a participating public school academy's state school aid funds prior to receipt of the funds by the authorizing bodies. In general, the process requires that the State Treasurer and the authorizing bodies permit MMBA to intercept a portion of the public school academy's monthly state school aid funds to cover the cost of the debt servicing on the public school academy's loan with MMBA. All of these loans are paid back within one year. As part of this process, authorizing bodies have voluntarily agreed to give a "Certificate of Authorizing Body" to MMBA. Generally, the Certificate of Authorizing Body requires the authorizing body, if it is aware of such pertinent information, to notify MMBA of any adverse action taken against the public school academy (e.g., revocation), or to notify MMBA of any substantial changes in the enrollment or financial conditions at the public school academy.

V. ROLE OF STATE BOARD OF EDUCATION. ⁽¹⁶⁾

WHAT ROLE DOES THE STATE BOARD OF EDUCATION HAVE IN THE OVERSIGHT FOR PUBLIC SCHOOL ACADEMIES?

The Michigan Constitution places general leadership and supervision over public schools in the State Board of Education. In addition, the State Board, Superintendent of Public Instruction and the State Department of Education are statutorily required to oversee various aspects of public education and enforce laws relating to public education (including public school academies).

No provision of the Michigan Constitution mentions authorizing bodies. Authorizing bodies are legislative creatures that have been given statutory powers to authorize the establishment of public school academies and provide some level of public accountability over public school academies. In addition, an authorizing body's oversight responsibilities over public school academies must be consistent with the rules and guidelines established by the State Board, the Superintendent of Public Instruction and the Department of Education. *See* Attachment E for a diagram of the State's public education system.

In particular, one Code section illustrates the hierarchy of public oversight over public school academies. Section 1281 of the Code sets forth some of the State Board's supervisory responsibilities over public school academies:

- Require each public school academy board of directors and the officers of each of those boards to observe the laws relating to schools;
- Prescribe appropriate uniform pupil and finance accounting records for use in public school academies and promulgate rules for their adoption;
- Require each public school academy board of directors to carry out the state board's recommendations relative to the safety of school buildings, equipment, and appurtenances, including any condition that may endanger the health or life of pupils;
- The State Board may examine and audit the official records and accounts of public school

academies and may compel proper accounting by legal action instituted by direction of the attorney general; and

- Grant waivers to public school academies from State Board or Department of Education rules interpreting or implementing provisions of the act.

MCL 380.1281.

***DOES THE STATE BOARD OF EDUCATION APPROVE
PUBLIC SCHOOL ACADEMY CONTRACTS ISSUED BY
AUTHORIZING BODIES?***

Under the Code, a public school academy's final application and contract must be forwarded by the authorizing body to the State Board within ten (10) days of the issuing of the contract. If a particular public school academy application or contract does not comply with the Code or all applicable law, the State Board, through the Superintendent of Public Instruction, can in effect reject the application or contract by denying state school aid funding to the public school academy.

***CAN THE STATE BOARD OF EDUCATION REMOVE PUBLIC SCHOOL
ACADEMY BOARD MEMBERS FROM PUBLIC OFFICE?***

Similar to other public schools, the State Board has no authority to remove public school academy board members from office. As part of a public school academy's method of selection process, however, authorizing bodies could include a provision in the contract permitting public school academy board members to be removed by the authorizing body or the State Board.

***CAN THE STATE BOARD OF EDUCATION REVOKE
PUBLIC SCHOOL ACADEMY CONTRACTS?***

The State Board has no legal authority to revoke public school academy contracts. Under Article 8, section 2 of the Michigan Constitution of 1963, the Legislature has been delegated the authority to "maintain and support a system of free public elementary and secondary schools *as defined by law.*" Under the Code, authorizing bodies are the only public entities that have been given the statutory authority to revoke charter school contracts.

The State Board does, however, maintain significant control over public school academies through its ability to withhold or deny state school aid funding. In the event that a public school academy fails to comply with applicable law, the State Board, through the Superintendent of Public Instruction, could withhold or deny state school aid funding until the violation was corrected.

