

# **GOVERNING COUNCIL FIRST RESTATED BYLAWS**

## **ARTICLE I MISSION STATEMENT**

Together with parents and the community, Albuquerque Bilingual Academy, ("ABA"), a New Mexico public charter school created pursuant to the Charter Schools Act, NMSA 1978 §§22-8B-1, *et seq.*, is committed to ensuring that culturally and linguistically diverse students thrive in an academic, family centered, developmentally seamless continuum of learning where high expectations, PRIDE, respect and empowerment meet grade level proficiency.

## **ARTICLE II NAME OF GOVERNING BODY AND SCHOOL**

The name of ABA's governing body shall be known as the "Governing Council," and referred to in these bylaws as "the Council" or the "Governing Council."

## **ARTICLE III EQUAL OPPORTUNITY**

ABA affirms its commitment to providing equal treatment of all of its students, parents and employees. Neither ABA or the Council shall discriminate against any student, parent or employee on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, sexual orientation, gender identity, or any other basis protected by law, with respect to his/her rights, privileges, programs, activities, and/or in the administration of its educational programs and athletics/extracurricular activities.

## **ARTICLE IV GOVERNANCE AND TRAINING**

The Council has a responsibility to ensure that ABA operates in accordance with all applicable laws and regulations, and meets its commitments to its authorizer, the New Mexico Public Education Commission ("PEC") and to the New Mexico Public Education Department ("NMPED") as reflected in its charter. Council members have a responsibility to be familiar with the terms of the ABA charter and legal responsibilities of public schools. Council members must become educated about public school laws and applicable rules and regulations. All ABA Council members are required to attend annual mandatory training that explains New Mexico Public Education Department rules, policies, and procedures, statutory powers, and duties of charter school governing bodies, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the NMPED. In particular, the ABA Council recognizes that the following New Mexico statutes and rules are applicable to public charter schools and each member commits to take necessary steps to become familiar with these provisions:

- Charter Schools Act (NMSA 1978 §§ 22-8B-1 et seq

- School Personnel Act (NMSA 1978 §§ 22-10A-1 et seq.);
- Procurement Code (NMSA 1978 §§ 13-1-1 et. seq.);
- Open Meetings Act (NMSA 1978, §§ 10-15-1 et seq.);
- Public School Finance Act (NMSA 1978 §§22-8-1 et seq.)
- New Mexico Public Education Department regulations, (contained in Title 6 of the New Mexico Administrative Code).

To the extent ABA has not specifically requested and been granted a waiver from a particular NMPED policy/regulation, those policies/regulations which have not been waived, shall apply.

## **ARTICLE V**

### **GOVERNING COUNCIL POWERS AND RESPONSIBILITIES**

The primary powers and duties of the Council are to:

1. Develop educational and operational policies for the ABA;
2. Employ ABA's head administrator, who shall be referred to hereafter as the "Director," evaluate the Director annually, and set the salary schedule for certified/licensed employees;
3. Charge the Director with the responsibility of implementing the charter; the responsibility over all employment, salary, assignment, termination, and discharge decisions; carrying out ABA's policies, procedures, facilities plans, budget, and such other directives and policies adopted by the Governing Council from time to time. The Governing Council shall not be involved in the day-to-day operations of the school;
4. Review, approve and monitor implementation of the annual ABA budget;
5. Acquire, lease, and dispose of property, both real and personal to the extent permissible by laws applicable to public charter schools;
6. Initiate lawsuits or take all necessary steps to protect the ABA's interests;
7. Consistent with ABA's budget authority, approve contracts for the repair and maintenance of all property belonging to the ABA or for which ABA is contractually responsible to maintain and repair, which authority may be delegated to the Director up to an amount not exceeding \$49,999.00. The Governing Council shall approve all contracts for repair and maintenance, including leases, above \$50,000. The Director shall notify the Governing Council when the School enters contracts for repair and maintenance.
8. Enter contracts consistent with the ABA approved budget for any service or activity that is required for ABA to perform in order to carry out the educational program described in the ABA charter. The Governing Council may delegate its authority hereunder to the Director for contracts not exceeding \$25,000, except in cases of employment contracts which shall be delegated to the Director consistent with ABA's budget authority and the Council's adopted salary schedule;
9. Develop, adopt, and amend policies and procedures pertaining to the administration of all powers or duties of the Council and ABA;
10. Accept or reject any charitable gift, grant, devise or bequest. Each particular gift, grant, devise or bequest accepted shall be considered an asset of the ABA;
11. Approve amendments to the Charter prior to presentation to the PEC for approval;
12. Make application for available capital outlay funds;

