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New Kituwah Academy

BOARD OF TRUSTEES BYLAWS

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The contents of this document were created by and approved by the Founding Board of Trustees for New Kituwah Academy. EBCI, legal review by attorney, Jay Gallinger.

NEW KITUWAH ACADEMY BOARD OF TRUSTEES BYLAWS

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**NEW KITUWAH ACADEMY
ELEMENTARY BOARD OF TRUSTEES
BYLAWS**

1.0 MISSION

The Board of Trustees is the guardian of the school's mission, which is to provide a nurturing learning environment in a language immersion setting where students, staff, families and the community work in partnership to rekindle our language and to instill pride in being "Kituwah First".

2.0 NAME

The name of this organization is the New Kituwah Academy Board of Trustees "Board".

3.0 PURPOSE

The Board adopts a clear statement of the school's mission, vision, and strategic goals and establishes policies and plans consistent with this statement and assures that the school and the board operate in compliance with applicable laws and regulations, minimizing exposure to legal action.

4.0 BOARD OF TRUSTEES

4.1 CONTROL, AUTHORITY, ACCOUNTABILITY, AND POWER: the Board acknowledges New Kituwah Academy (NKA) is a unique private school that is 100% funded by the Eastern Band of the Cherokee Indians (EBCI), as such NKA is bound by EBCI policies and procedures. The Board shall work collaboratively with the Kituwah Preservation and Education Program (KPEP) Manager in the affairs and business of New Kituwah Academy Elementary. This includes the hiring and firing of the Elementary Administrator, directing the officers in their duties, requiring each officer to perform all of his respective duties as prescribed by these Bylaws, and performing such other special duties as the Board of Trustees deem appropriate in the interest of the Board and the Academy.

4.2 THE NUMBER OF TRUSTEES shall be seven (7). A Tribal elected official (Council Member, Vice Chief, or Chief) shall be an ex-officio non-voting member.

4.3 THE FOUNDING BOARD members were appointed by the Principal Chief. New Board members shall be elected by the plurality of the votes of the Board.

4.4 TERM LIMITS: There shall be three (3) term limits; two, three (3) year terms, three two year terms; and two, one year terms. One of the one year terms shall be the Parent Association Representative. At each annual meeting the Board

shall elect a class of Trustees to succeed the class whose terms then expire; such newly elected Trustees take office at the close of such meeting.

- 4.5 VACANCY: A vacancy occurring among the elected Board shall be filled by a plurality of votes of the remaining Board.
- 4.6 REMOVAL: Two-thirds (2/3) vote of the Board may remove any Board member with cause upon notice to such Board member. If a Board member is removed, a new Board member shall be elected by the Board to fill the vacancy.
- 4.7 FAILURE TO ATTEND REGULAR MEETINGS: Missed meetings seriously diminish the effectiveness of the entire board. An attendance problem occurs if any of the following conditions exist in regard to a board member's attendance to board meetings: 1) the Trustee has two un-notified absences.; 2) the Trustee has three notified absences in a row or 3) the Trustee missed one-third of the total number of board meetings in a twelfth month period.

If any of the above occurs, the Chair will promptly contact the member to discuss the problem. The Trustee's response will be shared at the next meeting. In this meeting the Board will decide what action, if any, to take regarding the Trustee's future membership on the Board. If the board decides to terminate the Trustee's membership, the Board Chair will call the Trustee member and notify him or her of the board's decision to terminate their membership and suggest, the Trustee submit a letter of resignation. If a letter of resignation is received, the Board shall vote on whether to accept it the next scheduled meeting. The Board will promptly begin the process to recruit a new Board of Trustee member.

- 4.8 PARENT ASSOCIATION REPRESENTATIVE: The Parent Association Representative shall be responsible for making a formal report on Board Actions to the Parent Association at the regularly scheduled Parent Association meetings.

5.0 MEETINGS

- 5.1 ANNUAL MEETING: The annual meeting of the Board shall be held in April of each year for the purpose of electing officers and the transaction of such other business as may be properly brought before the meeting. If the annual meeting is not held in the month designated by these bylaws, a substitute annual meeting may be called by or at the request of the Board, and such meeting shall be designated and treated for all purposes as the annual meeting.
- 5.0 LOCATION: The meetings shall be held at locations agreed upon by the Board. Meetings may take place by teleconferencing and or other electronic medium so long as a quorum is established and the members are able to hear and participate in the proceedings. Votes taken at a teleconferenced/electronic

media meeting have the same force and effect as votes taken at any meeting when a quorum is present in person.

