

Agenda Item:	IV E: Action Item
Date:	May 9, 2024
To:	Magnolia Educational & Research Foundation dba Magnolia Public Schools (“MPS”) Board of Directors (the “Board”)
From:	Alfredo Rubalcava, CEO & Superintendent
Staff Lead(s):	Alfredo Rubalcava, CEO & Superintendent
RE:	Approval of MPS Amended Volunteer Enrichment Programs Policy

1. Action Proposed:

I move that the Board approve the amended MPS Volunteer Enrichment Programs Policy.

2. Purpose:

MPS appreciates the time of all who serve MPS in various capacities and wishes to encourage these contributions. Because MPS is subject to various laws, regulations, and requirements set forth in charters, and because MPS’ obligation, first and foremost, is to ensure that its students are safely supervised, MPS has developed this policy to set forth standards and expectations by which volunteer enrichment programs (“Programs”) shall operate.

3. Background:

MPS Board of Directors approved the MPS Volunteer Enrichment Programs Policy at the April 11th Regular Board Meeting. Since then, with the guidance of legal counsel, added additional clauses to the policy which elaborate on indemnification and insurance, which can be found on pages 4-5 of the policy.

4. Analysis:

The Policy addresses the following topics:

- Program Suitability
- Nature of Volunteering
- Working with Staff
- Background Checks
- TB Tests
- Discrimination, Hazing, Bullying, Intimidation, and Harassment
- Equal Opportunities for Participation
- Avoidance of Conflicts of Interest

- Facilities Usage and Safety Expectations
- Supervision
- Parent Agreement
- Waiver of Liability
- Indemnification
- Insurance
- Publicity
- Confidentiality
- Status
- Termination

The agreement attached to the Policy asks the Operator to review and affirm compliance with the Policy, that the Program will be without charge or any value due in exchange, and disclosure of any financial benefit if applicable.

5. Impact:

This Policy will ensure that volunteer enrichment programs follow certain standards and expectations, comply with applicable laws, regulations, and requirements, and that students benefit from these programs as learners in a safe and secure manner.

6. Exhibits:

1. Amended MPS Volunteer Enrichment Programs Policy

Magnolia Public Schools

Volunteer Enrichment Programs Policy

Magnolia Public Schools (“MPS”) was founded on the belief that students benefit significantly in their development as learners and in preparation for college and career when they are exposed to and engaged in first-hand experiences in science and technology. MPS’ commitment to providing students with these experiences is possible because of contributions of time and resources from community partners, scientific experts in academia, and industry leaders. MPS is also fortunate that its Board of Directors has, historically, included these individuals as members, who have volunteered their time to contribute to MPS’ governance, as well as its mission. MPS appreciates the time of all who serve MPS in various capacities, and wishes to encourage these contributions. Because MPS is subject to various laws, regulations, and requirements set forth in charters, and because MPS obligation first and foremost it to ensure that its students are safely supervised, MPS sets forth the following standards and expectations by which volunteer enrichment programs (“Programs”) shall operate. Prior to the time that any Program serves students, the Program’s operator (the “Operator”) is required to execute the agreement attached hereto confirming their agreement to comply with the terms of this policy (the “Policy”).

Program Suitability

It is within the sole discretion of MPS to determine whether a Program is suitable to be offered to its students, taking into account and balancing the expected benefits, the Operator’s capacity and reputation to operate a safe and successful Program, the Program’s suitability taking into account applicable laws and regulations and the charters operated by MPS, the reputational impacts of working with an Operator or a particular Program, and the logistical demands upon MPS related to a Program.

Nature of Volunteering

All programs falling under this Policy must be provided to MPS and to its students by the Operator without any remuneration or consideration of any kind due to the Operator from MPS or its students, directly or indirectly. Operator agrees to provide the Program free-of-charge to MPS in order to provide an educational benefit to MPS students.

