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Form 990 Policies

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governance, management, and disclosure

- New section of Form 990
- Rationale: independent boards and well-defined governance and management policies increase likelihood of tax compliance, safeguarding of charitable assets, and serving of charitable interests
- IRS encourages higher level of self-regulation and internal controls
- Transparency and accountability
- Influenced by the Sarbanes Oxley Act

questions regarding policies

- Questions regarding policies are a new addition to the Form 990
 - Answers are yes/no
- Questions indicate the importance of self-regulation and transparency
- Policies not legally required, but recommended as best practice and good governance

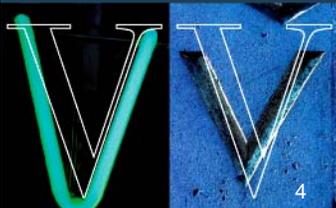
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Schedule O

- Any additional information about the school's mission and programs can be reported on a new Schedule O
- Asks whether organization makes its governing documents, conflict of interest policy, and financial statements, available to the public
 - Schools should make sure such documents are updated, sends a consistent message about mission and philosophy, and accurate

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conflict of interest policy

- Form asks whether the school has a written conflict of interest policy
 - officers, directors, and key employees required to disclose annually interests that could give rise to conflicts
- “Key employee” definition (must meet all three tests)
 - \$150,000 test
 - Employee had reportable compensation of more than \$150,000
 - Responsibility test
 - Employee had or shared organization-wide control or influence similar to an officer, director, or trustee or
 - Employee managed or had authority or control over at least 10% of the organization’s activities
 - Top 20 test
 - Employee one of “top 20” highest paid

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conflict of interest policy

- Key employees
 - Head of school, business manager, division head
- Describe regular and consistent monitoring and enforcement
- Process
 - Create process for investigating conflict
 - Review disclosures of potential conflicts when reviewing agenda items
 - Affirm no conflicts of interest exists and/or that rebuttable presumption process was followed, in minutes and/or board resolution

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conflict of interest policy

- Recommended format
 - General conflict policy signed by officers, directors, and key employees
 - Disclosure statement
 - Investigation/due diligence process including
 - Identification of conflicts
 - Rebuttable presumption and intermediate sanctions process
 - Reporting to board and documentation of monitoring and enforcement

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conflict of interest policy

- Policy should be approved by the Board
- Conflict of Interest process/procedures are just as important as the policy statement
- Many schools rushed to establish new policies and should now ensure enforcement and ongoing compliance
 - Annual disclosure statements
 - Staff or board member should review disclosure statements for potential issues before each board meeting

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more questions regarding policies

- Form 990 asks whether the organization followed the procedures for the rebuttable presumption in setting compensation (for the Head of School and other officers or key employees of the school)
- Form 990 asks schools to describe the process
- Rebuttable presumption process should include:
 - Independent body
 - Approval of transaction by independent board, or committee thereof
 - Comparability data
 - Reviewing comparable data
 - Documentation of decision
 - Documentation of process and decision in minutes or other records
- Schools must actually FOLLOW the process in their policy

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whistleblower policy

- Maintain a written whistleblower policy
 - Applies to employees and VOLUNTEERS
 - Schools must enforce policy and train supervisors and volunteer coordinators on receiving complaints
 - More expansive than Sarbanes Oxley Act:
 - SOX imposes criminal penalties for retaliating against those who report a suspected federal offense to a law enforcement agency
 - IRS encourages organizations to have a policy for handling employee complaints and protect employees who report any suspected financial impropriety or misuse of assets

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document retention and destruction policy

- More expansive than Sarbanes Oxley Act:
 - SOX makes it a crime to destroy documents to prevent their use in an official proceeding
 - IRS encourages organizations to have a policy for document integrity, retention, and destruction.

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document retention and destruction policy

- Federal and STATE compliance
 - Especially for student records
- All school documents including admissions, development, financial aid
- Policy should include:
 - Period of time to retain documents (including electronic documents)
 - Rationale for retention period
 - Destruction timeline
 - Prohibition on destroying documents when an investigation is pending
 - Process for destroying documents with personal identifying information
- Now that policy is in place, schools must ENFORCE them in order for them to be effective
 - Designate and train employees in charge of ongoing compliance



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