- 5.3 QUORUM: At all meetings of the Board, four (4) Trustees shall be present in person or by teleconference/electronic medium in order to constitute a quorum for the transaction of business; provided that any number less than a quorum shall have the power to adjourn the meeting to a later fixed time and place.
- 5.4 VOTE: At all meetings of the Board, each Trustee shall have one vote. At any meeting, a majority vote by Trustees present shall be required to take any action except that a two-thirds (2/3) majority of all Trustees in office shall be required to amend the Bylaws. No proxy votes shall be allowed.

6.0 OFFICERS

- 6.1 TITLES, NUMBER AND COMBINATION OF OFFICERS: The officers of the Board shall be: Chair of the Board; Vice-Chair; Treasurer and Secretary. The Board may elect such other officers as from time to time may be prescribed by the Board, except as otherwise specifically provided in these Bylaws.
- 6.2 ELECTION AND TERM: The Board shall nominate candidates for the office of Chair, Vice-Chair, Secretary, and Treasurer. The election of these officers shall be conducted at the annual meeting of the Board. Officers shall have a term of one year, or until their successors are qualified and elected.
- 6.3 VACANCY AND REMOVAL: If an Officer position should become vacant, a successor will be nominated; with an election held to fill the unexpired term by the Board at a regular and/or or special meeting, provided that notice of such nomination and election are given and approved by the Board. The Board may, by two-thirds (2/3) majority vote, remove any officer with cause.
- 6.4 CHAIR: The Chair shall preside at all meetings of the Board and perform such other functions as ordinarily pertain to the position of Chair or as may be prescribed by the Board.
- 6.5 VICE-CHAIR: During the absence or inability of the Chair, the duties, responsibilities and functions of the Chair shall be performed and carried out by the Vice-Chair. If both the Chair and Vice-Chair are unavailable to preside at a meeting of the Board, the Secretary and/or the Treasurer shall preside over the meeting.
- 6.6 SECRETARY: The Secretary shall be responsible for the books and records of the Board and shall perform such other functions as ordinarily pertain to the position of Secretary. A staff person from the Kituwah Preservation &

Education Program "KPEP" shall keep the minutes of the meetings. The Secretary shall be responsible for reviewing minutes prior to regular and or special called meetings and presenting them to the Board for approval. The Secretary shall also perform such other functions as may be delegated by the Board or as may be prescribed by these Bylaws.

6.7 TREASURER: The Treasurer shall be responsible for reviewing the annual tribal budget in collaboration with the Elementary Administrator. This shall include, but is not limited to, annual budget, grant applications, capital improvements, and/or capital purchases. The Treasurer shall make regular reports on financial matters at regular Board meetings.

6.8 OTHER EMPLOYEES OR AGENTS: The Board may employ or authorize the employment of such other advisors, agents and employees as shall be considered necessary or advisable for the conduct of the affairs of the Board and shall assign their duties and fix or approve their compensation.

7.0 EXEMPT ACTIVITIES

7.1 EXEMPT ACTIVITIES: Notwithstanding any other provision of these bylaws, no officer, employee, agent or representative of the Board shall take any action or carry on any activity by or on behalf of the Board not permitted to be taken by the Board. All actions must be in furtherance of the Board's exempt purpose.

8.0 CONFLICT OF INTEREST

8.1 SCOPE: To protect the Board's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Trustee of the Board, the provisions of this Article will apply.

8.2 DEFINITIONS:

8.2.1 Interested person: Any Board member or Officer with Board delegated powers who has a direct or indirect financial interest, as defined below.

8.2.2 Financial Interest: A person has a financial interest if the person has directly or indirectly, through business, investment or family:

- a. An ownership or investment interest in any entity with which the Board has a transaction or arrangement, or
- b. A compensation arrangement with the Board, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Board is negotiating a transaction or arrangement.

8.2.3 Compensation includes direct and indirect remuneration as well as gifts or favors.

8.3 DUTY TO DISCLOSE: In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and all material facts to the Board delegated powers considering the proposed transaction or arrangement.

8.4 DETERMINING WHETHER A CONFLICT EXISTS: After disclosure of the financial interest and all material facts, and after discussion with the interested person, he or she shall leave the meeting when the determination of a conflict of interest is discussed and voted upon. The remaining board shall decide if a conflict of interest exists.

8.5 PROCEDURES FOR ADDRESSING THE CONFLICT OF INTEREST

8.5.1 An interested person may make a presentation at the Board meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that constitutes the conflict of interest.

8.5.2 The Chair of the Board shall, if appropriate, appoint a disinterested person to investigate alternatives to the proposed transaction or arrangement.

