



# Southwestern Michigan College Board Policy - Bylaws – Article VIII Ethics and Conflicts of Interest – Board of Trustees

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10/26/2020		10/26/2020

## SECTION 1. Statement of Obligations

It is the policy of the Board of Trustees (“Board”) that all Trustees and Officers (Chairperson, Vice Chairperson, Secretary, and Treasurer), serve the public trust and are required to fulfill their responsibilities with full care and loyalty to the College over their own personal and financial interests. All Decisions and actions of the Trustees shall be made in conformity with this Ethics and Conflicts of Interest Bylaw (“Bylaw”) and for the sole purpose of advancing the best interests of the College and the public good. The College’s integrity must be protected at all times and the fiduciary duties of the Trustees must be respected in both actuality and appearance. Trustees must comply with the Michigan Constitution, laws of the State of Michigan and provisions of this Bylaw. Trustees also are subject to the provisions of Act 331 of the Michigan Public Acts of 1966 as amended (MCL 398.1, et seq.); Act 318 of the Michigan Public Acts of 1968 (MCL 15.301, et seq.); 1995, Act 266 of the Michigan Public Acts of 1995, all applicable Federal and State laws and regulations, and the provisions of this Bylaw.

The Board’s Secretary shall distribute annually a copy of this Bylaw to all Trustees for their signature (physical or electronic) acknowledging receipt and via initialing each page of this Board Policy. It is the individual responsibility of each Trustee to disclose in writing his/her own conflicts of interest or potential conflicts and those of others to the College as soon as any conflict becomes known. This Bylaw will be interpreted and applied broadly in accordance with the provisions set out below.

## SECTION 2. Definitions

“Confidential Information” means information that has been obtained by a Trustee that is not available to members of the public under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) or the Michigan Freedom of Information Act, being MCL 15.231 et seq., or pursuant to other law, regulation, policy or procedure recognized by law, including the attorney-client privilege, and that the Trustee is not previously authorized in writing to disclose. Confidential Information of any type shall not be released without the specific, written prior authorization of the Board. Confidential Information includes, but is not limited to: (1) any written information, whether in document or in electronic form, which could be exempted from disclosure under this Bylaw; and/or (2) any non-written information which, if written, is subject to non-disclosure under this Bylaw. Disclosure of Confidential Information may occur pursuant to prior written authorization issued by Board action, an applicable law, regulation, or court order.

“Decision” means: (1) a decision, determination, action, vote, or other disposition upon a motion, proposal, recommendation, or resolution, by members of the Board of Trustees or (2) a decision, determination, action or other disposition taken by any Trustee with the authority to do so in the performance of their duties authorized by the Board or College.

“Entity” or “Entities” means any corporation; company; limited liability company; foreign or domestic corporation or company; partnership; sole proprietorship; joint venture; unincorporated entity; other college, university, or trade school in the State of Michigan or any other state; or association, social organization; or any other form of commercial or business entity.

“Gift” means, except as otherwise provided in this Bylaw, anything of value in any form including money, donations, employment, goods, entertainment, travel, services, use of real or personal property or facilities, vehicles, loans, or price reductions/discounts for goods or services provided to a Trustee and/or their Immediate Family.

“Immediate Family” means: (1) a person who is related to a Trustee as spouse, domestic partner, or as any of the following, whether by marriage, blood or adoption: parent, son or daughter, brother, sister, uncle, aunt, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law, or sister-in-law; (2) an individual claimed by a Trustee or his/her domestic partner as a dependent under the United States Internal Revenue Code or Michigan law.

“Ownership/Business Interest” means, except as otherwise stated in this Bylaw, a financial, ownership, personal or pecuniary interest that a Trustee has or will have in the affairs of: (1) any business Entity in which the Trustee or a member of his/her Immediate Family is an officer, director, member, or employee; (2) any business Entity that is not publicly traded in which the Trustee or a member of his/her Immediate Family controls, or directly or indirectly owns, any stock or membership interest regardless of value; or (3) any person or business Entity with whom the Trustee has a contract. A business interest also includes any relationship the Trustee or his/her immediate family has or will have in or with any business, institution, or Entity: (1) as an officer, executive, manager, partner, shareholder, director, member, employee, or agent; (2) direct or indirect control, ownership, stock, membership or partnership interest, regardless of value; or (3) any oral or written contract, employment contract, agency contract, a sales relationship, or any commercial or employment relationship.