13. Open other locations for operation of ABA as consistent with the charter contract

and as approved by the PEC;

14. Address problems through the applicable dispute resolution processes according to policies and procedures;

15. Review and consider recommendations submitted by the Director and other advisors to the Council;

16. Promote a cooperative relationship with its charter authorizer; to function in accordance with the New Mexico Charter School Act and resolve any dispute, which may arise between ABA or its Council and PEC officials to the mutual benefit of the operation of ABA and its authorizer; and

17. Such other powers and authorities as provided for by law.

## **ARTICLE VI**

### **COLLECTIVE AUTHORITY OF COUNCIL**

The Council will not be bound by any statement or action by an individual Council member, unless the Council, by majority vote in a properly convened meeting, delegates authority to that individual member to speak for or represent the entire Council. Unless acting pursuant to said express-delegated authority from the Council, no Council member shall undertake any individual action to implement any plan or action of the Council. When a Council member is assisting the Director with implementing school policies, programs or other directives of the Director or Council, in this role the Council member shall be considered a volunteer and have no special authority beyond that of a volunteer.

## **ARTICLE VII**

### **COUNCIL MEMBERSHIP**

1. Positions and Qualifications. ABA Governing Council shall have no fewer than 5 (five), but no more than eleven (11) voting members. No member shall serve on the ABA's governing body if he/she was a member of another charter school's governing body that was suspended or failed to receive or maintain their board of finance designation. The ABA GC shall strive to have the following composition: at least one (1) parent who has a child currently enrolled in ABA; with the balance of the council to be qualified individuals who have experience in business, education, law, finance, real estate and such other fields beneficial to ABA's mission and the efficient, sound governance of ABA. The candidates for positions on the Governing Council shall be considered based upon their professional skills, demonstrated collaborative and problem-solving skills and attitudes, their ability and willingness to devote substantial time and energy to serving on the Council (including the requirement that each Council member shall regularly participate in the activities of at least one Council committee), and their commitment to acting in the best interests of ABA as a whole, rather than for the interests of any particular person or group. The Council shall determine, at its Annual Meeting each school year, whether the make-up of the Council shall be increased or otherwise changed.

2. Member Terms. Council member terms shall be two years. Terms of Council members begin as on the date of the Annual meeting at which the member was elected. If a member fills a vacancy, the member's term shall be for the balance of departing member's term. There shall be no limit on the length of a member's tenure on the ABACouncil.

3. Elections. Governing Council members shall be elected by a majority vote of the existing Council members and selected from the nomination presented by the Nomination Committee as defined herein. Elections of Council will be held during the Annual meeting unless an election is required to fill a vacancy.

4. Vacancies. A vacancy on the Council caused by an increase in the number of council members, a member's resignation, a member's removal by vote of the Council, or by expiration of a member's term, will be filled by majority vote of the remaining Council members. To fill any vacancy, the Council shall convene to appoint a Nominating Committee who will recommend candidates to fill the vacancy. If Council membership falls below five (5) the vacancy shall be filled within sixty (60) days from creation of the vacancy. If the vacancy cannot be filled within sixty (60) days, the Council will make a request in writing to the PEC for an extension. The Nominating Committee shall be comprised of two Council members who will make recommendations to the governing council regarding new members as outlined in the Governing Council Recruitment Plan. The Nominating Committee shall meet and solicit written applications, recruit potential candidates, and screen applicants and recruits for each of the positions on the Council to be filled. The Nominating Committee shall recommend candidates to the Council at a public meeting. The Council shall thereafter select new members by a majority vote. Elections of new members on expiration of a member's term shall be held during the Annual Meeting.

5. Notification of PEC. The Council President or his/her designee will notify the PEC within thirty (30) days of a member's resignation or designation of a new member and shall sign and submit the appropriate forms to ensure that the governing body continues to qualify as a Board of Finance. The new member must execute the required statements for Board of Finance designation to the NMPED.

6. Disqualifications/Nepotism Rule. In no event shall a Council member be an ABA employee, spouse of another Council member, or have a contract for provision of services or property with ABA. The Council will not initially employ as Director a person who is a Council member (unless the offer of employment is contingent upon such member's resignation from the Council), the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, or daughter-in-law, sister, sister-in-law, brother, brother-in-law, or sibling (collectively "family members") of any Council member. Upon petition by the Director, the Council may approve the Director's hiring of the Director's family members as ABA employees by majority vote at a public meeting. Prior to approving the Director's request to hire a family member the Director shall follow the Council's Conflict of Interest Policy. Prior to voting on the Director's request, the Council shall carefully consider the potential impact on the integrity, efficiency, discipline, and public perception of ABA in the employment of any person who is a family member of the Director or the parent of a currently enrolled ABA student.

