TEJANO CENTER FOR COMMUNITY CONCERNS
DBA
RAUL YZAGUIRRE SCHOOLS FOR SUCCESS
BOARD POLICY MANUAL
POLICY GROUP 5 – FISCAL MANAGEMENT

PG-5.330: THIRD-PARTY USE OF PUBLIC PROPERTY

Sec. 1. PURPOSE OF POLICY.

Through this policy, the Board of Directors (hereafter, the "Board") of Tejano Center for Community concerns doing business as Raul Yzaguirre Schools for Success (hereafter, the "School") shall address the legal requirements, as applicable, promulgated at:

(a) Texas Constitution, Article III, Sec. 52;
(b) Texas Business Organizations Code ("Tex. Bus. Org. Code") §§ 3.101, 22.201, 22.221 and 22.235;
(c) Texas Education Code ("Tex. Ed. Code") §§ 12.102, 12.107, 12.115(a)(2), 12.121 and 12.128;
(d) Texas Administrative Code, Title 19 ("19 TAC"), §§ 100.1043(a), 100.1047(e)-(g), 100.1063(a)-(c), 100.1131-.1135 and 100.1101; and
(e) Code of Federal Regulations, Title 2 ("2 CFR"), §§ 200.303(a), 200.310, 200.313(c) and 200.314-.316.

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

Sec. 2. AUTHORITY OVER FISCAL MATTERS.

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

Sec. 2.2. The Delegate, as defined in Sec. 3.2 of the Controlling Policy, shall report to the Board any business arrangement or transaction with an individual that is an officer, as defined in Sec. 5 of the Controlling Policy, and any conflicted,[1] interested[2] or related[3] party, as defined in other Board policy or applicable law. The School and its officers may not enter into a business arrangement or conduct a transaction in such a manner so as to circumvent this requirement.

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

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1 Tex. Ed. Code § 12.1054; 19 TAC §§ 100.1131 through 100.1135
2 19 TAC § 100.1047(f)
3 Tex. Ed. Code § 12.1166

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Sec. 3. APPLICABILITY OF POLICY.

Sec. 3.1. This policy applies to property acquired with Foundation School Program funds received by the School pursuant to Tex. Ed. Code § 12.106.

Sec. 3.2. This policy applies to the use of public property by a third party for an activity not directly related to the School.

Sec. 3.3. This policy is limited to an authorized use, as established under Sec. 6 of this policy, of a School facility, as defined under Sec. 4.2 of this policy.

Sec. 3.4. Except as set forth under Sec. 3.3 of this policy, the School is not authorized to permit any use of any public property by a third party.

Sec. 4. PUBLIC PROPERTY DEFINED.

Sec. 4.1. Public property is property purchased with public funds received by the School[4] and includes:

(a) real property, including a lease interest and improvements to buildings, fixtures, utilities, landscaping, construction in progress, or other improvements; and
(b) personal property, including:
    (1) furniture, equipment, supplies, and other goods;
    (2) computer hardware and software;
    (3) contract rights, intellectual property such as patents, and other intangible property;
    (4) cash, currency, funds, bank accounts, securities, and other investment instruments;
    (5) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and
    (6) any other form of personal property recognized by Texas law.[5]

Sec. 4.2. For purposes of this policy, School facility shall mean auditoriums, cafeterias, cafetoriums, classrooms, conference, meeting or training rooms, gymnasiums, practice fields, and stadiums.

Sec. 5. THIRD PARTY DEFINED.

Sec. 5.1. In this policy, third party means any group formed independently of the School as an unincorporated nonprofit association under Tex. Bus. Org. Code Chapter 252 or a nonprofit corporation under Tex. Bus. Org. Code Chapter 22 including:

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4 Tex. Ed. Code § 12.128(a)
5 19 TAC § 100.1001(4)-(6)

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(a) Parent-teacher association or organization.
(b) Booster clubs.
(c) American Legion.
(d) Boy Scouts.
(e) Camp Fire.
(f) Girl Scouts.
(g) Lions Club International.
(h) Rotary Club.
(i) Any other group formed independently of the School as an unincorporated nonprofit association or a nonprofit corporation approved by the Board in a resolution.

Sec. 5.2. Third party does not include any internal employee or student group.

Sec. 5.3. Third party does not include any for-profit entity or individual.

Sec. 6. USE OF PUBLIC PROPERTY.