DOES THE STATE BOARD OF EDUCATION OVERSEE AUTHORIZING BODIES?

To the extent that authorizing bodies are part of the State's public education system, the State Board has the constitutional authority to oversee the functions performed by authorizing bodies. The Code also gives the State Board the right to suspend an authorizing body from issuing any new contracts if the authorizing body is not "engaging in appropriate continuing oversight."

SCHOOL CODE PROVISIONS APPLYING TO PUBLIC SCHOOL ACADEMIES

Unless otherwise stated, all statutory references are to the revised School Code, 1995 PA 289.

- 1) MCL 380.627; MSA 15.4627. Board; additional duties; cooperative programs for information technology systems; comprehensive school improvement support services; cost-effective business services.
- 2) 1987 PA 84, MCL 380.1134; MSA 15.41134. Definitions; tagging record of missing student; removal of tag.
- 3) 1987 PA 84, MCL 380.1135; MSA 15.41135. Proof of identity and age; notice of noncompliance; investigation; reporting inaccurate or suspicious affidavit; school record of transfer student; compliance; effect of tagging record; confidentiality.
- 4) MCL 380.1137; MSA 15.41137. Powers of parents and legal guardians; policies or guidelines.
- 5) 1976 PA 451, MCL 380.1146; MSA 15.41146. Discrimination; grading of schools.
- 6) 1995 PA 289, MCL 380.1153; MSA 15.41153: Bilingual Instruction program; establishment and operation.
- 7) 1976 PA 451, MCL 380.1166; MSA 15.41166. Constitutions and governments; mandatory courses; commencement of instruction; exception.
- 8) 1987 PA 147, MCL 380.1169; MSA 15.41169. Dangerous communicable diseases; human immunodeficiency virus infection and acquired immunodeficiency virus infection; teacher training; teaching materials; curricula; teaching of abstinence.
- 9) MCL 380.1175; MSA 15.41175. Public holidays; salaries not affected; commemorative exercises.
- 10) MCL 380.1177; MSA 15.41177. Immunization statements; vision test; advisory board; immunization status and vision report; rules.
- 11) MCL 380.1178; MSA 15.41178. Administration of medication to pupil; liability.
- 12) 1995 PA 130, MCL 380.1204a; MSA 15.41204(1). Annual educational report.
- 13) 1994 PA 416, MCL 380.1217; MSA 15.41217. Support and maintenance of sectarian schools prohibited; transportation of nonpublic school pupils.
- 14) 1994 PA 416, MCL 380.1221; MSA 15.41221. Deposit of district or academy funds; designation of depositories; limitation on deposit or investment of additional funds; "deposit" defined.
- 15) MCL 380.1225; MSA 15.41225. Power of board to borrow money and issue notes; purpose; pledging money to be received from state school aid; notes as full faith and credit obligations; due date; limitation; school district not able to redeem notes within 12 months of issuance; multi-year repayment agreement; notes issued for next succeeding fiscal year; maturity, interest rate, and redemption; prior approval; failure to receive state school aid; number of borrowings; contesting validity of notes; order of prior approval and estimated determination conclusive as to authority; signature; exception from prior

approval; conditions; issuance; validity.

16) MCL 380.1228; MSA 15.41228. Contract between school or intermediate district and public school academy to provide services.

17) 1993 PA 284, MCL 380.1230; MSA 15.41230. Offer of employment as teacher, school administrator, substitute teacher, or position requiring state board approval; criminal history check; employment as conditional employee; conditions; voiding contract and terminating employment; report received by another district; consent; request; conducting criminal history check; report; use; disclosure; violation as misdemeanor; penalty; definitions.