7. Attendance. Council members are expected to regularly attend Council meetings. If a Council member anticipates that he/she will not be able to attend a meeting, the Council member shall notify the President or designee of his/her impending absence in advance of the meeting. If a Council member, as a result of an emergency or illness, is unable to notify the President or designee of the Council in advance that he/she will be unable to attend a meeting, the Council member shall notify the President or designee in a timely manner following the meeting of the reason for his/her absence.

8. Removal from Council. A Council member may be removed by a majority vote of the remaining Council members for the following reasons:

- a. If a member misses two consecutive regular meetings or two out of six consecutive regular meetings except when such absence is due to exigent circumstances;
- b. If a member violates any policy or procedure adopted by the Council;
- c. If the Council determines that a member is not acting in the best interest or is otherwise obstructing the business of the Council;
- d. Violation of the member's duty of loyalty, care, or obedience to the school; or
- e. Any other ground the Council deems appropriate.

9. Resignations. A member shall state his/her intent to resign and the effective date of the resignation in writing to the Council President. A member's resignation shall be effective upon the date stated in the letter of resignation.

## ARTICLE VIII OFFICERS OF THE COUNCIL

1. Officers of ABA Council. The officers of the ABA Council shall be a president, vice president and secretary. The Council may elect a member to serve as the treasurer as it deems necessary and appropriate. ABA may, by a majority vote, create different categories of officers without requiring an amendment to these bylaws. The duties of certain officers are set forth herein. When the incumbent of an office is unable to perform the duties thereof or when there is no incumbent of an office (both such situations referred to hereafter as the "absence" of the officer), the duties of the office shall, unless otherwise provided by the Council, be performed by the next officer set forth **in** the following sequence: president, secretary, treasurer.

2. Election and Tenure. All officers shall be elected by a majority vote of the Council. Officers shall serve for one (1) year terms; and be limited to a maximum of two (2) consecutive terms. Regular election of officers shall take place at the Annual meeting of the ABA Council or until the member's successors have been duly elected and qualified, or until their death, resignation, or removal. Officers' terms shall begin at the meeting immediately following the meeting of the Council at which the officer is elected.

3. Resignations and Removal. An officer may resign at any time by giving written notice to the president or to the secretary, the acceptance of such resignation shall not be necessary to make it effective. An officer may be removed by the vote of the Council whenever in its judgment the officer fails to perform the duty of his/her office or such other duties as appointed by the Council, or when the best interests of ABA would be served thereby.

4. Vacancies. A vacancy in any office may be filled by a majority vote of the Council for the unexpired portion of the term of the officer being replaced.

5. President. The president of the Council shall preside at all meetings. She/he shall have the right, as other members of the Council, to make or second motions, to discuss questions, and to vote. The president of the Council may not take any action on behalf of the Council or ABA without prior specific authority from a majority of the Council to do so. All communications addressed to the president shall be considered by him/her for appropriate action, for which consideration may include consulting with legal counsel, and consideration by the Council. The president shall sign legal documents as required by law and perform such other duties as may be prescribed by the Council. It is the president's responsibility to ensure that

Council members uphold their commitments/responsibilities to the school. The president is responsible for compiling the topics for business to be placed on the agenda.

6. Vice President. The office of vice president shall be filled by the past president to ensure institutional continuity. If the past-president resigns from the Council, the Council shall elect a vice-president. The officer in this position shall perform the duties of the president in the absence of the president or at the request of the president. In the event a vacancy occurs in the presidency, the past-president or vice-president will act in the capacity of the president until the office has been filled by a vote of the Council membership.

7. Secretary. As secretary to the Council, this office shall keep the minutes of the Council meetings, subject to the direction of the president; ensure that all notices are given in accordance with the provisions of the charter, Council policies, and as required by law; shall countersign, when required, all authorized contracts, deeds, leases, or other legal instruments; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary by the Council. The Council may appoint a designee to assist with the responsibilities of the secretary as described herein, including recording and transcribing the minutes of the meetings, posting notices and agendas, and preparing packets for the Council's review. The secretary will review the minutes prior to presentation to the Council for approval. The secretary or the Council's designee shall be responsible for presenting the minutes to the Council at meetings.

8. Treasurer. If the Council votes to create the position of treasurer, the treasurer shall be familiar with the fiscal affairs of ABA and keep the Council informed thereof in the event that the ABA Business Manager is unable to so act. He/she will have knowledge of public school finance laws, rules, and policies and shall serve as the chair of the ABA's Finance Committee and Audit Committee. He/she shall attend the PED Spring Budget Workshop and/or any other financial regulatory training recommended by the Council, Director, or the Business Manager. The treasurer shall have charge of and supervise receipts and disbursements of the Council, and shall keep or cause to be kept all business and transactions of the Council.

