

AMENDED AND RESTATED

BYLAWS

OF

THE TRUSTEES OF PHILLIPS EXETER ACADEMY

Adopted October 25, 2019

ARTICLE I. The Trustees.

Section 1. Governance of Phillips Exeter Academy (the Academy) shall be vested in the Trustees, who shall exercise all of the corporate powers and responsibilities of the Academy, conduct the Academy's programs and business affairs, and direct and control the management and administration of the Academy's property, affairs, and funds. There shall be not fewer than seven and not more than twenty-nine Trustees, all of whom shall have equal voting power, and who after the adoption of these bylaws shall be chosen as follows:

- (a) All Trustees, other than those provided for in the following paragraphs (b) and (c), shall be elected by the Trustees pursuant to Sections 2 or 3;
- (b) The Principal shall be a Trustee, *ex officio*; and
- (c) The President and the two Vice Presidents of the General Alumni/ae Association shall during their respective terms of office be Trustees, *ex officio*.

Section 2. Except as otherwise provided herein, Trustees shall be elected to five-year terms at the spring meeting each year, to take office as of July 1. Trustees elected pursuant to this Section 2, and pursuant to the following Section 3, shall be chosen from candidates whose names are submitted to the Trustees by the Committee on Trustees pursuant to Article XII. The following provisions shall apply to Trustees so elected:

- (a) Except as provided in paragraph (c), no Trustee shall be elected to more than two five-year terms, and no Trustee shall serve more than ten years in total as a Trustee, which ten year service shall include serving as a Trustee *ex officio* as either President or Vice President of the General Alumni/ae Association. Serving a portion of a term shall be included in the calculation of a Trustee's number of years of service.
- (b) A person shall be elected to serve as a Trustee by a majority vote of the Trustees present and voting at a meeting at which a quorum is present.
- (c) A Trustee who shall at the end of his or her second full term be serving, or who shall at that time be elected to serve, as President or Vice President of the Trustees

may be elected to serve as Trustee for up to five (5) additional one-year terms so long as the Trustee continues to serve during such extensions as President or Vice President.

The election of Trustees may, but need not, be by secret ballot of the Trustees.

Section 3. Newly created Trustee positions resulting from an increase in the authorized or fixed number of Trustees, and vacancies occurring for any reason, including any vacancy occurring by reason of the death, resignation, or removal of a Trustee, may be filled at any meeting of the Trustees by the vote of the majority of the Trustees then in office, although less than a quorum. A Trustee so elected to fill a vacancy shall serve for the unexpired portion of the term of the Trustee whose term ended and resulted in the vacancy. If the office of Principal shall at any time be vacant, and if there shall be an Acting Principal, the Acting Principal shall be a Trustee, *ex officio*, so long as he or she is Acting Principal.

Section 4. Other than the Trustee who is the Principal, a Trustee may be removed with or without cause by the vote of two-thirds of the Trustees then in office; provided, however, that a Trustee may be removed for cause only after reasonable notice and opportunity to be heard before the Trustees.

Section 5. Any Trustee may resign at any time by delivering a written resignation to the President or Vice President of the Trustees. Unless otherwise specified in the resignation, the resignation shall take effect at the time of receipt by the President or Vice President. The acceptance of such resignation shall not be necessary to make it effective. No resignations shall discharge any accrued obligation or duty of a Trustee..

Section 6. Trustees shall be natural persons of full age who need not be residents of the State of New Hampshire. A person who is employed in any capacity by the Academy shall not be eligible to serve as a Trustee for a period of three years from the date of last employment in any capacity by the Academy, except that the Principal shall be a Trustee *ex officio* in accordance with these bylaws.

Section 7. Trustees stand in a fiduciary relationship to the Academy, which reposes special confidence in each Trustee. Every Trustee and officer shall discharge his or her duties in good faith, with due regard for the interests of the Academy, and in compliance with the fiduciary principles of conduct in addition to any other state or federal requirements. No Trustee shall for personal gain or benefit or for the gain or benefit of others use any information not available to the public at large and obtained as a result of service to the Academy

Section 8. The Academy shall not pay compensation to Trustees for services rendered to the Academy in their capacity as Trustees, except that Trustees may be reimbursed for reasonable expenses incurred in the performance of their duties to the Academy. A Trustee may receive reasonable compensation for the performance of services provided to the Academy in any capacity separate from his or her responsibilities as a Trustee when so authorized by a majority of the Trustees then in office and in accordance with the Academy's Conflict of Interest Policy.