18) 1995 PA 83, MCL 380.1230a; MSA 15.41230(1). Criminal records check through federal bureau of investigation; employment as conditional employee; voiding contract and terminating employment; application as substitute teacher; obtaining copy of results from another district, public school academy, or nonpublic school; consent; form and manner of request; use and disclosure of results; violation as misdemeanor; penalty; initiation of criminal records check by department of state police; "state board approval" defined.

19) MCL 380.1230(b); MSA 15.1230(b). Requires disclosure of unprofessional conduct from applicants for employment.

20) MCL 380.1246; MSA 15.41246. Superintendent, principal, assistant principal, administrator of instructional programs, or chief business official; completion of continuing education requirements; rules.

21) 1990 PA 159, MCL 380.1263(3); MSA 15.41263. Building schools; requirements; compliance; review and approval.

22) MCL 380.1267; MSA 15.41267. School buildings; construction, addition, repair, or renovation; competitive bids; exception; advertising; security; opening and reading of bids; rejection of bids; readvertising; applicability of section; adjustment of maximum amount.

23) MCL 380.1269; MSA 15.41269. Insuring school district or public school academy property.

24) 1994 PA 416, MCL 380.1274; MSA 15.41274. Procurement of supplies, materials, and equipment; written policies; competitive bids; approval of purchase; adjustment of maximum amount; acquisition of equipment; payment; purchase of heating and cooking equipment.

25) 1995 PA 130, MCL 380.1277; MSA 15.41277. School improvement plan.

26) 1995 PA 130, MCL 380.1278; MSA 15.41278. Core academic curriculum.

27) MCL 380.1279; MSA 15.41279. State-endorsed high school diploma.

28) MCL 380.1279c; MSA 15.41279(3). Use of MEAP tests to measure pupils' values or attitudes prohibited.

29) 1995 PA 130, MCL 380.1280; MSA 15.42180. Accreditation.

30) MCL 380.1281; MSA 15.41281. State board; duties generally; examination and audit of official

records and accounts; action to compel accounting; waiver from compliance with rules.

31) MCL 380.1284; MSA 15.41284. Length of school term; determination; minimum number of days and hours; increase in number of days and hours not required; certification; strikes or teachers' conferences; rules.

32) MCL 380.1288. Certain Courses; Safety Devices.

33) MCL 380.1289; MSA 15.41289. Participation of female pupils in interscholastic athletic activities.

34) 1994 PA 416, MCL 380.1291[1]; MSA 15.41291(1). Michigan information network.

35) MCL 380.1299; MSA 15.41299. Limited open forum; equal access and opportunity; definitions.

36) MCLA 380.1301; 15.1301. Pregnant persons, expulsion prohibited; withdrawal from school; alternative educational programs; rules.

37) 1994 PA 328, MCL 380.1311; MSA 15.41311. Weapons, suspension or expulsion of pupils, grounds, exceptions, entry on permanent record; referral to county department of social services; reinstatement; liability of school board & administrator; due process rights.

38) MCL 380.1312; MSA 15.41312. "Corporal punishment" defined; infliction of corporal punishment by employee, volunteer, or contractor; exercise of necessary reasonable physical force; liability; violation; deference given to reasonable good-faith judgments; development, implementation, and enforcement of code of student conduct; model list of alternatives to use of corporal punishment; authority permitting corporal punishment void.

39) MCL 380.1313; MSA 15.1313. Possession of dangerous weapon by pupil.

40) 1994 PA 416, MCL 380.1324; MSA 15.41324. Transportation for pupils; contracts; price.

41) 1996 PA 159, MCL 380.1471; MSA 15.41471. Definitions of "college level equivalent course" and "college level equivalent credit examination."

42) 1996 PA 159, MCL 380.1472; MSA 15.41472. Planning of pupil's schedule, providing of information; pupil portfolios, contents.

43) 1996 PA 159, MCL 380.1473; MSA 15.41473. Programs providing college level equivalent courses.

44) 1996 PA 159, MCL 380.1474; MSA 15.41474. College level equivalent course directory; publication, distribution, contents, accuracy.