9. Compensation. The officers shall not be compensated for their services; however, they may be compensated for reasonable expenses in accordance with the New Mexico Mileage and Per Diem Act.

10. Directors and Officers Insurance. The Council may secure officers and directors insurance in excess of the coverage provided by the New Mexico Public School Insurance Authority upon appropriate approval of the Council and if provided for in ABA's approved budget.

## **ARTICLE IX COUNCIL COMMITTEES**

1. Standing Committees. The Council may establish standing committees, which may consist of Council members and non-Council members. Committee assignments and chairmanships will be determined by action of the entire Council, provided that at least one Council member shall serve on each committee. Standing committees of the Council shall include a Finance Committee and Audit Committee as defined by NMSA 1978 §22-8- 12.3(2010); and a Nominating Committee, as defined in Article VII, Section 3. The time and place of all committee meetings shall be announced to the Council. Except for the audit

committee, all Council members may attend any committee meeting if the meetings are properly noticed pursuant to the Open Meetings Act when a quorum will be present.

2. School Council.

A. Each public school shall create an advisory "school council" to assist the school principal with school-based decision-making and to involve parents in their children's education.

B. A school council shall be created and its membership elected in accordance with local school board rule. School council membership shall reflect an equitable balance between school employees and parents and community members. At least one community member shall represent the business community, if such person is available. The school principal may serve as chairman. The school principal shall be an active member of the school council.

C. The school council shall:

(1) work with the school principal and give advice, consistent with state and school district rules and policies, on policies relating to instructional issues and curricula and on the public school's proposed and actual budgets;

(2) develop creative ways to involve parents in the schools;

(3) where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities; and

(4) serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.

3. Director's Committees. The Director is empowered to establish committees within the school that report to the Director. The Director shall advise the Council about the purpose of the committees and activities affecting the school.

4. Ad Hoc Committees. The Council may appoint *ad hoc* advisory committees when and as determined to be necessary or advisable by the Council. Ultimate authority to make decisions will continue to reside with the Council. All Committees must consist of at least one (1) Council members.

5. Committee Functions. The function of Council committees will be fact-finding, deliberative, and advisory, rather than legislative or administrative. Committee recommendations that require school-wide policy changes must be submitted to the Council. The organization, responsibilities and rules of each committee created by the Council shall be reflected in a resolution approved by the Council. All committees shall keep written minutes of their meetings, and shall periodically present written reports to the Council containing committee recommendations. Committees shall comply with the Open Meetings Act, when applicable.

## ARTICLE X COUNCIL MEETINGS

1. Council Meetings. The ABA Governing Council will comply with the New Mexico Open Meetings Act, NMSA 1978 §10-15-1 et seq. ("OMA"). Regular meetings of the Council will be scheduled as determined to be reasonable and necessary for ABA and set forth in the Council's annual OMA resolution. Council meetings will be held at ABA at 7500 La Morada Pl, NW, Albuquerque, New Mexico, 87120, or such other location as may be determined by the Council. Special meetings of the governing body may be called by the Council president or at the request of a Council member, in accordance with the OMA. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health,

safety and property of citizens or to protect the public body from substantial financial loss, and in accordance with the OMA. The Council shall consider at least once annually what constitutes reasonable notice for all regular, special, and emergency meetings as contemplated by the New Mexico OMA and, thereafter, pass an appropriate resolution adopting policies and procedures for complying with the Act. The Resolution shall be posted for public information.

2. Council Agenda. The President of the Council shall set the council agendas. A request to have an item placed on the agenda must be submitted in writing to the President at least 48 hours prior to the required time the agenda must be posted. The President or designee shall provide a copy of the agenda and strive to provide all documentation to be considered by the Council at the meeting to each Council member at least 72 hours prior to the meeting. The agenda shall be posted for the public in accordance with the OMA.

3. Council Record. A record of all actions of the Council will be set forth in the official minutes of the Council. The minutes and recordings will be kept on file pursuant to New Mexico record retention requirements. The Council will maintain a separate handbook of its minutes and resolutions passed by the Council which shall be available for public inspection.

4. Council Minutes and Records. The Council may delegate responsibility for taking minutes of all Council meetings to a designee of ABA's administrative staff who shall provide thereof a draft copy of the minutes to the Council secretary prior to the next regular meeting of the Council. The secretary shall present the draft minutes for approval at the next regular Council meeting. The Director or his/her designee shall also supervise the Governing Council handbook of resolutions passed by the Council and the indexed record of action. A draft copy of the minutes shall be made available for public review by no later than ten (10) days after each meeting of the Council.