8.5.3 After exercising due diligence, the Board shall determine whether the Board can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

8.5.4 If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board shall determine by majority vote of the disinterested members whether the transaction or arrangement is in the Board's best interests and for its own benefit and whether the transaction is fair and reasonable to the Board and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

8.6 VIOLATIONS OF THE CONFLICT OF INTEREST PROVISIONS

8.6.1 If the Board has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall take appropriate action.

8.7 RECORDS OF PROCEEDINGS: The minutes of the Board shall contain:

8.7.1 The names of the persons who disclosed or otherwise were found to have financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.

8.7.2 The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

8.6 ANNUAL STATEMENTS: Each Board Member and principal officer shall annually sign a statement which affirms that such person:

8.6.1 Has received a copy of these Bylaws and any modifications/amendments thereafter.

8.6.2 Has read and understands the provisions concerning conflict of interest.

8.6.3 Has agreed to comply with the provisions, and

8.6.4 Has reviewed the agreement between the Kituwah Institute Board of Directors, the non-profit institute under which the school receives charitable donations.

8.6 PERIODIC REVIEWS: To ensure the Board operates in a manner consistent with its bylaws and does not engage in activities that violate the rules and policies of the Eastern Band of Cherokee Indians "EBCI", periodic reviews of it shall be conducted to ensure compliance.

8.7 ANNUAL REPORTING: The Trustees shall prepare an annual report that shall be presented to Tribal Council at the beginning of each fiscal year or within the same time frame as all EBCI programs.

8.8 USE OF OUTSIDE EXPERTS: In conducting the periodic reviews provided for these Bylaws, the Board shall have the Bylaws reviewed by the EBCI Legal Department. If outside experts are used, their use shall not relieve the Board its responsibility for ensuring that periodic reviews are conducted.

9.0 GENERAL PROVISIONS:

9.1 INDEMNIFICATION: Any person who at any time serves or has served as a Board member or an officer of the New Kituwah Academy Board of Trustees,

shall have a right to be indemnified by the New Kituwah Academy Board of Trustees to the fullest extent permitted by currently applicable tribal and or N.C. law for or against (a) reasonable expenses, including but not limited to attorney's fees, actually and necessarily incurred in connection with the defense of any threatened, pending or completed action, suit or proceeding, in which the person is made party by reason of being or having been such, officer or member, or (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he may have become liable in any such action, suit or proceeding; provided that his right to be indemnified by the Board shall in no event exceed that portion of reasonable expenses and reasonable payments which is in excess of any and all available insurance proceeds.

The Board shall take all such action as may be necessary and appropriate to authorize the payment for the indemnification required by this Article, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due.

Any person who at any time after the adoption of the Section, served or has served in any of the aforesaid capacities for or on behalf of the Board of Trustees shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this Section, or any Bylaw, agreement, vote of member or otherwise.

Notwithstanding the above, this paragraph shall have no effect in relation to any matter as to which such person shall be adjudged in such action, suit or proceeding or related matter to be liable for gross negligence or misconduct in the performance of his or her duty as a Director or officer.

- 9.2 **CONTRACTS:** Contracts of the Board shall be made or taken only in the name of the EBCI using the EBCI's contract procedures.
- 9.3 **CORPORATE BOOKS AND FISCAL YEAR:** For accounting purposes, the annual budget and reports shall be kept on a fiscal year basis, to run from the first day of October to the last day of September of the following year.
- 9.4 **GENDER:** The masculine gender shall include the feminine and the singular shall include the plural, to the extent applicable.
- 9.5 **AMENDMENTS:** These Bylaws may be amended by a 2/3 majority vote of all Board at any regular or annual meeting of the Board or at a special meeting

thereof called for that purpose. Notice of such amendment, giving the wording of the Bylaw, or portion thereof, proposed to be changed and the wording of the change proposed to be made therein shall be given to each member along with the notice of the regular or special meeting at which the proposed change is to be submitted.

- 9.6 MONIES: The monies of the Board shall be deposited in the name of the Kituwah Preservation & Education Program with the EBCI, Finance Office. Disbursements shall only be made by resolution which may be included in the minutes of the Board. The check shall be that of the Eastern Band of Cherokee Indians.
- 9.7 WAIVER OF NOTICE: A waiver of any notice in writing signed by the Board whether before or after the time stated in the waiver for holding a meeting, shall be deemed equivalent to a notice required to be given to the Board.
- 9.7 NOTICE OF MEETINGS: Notice of the time, date and place, and as to special meeting, the purpose of annual, regular or special meetings of the Board and all Committees shall be mailed or delivered to each member of the Board or such Committees. As to special meetings, no business other than that stated in such notice shall be transacted. Notice of any annual or regular meeting shall be given not less than seven (7) days prior to the date of the meeting. Notice of any special meeting shall be given not less than three (3) days prior to the date of such meeting. Any member of the Committee or Board Member may waive notice of any meeting. The attendance of a Board member at a meeting shall constitute waiver of notice of such meeting.