45) MCL 380.1502; MSA 15.41502. Health and physical education courses, establishment; required attendance; credit for participation in extracurricular activities.

46) MCL 380.1507; MSA 15.1507: sex education as elective course, instruction topics inc. Family planning and abstinence; notification to parents of contents; advisory board to review and revise materials, public hearings.

47) MCL 380.1507a; MSA 15.41507(1). Notice of excuse from class; enrollment.

48) MCL 380.1526; MSA 15.1526: mentor problems for teachers.

49) MCL 380.1526a: Teacher training; professional development plan.

50) MCL 380.1527; MSA 15.41527. Teacher professional development; number of days.

51) MCL 380.1535a; MSA 15.41535(1). Conviction of teacher for certain crimes; notice of right to hearing; suspension of teaching certificate; applicability of subsection (1); summary suspension; reinstatement, continued suspension, or permanent revocation of teaching certificate; effect of reversal of conviction on final appeal; notice of conviction; notice of release; evidence of conviction; construction of section; rules; definitions.

52) MCL 380.1539a; MSA 15.41539(1). Conviction of school administrator for certain crimes; notice of right to hearing; suspension of school administrator's certificate; applicability of subsection (1); summary suspension; reinstatement, continued suspension, or permanent revocation of certificate; effect of reversal of conviction on final appeal; notice of conviction; evidence of conviction; construction of section; rules; definitions.

53) MCL 380.1539b; MSA 15.41539(2). Conviction of person holding board approval for certain crimes; notice of right to hearing; suspension of state board approval; applicability of subsection (1); summary suspension; reinstatement, continued suspension, or permanent revocation of state board approval; effect of reversal of conviction on final appeal; notice of conviction; evidence of conviction; construction of section; rules; definitions.

54) MCL 380.1561; MSA 15.41561. Compulsory attendance at public school; enrollment dates; exceptions.

55) 1994 PA 416, MCL 380.1701a; MSA 15.41701(1). Special education programs and services; public school academy as local school district.

56) MCL 380.1586; MSA 15.1586: nonattendance; investigation by attendance officer; notice to parent; nonattendance by nonresident pupils.

57) MCL 380.1587; MSA 15.1587: failure to send children to school; notice to parent.

58) MCL 380.1588: Complaint against parent; warrant; hearing; determination.

59) MCL 380.1589: Furnishing assistance and information to attendance officer.

STATE SCHOOL AID ACT PROVISIONS THAT DO NOT APPLY TO PUBLIC SCHOOL ACADEMIES

(1) MCL 388.1606(4) - Section 6(4), which defines the term "membership" under the Act, provides a separate definition for determining the membership in a public school academy. The method for calculating membership is directly related to the amount of state school aid funds a public school academy is entitled to under the Act. This section contains the "blended count" calculation.

(2) MCL 388.1606(6) - Section 6(6), which defines the term "pupil" under the Act, exempts public school academies from having to obtain the approval of a pupil's resident school district before enrolling the pupil in the public school academy.

(3) MCL 388.1613- Section 13 indicates that all apportionments and limitations on apportionments under the Act be made on, among other things, the taxable value and the operating millage of each district in any given year. Because public school academies have no tax base or power to level mills, the reference is not applicable.

(4) MCL 388.1620- Section 20 sets forth the method for calculating the basis foundation allowance for each pupil enrolled in the public schools. Section 20(6) provides the specific methodology for calculating the basic foundation allowance for public school academies.

(5) MCL 388.1623- Section 23 contains the authorization and appropriation of the university school operated by Wayne State University. Although some consider this school to be a public school academy, it is not established as a public school academy under the Revised School Code, nor is the school subject to all of the laws that apply to public school academies.

(6) MCL 388.1631a- Section 31a, which contains the appropriation for certain instructional services and programs, makes a distinction on how payments are calculated for public school academies' who are eligible to operate free breakfast, lunch, and milk programs under the National School Lunch Act. In addition, this section specifically authorizes public school academies to use monies appropriated under this section for instructional services for high school completion programs, general education development ("G.E.D.") test preparation, and adult education programs operated pursuant to section 107 of the Act.