Working with Staff

Operators may not supervise and direct MPS employees unless the Operator has hired an MPS employee as their own employee. MPS does not prohibit Operators from hiring MPS employees to support the Program so long as the employment does not conflict with MPS employees’ duties to MPS. MPS employees, officers, and board members who are also employed by Operators must take care to ensure that they respect the boundaries of their respective roles, and do not allow their respective roles to conflict. For example, a Board member or MPS employee must not give preferential treatment to an MPS employee because they are also employed by Operator, and they likewise must not discipline or adversely treat an MPS employee because of their performance as an employee of Operator.

Background Checks

Prior to commencing Services, all Operator employees or volunteers who will come into contact with MPS' students and employees shall submit to a criminal background check and furnish MPS with verification that the Operator has received and reviewed the criminal record summary consistent with the terms of Education Code Sections 18975(b), 44237, 45125.1 for all employees and volunteers, and has determined that none of the employees or volunteers have been convicted of a violent felony listed in Penal Code Section 667.5(c), a serious felony listed in Penal Code Section 1192.7(c), a sex offense listed in Education Code Section 44010, a controlled substance offense listed in Education Code Section 44011, a crime involving moral turpitude (e.g., embezzlement, perjury, fraud, etc.), or any offense which may make the employee unsuitable/undesirable to work around students. Any Operator employee or volunteer who has been convicted of a violent felony listed in Penal Code Section 667.5(c), a serious felony listed in Penal Code Section 1192.7(c), a sex offense listed in Education Code Section 44010, a controlled substance offense listed in Education Code Section 44011, a crime involving moral turpitude (e.g., embezzlement, perjury, fraud, etc.), or any offense which may make the employee unsuitable/undesirable to work around students shall not be allowed provide Services or come on campus. Operator shall maintain proof of compliance with these provisions and shall provide written confirmation of compliance for each employee and volunteer who comes into contact with MPS' students and/or staff at MPS' request.

TB Tests

All Operator employees or volunteers who will come into contact with MPS' students and employees shall not commence work/volunteering and working with students unless the person has submitted to a risk assessment and/or be examined and determined to be free of active tuberculosis (TB) within the period of 60 days prior to employment/service, or otherwise meet the requirements of Education Code Section 49406. Operator shall maintain proof of compliance with these provisions and shall provide written confirmation of compliance for each employee and volunteer who comes into contact with the MPS' students and/or staff at MPS' request.

Discrimination, Hazing, Bullying, Intimidation and Harassment.

Operator agrees that it shall maintain policies and procedures that prohibit hazing, bullying, intimidation, and harassment and ensure that its employees are trained regarding the same. Each of Operator's employee is required to take immediate steps to intervene when it is safe to do so if the employee witnesses an act of discrimination, hazing, harassment, intimidation or bullying of a student. The Operator is also required to report such actions to MPS as soon as practicable.

Equal Opportunities for Participation.

Operator agrees that it shall provide equal opportunities for participation by all persons without discrimination on the basis of the grounds identified in Education Code Section 220, which prohibit discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is

contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status. Operator shall comply with the Americans with Disabilities Act in its operations.

Avoidance of Conflicts of Interest

MPS Board members, officers, employees, and board members, officers, and employees of Operators must ensure that their involvement in the approval or operation of any Program does not present or create a potential or actual conflict of interest.

The Operator shall not derive any financial benefit from MPS for operating the Program. Accordingly, it is expected that no agreements with Operators could in any circumstance constitute a conflict of interest under Government Code Section 1090 in the absence of any financial interest in a contractual arrangement between MPS and an Operator.