“Private Gain” means any benefit or monetary gain that is accepted or received by a Trustee, or is perceived by a reasonable person to be accepted or received by a Trustee, as remuneration for the purpose of improperly influencing a Decision or official action in a specific manner or for refraining from making a Decision or performing of an official action in a specific manner, or as inducement for a Trustee to act in favor of some interest or Entity other than in the interest of the College and Board. Unless one or more of the above-standards are violated, the following types of benefits, monetary payments or reimbursements, Gifts, awards or emoluments may be received by a Trustee as:

1. Payment of salaries, compensation, expenses or employee benefits to a Trustee by that person’s employer or business pursuant to a contract or employment relationship where the payment is completely unrelated to the Trustee’s position with the College.
2. Authorized reimbursement by the College of documented actual and necessary expenses incurred by the Trustee;
3. Campaign or political contributions that are made and reported by a Trustee in accordance with Michigan and Federal law;

4. Admission or registration fees, travel expenses, entertainment, meals or refreshments that are: (a) furnished to a Trustee by the sponsor(s) of an event, appearance or ceremony that is related to College business in connection with such an event, appearance or ceremony and to which one or more members of the public are invited, or b) furnished to a Trustee in connection with a speaking engagement, teaching, or the provision of assistance to an organization or governmental Entity, provided that the College does not compensate the Trustee for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity or event;
5. Admission, regardless of value, to a charitable or civic event to which a Trustee is invited in his or her official capacity with the College, where any admission or other fees required of all persons attending the event are waived or paid for the Trustee by a party other than the College;
6. An award, Gift or other token of recognition presented to a Trustee by representatives of a governmental body, political subdivision or other Entity, who are acting in their official capacities;
7. A registration fee for a seminar or other informational conference that a Trustee attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the Trustee's attendance is waived or paid for a Trustee by a party other than the College or Trustee;
8. Meals or beverages provided to the Trustee by an individual, Entity or a nongovernmental organization during a meeting related to official College business;
9. Anything of value, regardless of the value, presented to or received by a Trustee on behalf of the College where the item of value is offered to, accepted by, and placed in the possession of the College;
10. Complimentary single copies of trade publications, subscriptions, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a Trustee;
11. Compensation paid to a Trustee for a published work, research, invention or intellectual property that did not involve the use of the College's time, equipment, facilities, supplies, staff or other resources, except as provided in any applicable collective bargaining agreement with College employees;
12. Receipt by the Trustee of anything of value, where the payment, Gift or other transfer of value is unrelated to the Trustee's holding or having held a College position, and where the activity or occasion for which the payment, Gift or other transfer of value given does not involve the use of the College's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;
13. Hospitality that is extended to a Trustee by another individual, or by an organization or Entity for a purpose unrelated to the business of the College or any Decision involving the College, including a Gift of food, beverage, or lodging; and/or
14. Receipt by a Trustee of a devise, bequest or inheritance for a reason unrelated to the official business of the College or any Decision involving the College.

### **SECTION 3. Fiduciary Responsibilities**

All Trustees shall act in a manner compliant with their fiduciary duties to the College. All Trustees shall place the College's interests ahead of their Private Gain, private interests or interests of their Immediate Family or place of employment, other than the College, or other institutions or entities. Breach of any fiduciary duty may subject the Trustee to the sanctions set out in this Bylaw or other financial or legal consequences.

## **SECTION 4. Conflicts of Interest**

A conflict of interest exists when a Trustee's financial interests or other opportunities for personal benefit may compromise, or reasonably appear to compromise, the Trustee's independence of judgment in fulfilling his/her duties. Trustee's shall remain free from the influence of, or the appearance of, any conflicting interest in fulfilling their duties. Trustee's will exercise care that no detriment to the College results from conflicts between their interests and those of the College. Trustee's shall refrain from accepting duties, incurring obligations, or engaging in activities that are or will be incompatible with, or in conflict with, their duties under this Bylaw. Any violation of this Section 4.0 shall also constitute a breach of fiduciary duties under this Bylaw. Conduct prohibited by this Bylaw includes, but is not limited to the following:

1. **Contracts (written or verbal).** A Trustee shall not receive a Private Gain, whether direct or indirect, from any contract or business relationship with the College. No Trustee shall have an Ownership/Business Interest in a business or Entity that is proposing to do or is doing business with the College.
2. **Except for individual employment agreements or collective bargaining agreements authorized by the Board, a Trustee shall not solicit, negotiate, renegotiate, make any Decision on or approve, directly or indirectly, any contract or commercial relationship, or amendment thereof, with the College and:** 1) himself or herself; 2) any corporation, partnership, limited liability company or unincorporated association, or other Entity of which the Trustee is a partner, member, owner, part owner or employee; 3) any corporation or limited liability company in which the Trustee is an owner, member or stockholder of more than one percent (1%) of the total outstanding stock or membership interest of any class where the stock or membership is not listed on an exchange, or of value of \$25,000 or more where the stock or membership interest is listed on a stock exchange or of which the Trustee is a director, officer, or employee; or 4) any trust of which the Trustee is a beneficiary or trustee, or represents any party to such contract. This prohibition does not pertain to any investments arising from participation in a retirement plan or fund.
3. **Use of Authority/Information.** Trustees will not use their positions, or any privileges or information, including Confidential Information, attendant to their positions, to obtain or provide other individuals, businesses or entities with any benefits. A Trustee shall not use Confidential Information acquired in service to the College for any purpose other than College business, or give Confidential Information to any person or Entity without the prior written consent of the College.
4. **Outside Influence.** No Trustee will solicit or accept any Gift, loan, favor or other thing of value, or the promise thereof, from any individual, business or Entity that would tend to influence improperly any Decision of or the manner in which the Trustee performs his/her duties.
5. **Improper Use of Position.** A Trustee shall not use or attempt to use his or her position to obtain a Private Gain or secure, request, or grant any privilege, exemption, advantage, or preferential treatment for himself or herself, or any Immediate Family or other person or business Entity. A Trustee shall not act as an agent, attorney, representative or advocate (whether compensated or not compensated) for another person or business Entity on subject or Decision pending before the College or any current or future business proposal of any nature.
6. **Incompatible Employment.** A Trustee shall not engage in any employment, or render services, for a public or private interest or Entity where such employment or service is incompatible or in conflict with the proper discharge or performance of the Trustee's duties and responsibilities, or where such employment or service can be reasonably expected to impair the Trustee's independence of judgment or action in the discharge of his or her official duties and responsibilities.

7. Nepotism. A Trustee shall not cause or in any way promote the employment of or any favorable employment action as to any member of his/her Immediate Family or participate in any employment Decision regarding a member of his/her Immediate Family. This section shall not prohibit a Trustee from recommending or approving a comprehensive budget that includes compensation for an Immediate Family member.
8. Political Activity. A Trustee shall not use any College equipment, computers, printer/copiers, facilities, supplies, or staff for his/her own political benefit, to seek any elective or appointive office, or for the political benefit of any other person seeking elective or appointive office, other than the use of property or facilities made available to the general public on an equal basis for fair market value and payment.
9. Competition with College. No Trustee shall directly or indirectly engage in or attempt to engage in any activity, have an Ownership/Business Interest in, or make any Decision that involves, any Entity competing with the College for any property, asset, opportunity, class or program/degree offering, or student recruitment and retention of the College.
10. Diversion of Opportunity. No Trustee will divert to another individual or Entity an opportunity which may be of interest to the College, unless the College has been informed in writing of the opportunity on a timely basis in advance and has declined to act on it.
11. Private Gain. A Covered Individual shall not intentionally make or refrain from making any Decision, or induce or attempt to induce any other Covered Individual or employee to make or refrain from making any Decision on any matter pending before the the College that would result in a Private Gain or commercial benefit for any Trustee.
12. Gift Ban. Except as expressly permitted by this Bylaw, no Trustee shall directly or indirectly solicit or accept any Gift, regardless of value, from any individual or business Entity that: (1) is seeking a Decisions or official action by a Trustee or by a public official or employee working for or representing the College in any capacity; (2) is currently doing business or seeking to do business with the College; or (3) has interests that may be affected in any way by the performance or nonperformance of the duties of a Trustee.
13. Public Expressions. Any public expressions made by a Covered Individual, unless previously authorized in writing by the Board, shall not state or imply that is the official position of the Board or College on College matters and it is the duty of the Trustee to make it clear that his/her statements do not reflect the views of the College, Board or other Board members; or
14. Due Diligence. A Trustee must inform herself/himself of any Ownership/Business Interest or investment in any College customer, vendor, or product/service supplier that could or does create a conflict of interest under this Bylaw. A Trustee must avoid personal interests, Ownership/Business Interests and investments that influence, or give the appearance of influencing, the objectivity and independence of his/her judgment, Decisions, or conduct in carrying out their duties and responsibilities for the College. A Trustee must disqualify himself/herself from any deliberations, Decisions, decision-making processes, or actions on behalf of the College regarding any such matters or transactions governed by this Section 4.0.