5. Quorum. A quorum shall consist of a simple majority of Council members in office. When a quorum is present, any action may be taken by a majority vote of those members present.

6. Procedure. Roberts' Rules of Order, newly revised, will govern the Council, except when in conflict with applicable laws or regulations, which then prevail. Most action items are handled by appropriate motion procedures.

7. Attendance via Telephone Conference Call. Except to the extent otherwise provided by law, any meeting of the Council may be attended by any of the Council members by means of a conference telephone (or similar communications equipment) when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any other member of the Council who speaks during the meeting. Such attendance shall constitute presence by the Council member as if in person at such meeting and for purposes of determining a quorum. Any action taken by the Council at such meeting shall constitute a valid action of the Council.

## **ARTICLE X**

### **CONFLICT OF INTEREST**

Governing Council members shall comply with the Conflict of Interest Policy passed by the Council. Each Council member shall complete an "Annual Disclosure Statement," in which he/she is responsible for disclosing to the Council the existence of any direct or indirect interest

in a ABA transaction. Failure to make such disclosure shall be grounds for voiding the transaction, at the discretion of the Council.

## **ARTICLE XI**

### **COUNCIL MEMBERS' ETHICAL OBLIGATIONS AND DUTIES**

1. Misuse of Position. A Council member shall not use his/her position at ABA to attempt to influence the decision of any ABA employee to grant special treatment to (a) the child or ward of the member, (b) any relative of the member, or (c) any "Family Member" as defined in the Council's Conflict of Interest Policy. Every Council member and every ABA employee who is a parent or ward of a ABA student shall inform his/her child that he/she is required to follow all rules, policies and procedures applicable to ABA students, that the student is not entitled to special treatment by virtue of the relationship with a Council member or employee, and that any attempt to seek such special treatment may result in disciplinary action.

2. Commitment to Collaboration. All Council members shall work collaboratively with each other with the sole goal of achieving ABA's educational mission. The Council has been constituted so as to include a broad spectrum of experience and perspectives, and every Council member shall be afforded the opportunity to express his/her opinion, in a professional manner, about matters before the Council. Council members shall refrain from non-constructive or personality-based comments that do not advance ABA's mission. Because the Council makes decisions as a deliberative body, it is expected that, except in extraordinary circumstances, Council members will voice their opinions to other Council members about Council matters in the context of Council and/or committee meetings, rather than in private communications among Council members.

3. Confidentiality. Council members shall be expected to keep confidential any deliberations or discussions that take place in closed session meetings. It is expected that Council members will raise concerns or share information about closed session meetings within the context of Council and/or other committee meetings with other members of the Council and appropriate staff members only. A member's obligation to maintain confidentiality shall survive the Council member's tenure on the ABA Council.

## **ARTICLE XII**

### **MISCELLANEOUS**

1. Policy Adoption. Adoption of new policies or the revision or repeal of existing policies is solely the responsibility of the Council. Proposals regarding policies may originate from Director, a Council member, Council advisors, or committees formed by the Council for the purpose of investigating and developing policy. Staff members, students, civic groups, parents, or other interested citizens may request that a Council member or the Director sponsor a proposed policy.

2. Amending Governing Council Bylaws. Any section or subsection of the Governing Council Bylaws may be altered, suspended, or revoked only by 2/3 two thirds of a quorum vote of the Governing Council.

3. Signatory Authority. The Governing Council may, by a majority vote, delegate authority to sign contracts as described by resolution, to the Director consistent with Article V,

paragraph 7 and 8. All checks must be signed by two authorized individuals, neither of which may be ABA's business manager.

4. Dissolution of the Charter. If deemed advisable by the Council that ABA's charter should be dissolved, ABA, in collaboration with the PEC and the New Mexico Public Education Department, shall devise an appropriate plan for closing the school and transferring assets as required by the New Mexico Charter School Act and such other applicable laws and regulations.

### CERTIFICATE OF ADOPTION

The undersigned hereby certifies that these First Restated Bylaws were duly adopted by a two-thirds majority vote of the ABA's Governing Council on October 25, 2021 and are intended to replace and repeal all previous bylaws and amendments thereto adopted by this Council

By  \_\_\_\_\_  
President

Date: \_\_\_\_\_

LAST REVIEW DATE: October 25, 2021

LAST REVISION DATE: May 26, 2020



# ABA gc bylaws\_10-25-21

Final Audit Report

2021-10-27

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