ARTICLE II. Meetings of the Trustees.

Section 1. The regular meetings of the Trustees shall be as follows:

The fall meeting shall occur in October, on such date as the President designates;
The winter meeting shall occur in January, on such date as the President designates;

The spring meeting, which shall be the annual meeting, shall occur in May, on such date as the President designates.

If at any time the President shall ascertain that a majority of the Trustees prefer a different date for any regular meeting, or shall determine that the interests of the Academy so require, the President may advance or postpone the same to any date not more than four weeks before or after the foregoing dates.

The President or any four Trustees may call a special meeting of the Trustees.

Section 2. Regular and special meetings shall be held at Exeter, unless the President shall otherwise direct.

Section 3. A majority of Trustees qualified to vote on matters before the full Trustees, or any Trustee Committee, as the case may be, shall constitute a quorum for the conduct of business.

Section 4. When a quorum is present at any meeting of the Trustees or any Trustee Committee, a majority of the Trustees present and voting shall decide any question, unless otherwise provided by law, the Academy's Act of Incorporation, or these Bylaws.

Section 5. Unless otherwise provided by law, action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting if the action is taken by unanimous consent of all the Trustees. The action must be evidenced by one or more written consents describing the action taken, signed by each Trustee, and included in the minutes or filed with the corporate records reflecting the action taken.

Section 6. Written notice of each annual, regular, and special meeting of the Trustees shall be given by the Clerk (or the President or other officer in the Clerk's absence) and delivered at least two days prior to the meeting in the manner specified in this section. Notice may be communicated in person, by facsimile, telegraph, teletype, email, or other form of wire or wireless communication or by mail or by private carrier. No business may be transacted at a special meeting which does not pertain to the purpose or purposes stated in the notice thereof. A Trustee may waive notice by writing, facsimile, or electronic mail delivered to the Clerk. Attendance at a meeting in person or telephonically constitutes waiver of notice unless such Trustee objects to notice at the meeting.

Section 7. Unless otherwise provided by law, Trustees may participate in a meeting of the Trustees or Trustee committee through video conference, telephone or

similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting of the Trustees or Trustee committee.

ARTICLE III. Officers of the Trustees.

Section 1. The Trustees, at the annual meeting, shall elect a President, a Vice President and a Clerk of the Trustees. The Clerk need not be a Trustee. The Principal may not serve as President, Vice President or Clerk.

Section 2. The President shall preside over all regular meetings of the Trustees, shall have the right to vote, shall preside over the Executive Committee constituted under Article V herein, and shall have such other powers, and perform such duties, elsewhere prescribed by law and by these bylaws.

Section 3. The Vice President shall have such powers, and perform such duties, as are assigned or delegated by the President, and shall perform the duties of President in the event of the absence, illness, unavailability, death, resignation or removal of the President, or in any matter in which the President has been recused from participating.

Section 4. Unless the President shall otherwise direct, the Clerk shall attend and keep the minutes of all regular and special meetings of the Trustees and provide for and ensure the custody and safekeeping of such minutes. The Clerk shall have all other powers, and perform such other duties as the President may prescribe.

Section 5. If a vacancy occurs in the office of President, Vice President or Clerk, the vacancy shall be filled by election by the Trustees held at their next regular or special meeting, or as soon thereafter as may be practicable.

ARTICLE IV. Committees.

Section 1. At or promptly after the annual meeting, the President shall annually appoint the following standing committees of the Trustees (provided, however, that appointments to the Executive Committee shall be subject to ratification by the Trustees):

1. The Executive Committee.
2. The Budget and Finance Committee.
3. The Audit and Risk Committee
4. The Investment Committee.
5. The Buildings and Grounds Committee.
6. The Committee on Student and Employee Life.

7. The Institutional Advancement Committee.
8. The Committee on Trustees.
9. The Committee on Student Safety.

Section 2. The President may appoint any special committees or task forces required, in the President's opinion, for specific purposes. Special committees shall be disbanded at the conclusion of their work. Special committees (and the Investment Committee and the Committee on Student Safety) may include both Trustees and members who are not Trustees, with votes to be separately recorded if action of the committee is not unanimous.

Section 3. The President may appoint Trustees as alternate members of any committee, to count toward a quorum and with power to vote in the absence of regular members. The President may be chair of the Executive Committee, but neither the President nor the Principal shall be chair of any other standing committee.