If a Trustee believes that he/she will have or may have a conflict of interest or is notified of a complaint of non-compliance with this Section 4.0, the Trustee shall promptly and fully disclose the conflict in a signed, dated writing submitted to the Board of Trustees Secretary and shall refrain from participating in any way in the matter to which the conflict relates until the conflict question has been resolved. The Secretary of the Board of Trustees shall inform the Chairperson of the Board, the President, and College counsel of all conflict of interest questions which have been disclosed to the Secretary. This Section 4.0 shall be interpreted and applied broadly and in a manner that will best serve the interests of the College.

## **SECTION 5. Addressing Conflicts of Interest**

Once a violation or potential violation matter ("Matter") is discovered or reported to the Board Secretary, the Secretary shall assign the matter to the Board or Board subcommittee. If it is determined that a matter involves a violation of this Bylaw, the Board or its designee(s) will discuss the matter with the Trustee to address the matter and explore alternatives in an attempt to eliminate the matter. If it is not possible to reach a mutually acceptable alternative arrangement, the activities giving rise to the matter shall be prohibited by the Board by written resolution.

## **SECTION 6. Disclosures**

Within 30 calendar days of the effective date of this Bylaw, all Trustees shall complete and file a written disclosure with the Board Secretary describing in detail any direct or indirect actual or potential violation of, or disclosure required by, this Bylaw. After the effective date of this Bylaw, all Trustees shall file a detailed written disclosure or report in writing an actual, potential, or suspected violation of the Bylaw with the Board Secretary within fifteen calendar days (15) calendar days after election, employment or appointment or within fifteen (15) calendar days after an actual, suspected or potential violation of this Bylaw arises or is discovered.

## **SECTION 7. Conflict Resolutions**

1. A violation of this Bylaw shall not constitute a basis for a third party challenge to the validity of any Decision of the Board of Trustees.
2. The value of anything transferred or received in breach of the standards set forth in this Bylaw may be recovered by and on behalf of the College.
3. The Board, following a hearing and findings on an alleged Bylaw violation under Section 6.0 may, by a simple majority, vote to impose sanctions or take other actions to address violations of this Bylaw. Sanctions or actions may include reprimand, censure, termination or change of a business relationship or contract, or such other sanctions or appropriate actions provided by the Bylaws, Michigan law, or as the Board deem necessary or proper in its discretion.
4. Any sanctions imposed under this Bylaw shall not be construed to limit, diminish or impair the rights of the Board or College to enforce any and all contracts or laws or bring suit or seek any other remedies, penalties, fines, restitution, or forfeitures available under any applicable law.

## **SECTION 8. Hearings**

1. Upon receiving a report or acquiring information of a reasonable suspicion of a violation of this Bylaw, the Board Chairperson and one Board Member or Vice Chairperson and one Board Member may call for a hearing to be held at a regular or special meeting of the Board to determine, by the vote of a simple majority, whether or not a violation of this Bylaw occurred, and if so, what penalties shall be imposed or other actions taken for the violation.
2. Trustees subject to hearing proceedings under this Article shall be afforded due process of law, including notice of charges, an opportunity to respond and be heard regarding the charges, and the right to representation of their choice before, during and after any hearings.
3. Upon conclusion of all hearings, the Board may render written findings on all issues concerning violations of this Bylaw, impose any one or more of the sanctions provided under this Bylaw and serve on all affected parties a copy of the findings and sanctions determined by the Board.