Sec. 6.1. Public property may be used only for a purpose for which a school district may use school district property and only to implement a program that is described in the open-enrollment charter and is consistent with Tex. Ed. Code §12.107.[6]

Sec. 6.2. The limitation under Sec. 6.1 of this policy notwithstanding, the Board finds that:

(a) The predominant purpose of allowing a use consistent with the School's purposes set forth in its Certificate of Formation, as amended, is to accomplish a public purpose[7] and not to benefit private parties;[8]
(b) The use shall provide a clear, public benefit in return;[9] and
(c) Sufficient control shall be retained over the use to ensure that the public purpose is accomplished, and a return benefit is received.[10]

Sec. 6.3. Limited to the property identified in Sec. 3.3 and subject to the requirements of Sec. 6.4 of this policy, the School may allow the use of a School facility by a third party for athletic, charitable, civic, educational, recreational, religious, scientific, or social activities.[11]

Sec. 6.4. The School may only allow the use of a School facility by a third party if the use does not conflict with the School's athletic events, educational and instructionally-related activities, cocurricular and extracurricular activities, maintenance work, meetings, professional development

6 Tex. Ed. Code § 12.128(a)(3); 19 TAC § 100.1063(c)
7 Tex. Att'y Gen. Op. No. GA-0743 (2009)
8 Tex. Att'y Gen. Op. No. GA-0076 (2003)
9 Tex. Att'y Gen. Op. No. KP-0099 (2016)
10 Tex. Att'y Gen. Op. No. GA-0076 (2003)
11 Tex. Bus. Org. Code § 2.002(1)

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workshops and trainings, student performances and practices, and other School activities, events, functions, and programs which shall, at all times, take precedent over any third party use.

Sec. 6.5. The School shall not allow the use of a School facility for a purpose that is inconsistent with the purpose established in its Certificate of Formation, as amended, and its vision and mission.

Sec. 6.6. The School shall not allow a use of a School facility by any organization or person that is not authorized by the Board under this policy.

Sec. 6.7. The School shall require a third party using a School facility under this policy to adequately supervise its use, including having an appropriate number of chaperones.

Sec. 6.8. The School may allow the use of a School facility by a local, state or federal governmental agency during an officially declared disaster or other emergency.

Sec. 7. FEES.

Sec. 7.1. The School shall charge a fee to a third party for the use of a School facility. The Delegate or designee shall establish and publish a fee(s) that adequately covers the cost of ensuring that the School facility is appropriately maintained and safeguarded during third party use and for cleaning the School facility after third party use.

Sec. 7.2. The Delegate or designee within the Delegate's office shall collect the fee(s) in advance and deposit the fee(s) collected into the School's general operating account and fund.

Sec. 7.3. A third party shall forfeit its prepaid fee(s) pursuant to Sec. 9.1(j)(3)(B) of this policy.

Sec. 7.4. The School shall not collect a fee(s) from parent-teacher associations or organizations, booster clubs, or internal employee or student groups.

Sec. 7.5. In an administrative procedure adopted under Sec. 12 of this policy, the Delegate or designee may uniformly waive the collection of a fee(s) from any third party under Sec. 5.1(c)-(h) of this policy.

Sec. 8. THIRD PARTY CONDUCT.

Sec. 8.1. A third party shall bear responsibility for the action(s) or failure(s) to act of its officers, employees, agents, attendees, participants, spectators, sponsors, and visitors directly or indirectly relating to its use of the School facility.

Sec. 8.2. A third party shall agree to comply with all applicable statutes, regulations, regulatory agency directives and policies, this policy, and any administrative procedures adopted under Sec. 12 of this policy.

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Sec. 8.3. A third party shall agree to prohibit the possession or use of:

(a) alcoholic beverages;
(b) firearms, knives or any other weapon;
(c) food, including beverages, in the School facility, other than in the cafeteria or other designated area(s); and
(d) tobacco products anywhere on or in the School facility.

Sec. 8.4. A third party shall agree to leave the School facility in the same condition as it was received and to not alter the School facility in any respect, unless so approved in advance by the Delegate.

Sec. 8.5. The Delegate or designee may stipulate other required conduct in the agreement under Sec. 9 or the administrative procedures under Sec. 12 of this policy.

Sec. 9. APPLICATION AND AGREEMENT REQUIRED.