(7) MCL 388.1705- Section 105, commonly referred to as the "schools of choice" provision, permits districts, under limited circumstances, to enroll pupils without first obtaining the consent of the pupil's resident school district. As noted above, section 6(6) of the Act exempts public school academies from obtaining the prior consent of a pupil's resident school district before enrolling the student in the public school academy.

APPLICABLE STATE LAW

NOTE: The following pages include some of the specific acts that public school academies deal with on a regular basis. The list is by no means exhaustive, as many other statutes also apply to public school academies.

Including, without limitation:

Michigan:

1. The Open Meetings Act, Act No. 267, Public Acts of Michigan, 1976. MCL 15.261 et seq.
2. The Freedom of Information Act, Act No. 442, Public Acts of Michigan 1976. MCL 15.231 et seq.
3. Public Employee Relations Act, Act No. 336, Public Acts of Michigan, 1947. MCL 423.201 et seq.
4. Prevailing Wages on State Projects, Act No. 166, Public Acts of Michigan, 1965. MCL 408.551 et seq.
5. The Revised School Code, Act No. 451 of 1976, as amended, MCL 380.1 et seq.
6. The State School Aid Act, Act No. 94, Public Acts of Michigan, 1979. MCL 388.1601 et seq.

7. The Michigan Occupational Safety and Health Act, Act No. 154, Public Acts of Michigan, 1974. MCL 408.1001 et seq.
8. Asbestos in Educational Facilities, Act No. 51, Public Acts of Michigan, 1993. MCL 388.861 et seq.
9. Purchase of Federal Equipment, Act No. 12, Public Acts of Michigan, 1982. MCL 3.541 et seq.
10. Declaration of State of Energy Emergency, Act No. 191, Public Acts of Michigan, 1982. MCL 10.81 et seq.
11. Incompatible Public Offices, Act No. 566, Public Acts of Michigan, 1978. MCL 15.181 et seq.
12. Contracts of Public Servants With Public Entities, Act No. 317, Public Acts of Michigan, 1968. MCL 15.321 et seq.
13. The Whistleblowers' Protection Act, Act No. 469, Public Acts of Michigan, 1980. MCL 15.361 et seq.
14. Political Activities by Public Employees, Act No. 169, Public Acts of Michigan, 1976. MCL 15.401 et seq.
15. Fire Prevention Code, Act No. 207, Public Acts of Michigan, 1941. MCL 29.01 et seq.
16. Michigan Handicappers' Civil Rights Act, Act No. 220, Public Acts of Michigan, 1976. MCL 37.1101 et seq.
17. Elliott-Larsen Civil Rights Act, Act No. 453, Public Acts of Michigan, 1976. MCL 37.2101 et seq.
18. The Public School Employees Retirement Act of 1979. MCL 38.1301 et seq.
19. Utilization of Public Facilities by Physically Limited, Act No. 1, Public Acts of Michigan, 1966. MCL 125.1351 et seq.
20. Depositories for Public Monies, Act No. 40, Public Acts of Michigan, 1932. MCL 129.11 et seq.
21. Contractor's Bond for Public Buildings or Works, Act No. 213, Public Acts of Michigan, 1963. MCL 129.201 et seq.
22. Intergovernmental Contracts Act, Act No. 35, Public Acts of Michigan, 1935. MCL 124.1 et seq.
23. Playground Equipment Safety Act, Act No. 16, Public Acts of Michigan, 1997. MCL 408.681 et seq.
24. The Uniform Condemnation Procedures Act, Act No. 87, Public Acts of Michigan, 1980. MCL 213.51 et seq.
25. Intergovernmental Transfers of Functions and Responsibilities Act, Act No. 8, Public Acts of Michigan, 1967. MCL 124.531 et seq.
26. Regulation of Vehicles on School Property, Act No. 175, Public Acts of Michigan, 1958. MCL 257.961 et seq.