To ensure compliance with the Political Reform Act (“PRA”), to the extent any employee, officer, or board member has an ownership interest in the Operator or is employed by the Operator, the individual must not participate in the approval of the Program. We hereby advise Operators and employees of operators, that the Political Reform Act bars MPS and its directors, officers, and employees from participating in any decision that is anticipated to financially impact a director, officer, or employee financially, even if the financial impact or benefit will be derived from a source other than MPS. For example, if operating the Program is expected to result in a financial benefit to a director, officer, or employee (e.g., a bonus or increased profit from increased business overall), even if the source of the financial gain is not MPS directly, this triggers the PRA’s prohibition on the director, officer, or employee’s participation in the decision to approve the Program. Any employee, officer, or board member who may be impacted financially by MPS’ decision to work with a Program shall disclose the same to MPS, refrain from influencing MPS to approve the Program, and take no part in MPS’ approval of the program (including the steps leading up to approval, e.g., negotiation and contracting).

Facilities Usage and Safety Expectations

Operator will be provided with classroom space, as determined in MPS’ discretion, so that Operator may operate the Program on the dates and times approved by MPS. Operator must ensure that its operation of the Program does not cause disturbance or damage to MPS facilities and tampering with materials stored in the classroom. At the conclusion of each Program session, Operator must ensure that the spaces it has utilized are neat and clean, in the condition that the spaces were found at the beginning of the Program session.

Operator will ensure that Operator and its employees are familiar with the School Safety Plan and related safety procedures applicable to the campus on which the Operator is providing the Program, and Operator and its employees agree to abide by and implement those policies and procedures as appropriate in the event of an emergency event.

Supervision

While operating the Program, Operator will be responsible for supervising students and ensuring that they are safe. Following the conclusion of a Program session, Operator may not dismiss students to anyone other than an MPS employee or the student's parents/guardians/authorized person, or to the location designated by MPS administration for dismissal.

If any student's behavior fails to conform with MPS' policies, the Operator shall promptly refer the student to MPS administration and shall not seek to discipline the student themselves. Operator may revoke a student's privilege to participate in the Program in consultation with MPS administration, and provided that doing so is not otherwise inconsistent with the Policy.

Parent Agreement

Students may not participate in the Program unless and until their parent/guardian provides written advance consent. Parents/guardians must be given specific notice regarding who will be supervising their child(ren).

Waiver of Liability

Operator provides the Program to MPS as a volunteer and at Operator's own risk. Operator shall hold MPS and its directors, officers, and employees harmless and free and clear of liability and damages of any kind arising from or related to Operator's operation of the Program.

Indemnification

Operator agrees to indemnify, defend, and hold harmless MPS and its officers, employees, board members, insurers, successors, representatives, affiliates, attorneys, and assigns, from and against any and all claims, expenses, losses, costs, deficiencies, liabilities, judgments, settlements, and damages (including related attorney's fees and expenses) arising out of, relating to, or due to, whether directly or indirectly, (i) any breach of any of the representations, warranties, covenants, or terms contained in this Policy and any related agreement between Operator and MPS, and any misrepresentations or omissions by Operator related to any such agreement, (ii) Operator's operation of the Program, including but not limited to Operator's supervision or alleged inadequate supervision of students, Operator's interactions with parents, Operator's interactions with MPS employees, and claims raised by any chartering authority or regulator concerning Operator or the Program; (iii) without limitation, Operator's wrongful acts, errors, omissions, or negligence; and (iv) third-party claims of any kind asserted against MPS that are incidental to and would not have arisen but-for Operator's provision of the Program, including but not limited to claims related to violation of intellectual property rights. As soon as MPS becomes aware of a matter subject to indemnification under this section, MPS shall provide notice to Operator, and Operator shall promptly, and on an ongoing basis, advance attorney's fees and costs to MPS' legal counsel of choice until the final resolution of the underlying claim.