Sec. 9.1. The Delegate or designee shall require that a third party submit an application to request the use of a School facility at least ten (10) business days prior to the first day of the requested use. The application must provide:

(a) the name of the legal entity, the official physical address of its central administrative office, and official telephone number;
(b) the type of legal entity conforming with Sec. 5.1 of this policy;
(c) the requested School facility;
(d) the date(s) and time(s) of the requested use;
(e) the purpose of the requested use, event name, and a statement disclosing the activity to be undertaken;
(f) if the event will be closed or open to the general public;
(g) the number of attendees;
(h) if food will be served;
(i) evidence of liability insurance coverage with the School named as the certificate holder;
(j) an acknowledgement that:
    (1) the request will be approved on a first-come, first served basis;
    (2) School activities, events, functions, and programs shall preempt the requested and approved use at all times; and
    (3) the School reserves the right to cancel the requested use if:
        (A) an unanticipated conflict arises under Sec. 9.1(j)(2) of this policy; and
        (B) if the third party violates its agreement, this policy and related administrative procedures, and applicable law; and
(k) the printed name, signature, and date of signature of a duly authorized representative certifying the information provided on the application.

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Sec. 9.2. The Delegate or designee shall require that a third party execute a written agreement, including the approved application as an attachment or exhibit. The Delegate or designee must seek legal counsel during the preparation and adoption of the agreement to ensure that the School's interests are protected.

Sec. 9.3. The Delegate or designee may only bind the School to a term concluding at the end of the fiscal year during which the agreement is fully executed. The School shall not allow any renewals. A third party desiring to use a School facility in a subsequent fiscal year shall apply anew.

Sec. 9.4. The third party shall agree to release the School from any and all liability for any damage to personal property or personal injury.

Sec. 9.5. The third party shall agree to bear the cost of any damage(s) to the School facility resulting from its use.

Sec. 10. REQUIRED APPROVAL.

Sec. 10.1. The Delegate or designee shall approve a third party request to use a School facility.

Sec. 10.2. If adopted as an administrative procedure under Sec. 12 of this policy, a campus principal may approve a third party request to use a School facility on the principal's own campus.

Sec. 10.3. The Delegate or designee, or campus principal, may deny a third request to use a School facility if it does not conform to the requirements of this policy in any respect.

Sec. 10.4. The Delegate or designee, or campus principal, may cancel any previously approved third party request to use a School facility under Sec. 9.1(j)(3) of this policy.

Sec. 10.5. The Board shall approve the final agreement prior to final execution by the Board's designee.[12]

Sec. 11. TRAINING AND UPDATES.[13]

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

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[12] *See* PG-5.001, Sec. 3.1(j).

[13] 2 CFR § 200.303(a), U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*, 4.02 and 4.05.

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Sec. 12. ADMINISTRATIVE PROCEDURES.[14]

The Delegate shall formally adopt administrative procedures as reasonably necessary to properly administer this policy and to adhere to applicable law and rule. In doing so, the Delegate shall not adopt, and is prohibited from adopting, an administrative procedure that conflicts with applicable law or this policy. Accordingly, the Delegate shall confer with the Board or legal counsel before deviating from the requirements set forth in this policy. In the event that a deviation from this policy becomes necessary, the Delegate shall either recommend an amendment to this policy or the Board's approval of a specific deviation, including the purpose, scope and duration of the requested deviation.

Sec. 13. DATE ADOPTED AND EFFECTIVE.

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

Sec. 14. RETENTION.[15]

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

Sec. 15. CERTIFICATION.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to the Third-Party Use of Public Property, as

[14] Tex. Ed. Code § 12.115(a)(2); FASRG Module 2; 2 CFR § 200.303(a). Consistent with 19 TAC § 100.1033(b)(14)(C)(iv), the Board has the final authority to adopt policies governing charter school operations, including authorizing the Delegate or designee to adopt an administrative procedure to implement this policy. Moreover, as set forth in the School's Certificate of Formation and Bylaws and in accordance with Tex. Bus. Org. Code §§ 3.101 and 22.201, the Board is the School's governing authority and, as such, manages and directs the School's business and affairs through Board actions, resolutions and policy.

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

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originally adopted by the Board on MDY, which Policy is in full force and effect and has not been revoked or amended.

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[INSERT NAME HERE.], Secretary

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Date Certified

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