27. The Pupil Transportation Act, Act No. 187, Public Acts of Michigan, 1990. MCL 257.1801 et seq.
28. Public Health Code, Act No. 368, Public Acts of Michigan, 1978. MCL 333.9101 et seq.
29. Athletic Services Providers, Act No. 31, Public Acts of Michigan, 1990. MCL 333.26301 et seq.
30. Oath of Teachers, Act No. 23, Public Acts of Michigan, 1935. MCL 388.401 et seq.
31. Construction of School Buildings, Act No. 306, Public Acts of Michigan, 1937. MCL 388.851 et seq.
32. The Library Privacy Act, Act No. 455, Public Acts of Michigan, 1982. MCL 397.601 et seq.
33. Youth Employment Standards Act, Act No. 90, Public Acts of Michigan, 1978. MCL 409.1001 et seq.
34. Bullard-Plawecki Employee Right to Know Act, Act No. 397, Public Acts of Michigan, 1978. MCL 423.501 et seq.
35. Revised Judicature Act of 1961, Act No. 236, Public Acts of Michigan, 1961. MCL 600.101 et seq.
36. Governmental Liability for Negligence, Act No. 170, Public Acts of Michigan, 1964, Section 7. MCL 691.1401 et seq.
37. Child Protection Law, Act No. 238, Public Acts of Michigan, 1975. MCL 722.621 et seq.
38. Child Identification and Protection Act, Act No. 176, Public Acts of Michigan, 1985. MCL 722.771 et seq.
39. The Michigan Penal Code, Act No. 328, Public Acts of Michigan, 1931. MCL 750.1 et seq.

APPLICABLE FEDERAL LAW

NOTE: The following pages include some of the specific acts that public school academies deal with on a regular basis. The list is by no means exhaustive, as many other statutes also apply to public school academies.

Including, without limitation:

Federal:

1. Americans with Disabilities Act, 42 U.S.C. §§12101-12213.
2. Age Discrimination in Employment Act, 29 U.S.C. §§621-634.
3. Fair Labor Standards Act, 29 U.S.C. §§201-219.
4. Family and Medical Leave Act, 29 U.S.C. 2601 et seq.

5. Occupational Safety and Health Act, 29 U.S.C. 651 et seq.
6. Drug-Free Workplace Act, 41 U.S.C. 701 et seq.
7. Drug-Free Schools and Communities Act, 20 U.S.C. 3171 et seq.
8. Asbestos School Hazard Detection and Control Act, 20 U.S.C. §§3601-3611.
9. Child Nutrition Act, 42 U.S.C. 1771 et seq.
10. Schoolyard Statute, 21 U.S.C. 860 et seq.
11. Alcohol and Drug Abuse Education Act, 21 U.S.C. 1001 et seq.
12. National School Lunch Act, 42 U.S.C. 1751 et seq.
13. Individuals with Disabilities Education Act, 20 U.S.C. §§1400-1485 et seq.
14. Rehabilitation Act of 1974, 29 U.S.C. 794 et seq.
15. General Education Provisions Act, 20 U.S.C. §§1221-1234i, including the Family Education Rights and Privacy Act.
16. Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. §§2301-2471.
17. Asbestos Hazard Emergency Response Act, 15 U.S.C. §§2641-2655.
18. Elementary and Secondary Education Act, 20 U.S.C. §§6301-8962.
19. Adult Education Act, 20 U.S.C. §§1201-1209.
20. Teaching of Agricultural, Trade, Home Economics and Industrial Subjects, 20 U.S.C. §§11-28.
21. Consolidated Omnibus Budget Reconciliation Act, 29 U.S.C. §§1161-1168.
22. Toxic Substances Control Act, 15 U.S.C. §§2601-2629.
23. Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§2000c-2000c-9.
24. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d-2000d-7.
25. Religious Freedom Restoration Act of 1993, 42 U.S.C. §§2000bb-2000bb-4.