Insurance

Operator represents and warrants that it maintains that at all times while providing the Program that it shall maintain (i) commercial general liability insurance of not less than \$2,000,000 per

occurrence, covering liabilities arising from bodily injury, personal injury, and property damage, and which names MPS as an additional insured and includes a waiver of subrogation provision for the benefit of MPS; (ii) professional liability insurance of not less than \$2,000,000 per occurrence, covering potential professional and operational liabilities associated with operating the Program, to the extent not encompassed in a general liability policy, including as a rider, or separate insurance policy, coverage for sexual misconduct and abuse, subject to the same limits of liability as the general liability policy.; (iii) with respect to an Operator that employs one or more employees, workers' compensation insurance at or greater than the minimum levels required by applicable law; (iv) to the extent the Operator operates vehicles owned or leased by the Operator, which are parked at MPS facilities and/or to the extent Operator transports students in vehicles owned or leased by the Operator (subject to MPS and parent approval on a request-by-request basis), Operator shall procure reasonable automobile insurance coverage. All required insurance must be purchased from companies with an A.M. Best Company financial strength rating of A minus or better and be authorized to transact the respective class of insurance in California. Operator shall provide proof of the foregoing insurance to MPS prior to providing the Program.

Publicity

Any of Operator's materials, webpages, social media posts, press releases, or other communications that use MPS' name or logo or the names or logos of MPS charter schools, or names or depicts MPS' students must be preapproved by MPS. MPS reserves the right to reject any such proposed communication in its sole discretion.

Confidentiality

Access to personally identifiable information of students shall be only for the purpose of carrying out an agreement subject to this Policy. Operator will not disclose personally identifiable information of any student to any third party. Operator shall comply with all applicable student data privacy laws and regulations, including but not limited to the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g.)

Status

For the avoidance of doubt, Operator's relationship with MPS shall be that of a volunteer providing a public service to MPS' students. Operator is not an agent of MPS, nor in a legal partnership with MPS. Operator shall provide the Program according to the Operator's own means and methods of work. The Operator will provide all materials and supplies necessary to operate its Program. The Operator is free to offer similar services to other schools and to otherwise practice their trade or profession for other organizations without limitation.

Termination

- A. Termination for Default. MPS or Operator (each a "Party") may terminate an agreement made pursuant to this Policy if the other Party materially fails to observe or perform any covenant, obligation, or provision, and the Party's material failure

- continues for a period of thirty (30) days after it receives a written notice of default from the other Party.
- B. Termination for Convenience. Either Party may terminate an agreement made pursuant to this Policy for convenience upon thirty (30) days prior written notice to the other party.
 - C. Termination by Necessity. MPS may terminate an agreement made pursuant to the Policy immediately with 24 hours' notice due to a change in law or anticipated or actual adverse administrative or judicial proceeding that it expected to make it impractical, impossible, or undesirable for MPS to continue under such agreement, or in the event of a health and safety exigency or incident by the Operator that adversely impacts MPS' reputation in MPS' sole opinion.

**Agreement Between Magnolia Public Schools (“MPS”) and
 (“Operator”) Regarding Program Offerings Pursuant to
 MPS’ Volunteer Enrichment Programs Policy**

1. I am an authorized representative of the Operator and am proposing for Operator to provide the following voluntary program to MPS:

[describe]

(the “Program”).

2. Operator has reviewed the attached Volunteer Enrichment Programs Policy (the “Policy”) and agrees to comply with its terms and agrees that the Policy will govern the manner in which Operator provides its Program to MPS students and the contractual terms of the relationship between Operator and MPS with respect to the Program.
3. Operator affirms that it is offering its Program to MPS and its students without charge and that nothing of any value is due from MPS to Program in exchange for Operator operating the Program.
4. Operator affirms that **as a consequence** of offering its Program, none of Operators shareholders, officers, directors, or employees who are also directors, officers, or employees of MPS will receive any financial benefit or be impacted financially, or, Operator affirms that it has fully disclosed such financial benefit below:

[describe]

5. Except as expressly set forth in the Policy and this agreement, there are no other terms, representations, warranties, or expectations, express or implied, governing the subject matter of this agreement and the Policy.

Executed by Operator this ___ day of ___, 20__ by:

Signed: _____

Name (Print): _____

Title: _____

Approved and agreed to by Magnolia Public Schools:

Signed: _____

Name (Print): _____

Title: _____