1. The term "public school academy" will be used throughout this discussion paper.

2. Central Michigan University, Eastern Michigan University, Ferris State University, Grand Valley State University, Lake Superior State University, Northern Michigan University, Oakland University

and Saginaw Valley State University. The university school established by the Wayne State University Board of Regents is not organized as a public school academy under the Code.

3. The Code's definition of "contract" is in fact the dictionary definition of a "charter." It is interesting to note that the term "charter" was used in the first public school academy statute enacted by the Legislature, 1993 PA 284, which was repealed before it took affect.

4. A "charter" is similar to a franchise but different than the typical license. In the simplest terms, a license involves the granting of permission, by a competent state authority, to conduct a certain activity or business that would not otherwise be permitted under law. Unlike the issuance of a charter, however, the granting of a license does not involve the delegation of powers or rights that reside in the state, and which by their nature are considered governmental.

5. The Code grants authorizing bodies ultimate discretion on whether to receive, review and approve public school academy applications. Contrast this with several licensing statutes, where the Legislature has giving the licensing body minimal or no discretion on whether a license should be issued.

6. In *Council of Organizations and Others for Education About Parochiaid, et al v Governor Engler, et al* (hereinafter referred to as the "*Noah Webster*" case), the Michigan Supreme Court determined that article 8, section 1 of the Michigan Constitution of 1963 delegates to the Legislature the authority to determine how public school officials are selected for office. With respect to public school academies, the Court determined that the Legislature did *not* require authorizing bodies to appoint or elect public school academy board members. On the contrary, the Court's decision only requires that authorizing bodies provide *some* method for selecting public school academy board members, but stops short of mandating the specific selection method. Accordingly, authorizing bodies have significant flexibility in determining the method of selection for public school academy board members.

7. In *Noah Webster*, the Michigan Supreme Court confirmed that public school academy board members are "public officials." As such, all public school academy board members are required to take the constitutional oath of public office before they can officially serve. *See* Mich Const 1963, art 11, § 1.

8. See MCL 388.1620(6).

9. Not all authorizing bodies conduct oversight in the same manner. In addition, the reader should note that the governing boards of state public universities, as constitutionally autonomous public bodies, have the discretion to develop and implement different oversight procedures consistent with the contract and applicable law.

10. Sections 8.10 and 8.11 are not included in Part 6a of the Code. In addition, these two statutes have not been amended specifically to include public school academies (*e.g.*, Intergovernmental Contracts Between Municipal Corporations, MCL 124.1 *et seq.* applies only to "municipal corporations" which by definition under this statute does not include public school academies, and the Intergovernmental Transfer of Functions and Responsibilities, MCL 124.531 *et seq.* applies only to "political subdivisions," which by definition under this statute does not include public school academies).

11. Roman numerals (iii) and (v) are not required by Part 6a of the Code.

12. This is particularly unique to some university authorizing bodies.

13. Under Michigan law, the Superintendent of Public Instruction and the Office of Fire Safety are

required to work cooperatively in the approval of school building construction and renovations.

14. The Act's definition of "district" states that a public school academy is a "district" except when that term is used in sections 6(4), 6(6), 13, 20, 23, 31a, and 105 of the Act. *See* Attachment B for a listing of those provisions.

15. This section of the Act was repealed by 1997 PA 142.

16. These questions and answers are designed to address some basic questions concerning the oversight role of the State Board. It is recognized that the State Board will promulgate its statutory and constitutional role in overseeing public school academies.

This document is to serve as an educational document and as a reference manual for persons involved in the oversight of public school academies. It is distributed with the understanding that the publisher is not engaged in rendering legal or other professional service by its distribution. It is designed as a general discussion document. Persons seeking advice regarding the application of the charter school laws should seek independent legal advice.

Comments or suggestions are welcome. Please e-mail the author at:

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