Section 4. The purpose of the standing committees (and subcommittees, if any) is to facilitate consideration of the business and management of the Trustees and of the Academy, as hereinafter set forth. The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles. Except as otherwise provided in these bylaws, matters determined to be appropriate for consideration by more than one committee (or subcommittee) may be referred by the President of the Trustees to one committee (or subcommittee) or more. Except as otherwise provided in these bylaws, the President shall appoint the Committee chairpersons.

Section 5. As promptly after the annual meeting as may be convenient, the President shall prepare and circulate to the Trustees a schedule of regular meetings of the Trustees to be held in the interval prior to the next annual meeting.

ARTICLE V. The Executive Committee.

Section 1. The Executive Committee shall consist of the President, the Vice President and not fewer than two other Trustees, in addition to the Principal. The President shall be the chair of the committee, provided, however, that the President may instead designate the Vice President as chair.

Section 2. Subject to the direction or approval of the Trustees, and except as limited by law, the Executive Committee shall have the powers of the Trustees in the intervals between Trustees' meetings. In general, the committee may act, on behalf of the Trustees, upon all matters except those which, in the opinion of the committee, should await the next meeting of the Trustees. Except as provided in Section 4 of this Article V,

all action so taken by the committee shall be deemed the action of the Trustees. At each meeting of the Trustees, the committee shall report action taken by it since the previous meeting of the Trustees.

Section 3. The Executive Committee shall meet on call of the President or of any two members of the committee.

Section 4. The Executive Committee shall be delegated the full authority of the Trustees to review and set the compensation for the Principal and all other employees who are “disqualified persons” as such term is defined in Tax Code Section 4958 and the related Treasury Regulations.

ARTICLE VI. The Budget and Finance Committee.

Section 1. The Budget and Finance Committee shall consist of not fewer than three Trustees.

Section 2. The Budget and Finance Committee shall watch over the general policies of the Academy as to its financial affairs.

Section 3. As early as practicable in each fiscal year, the Principal shall submit to the committee the budget for the next ensuing fiscal year. The budget shall show operating, capital and such other items as are appropriate separately. After such consultation with other Trustee committees as it may deem appropriate, the committee shall approve or modify the budget. At their winter meeting, if practicable, and otherwise at their spring meeting, the Trustees shall consider the budget as proposed by the Budget and Finance Committee and, after such amendment or modification as the Trustees shall determine, shall adopt the budget. After adopting the budget, the Trustees may, if desirable, amend it from time to time on the recommendation of the Budget and Finance Committee.

Section 4. The Budget and Finance Committee shall,

(a) examine proposed major financial transactions not included in the approved budget, and make recommendations for action by the Trustees, their examination of the recommendations of other committees of the Trustees to be limited to financial reports only, and

(b) report to the Trustees at each meeting on the relationship of the current financial condition to the current budget, both operation and capital.

Section 5. The Budget and Finance Committee shall meet on call of its chair.

ARTICLE VII. The Audit and Risk Committee

Section 1. The Audit and Risk Committee shall consist of not fewer than four Trustees. The chair of the Budget and Finance Committee shall be an ex officio non-voting member of the Audit and Risk Committee.

Section 2. The Audit and Risk Committee shall watch over the integrity of the financial statements of the Academy and be responsible for other related matters.

Section 3. The Audit and Risk Committee shall,

(a) periodically review the effectiveness of the Academy's system of financial control and accounting and recommend action to the Trustees;

(b) appoint, compensate and oversee the relationship with the Academy's auditors, review and approve the scope and staffing of the auditor's annual audit plans, evaluate the performance of the lead audit partner and consider lead audit partner or audit firm rotation, approve any significant non-audit work by the Academy's auditors, ensure recommendations from the auditors are addressed, adopt procedures to receive complaints regarding accounting and audit matters and undertake and oversee such other matters related to the foregoing as it and the Trustees shall deem appropriate;

(c) consider and report or recommend to the Trustees on matters pertaining to the identification and management of risks including but not limited to financial, material, and reputational;

(d) oversee adherence to laws, regulations, and policies that pertain to Academy operations and compliance obligations, including the preparation and submission of its annual Form 990 with the Internal Revenue Service.

Section 4. The Audit and Risk Committee shall meet on the call of its chair.

ARTICLE VIII. The Investment Committee.

Section 1. The Investment Committee shall consist of not fewer than three Trustees.

Section 2. The Investment Committee shall watch over the endowment funds of the Academy, to the end that they may be wisely and profitably invested.

Section 3. Subject to the direction or approval of the Trustees, the Investment Committee:

(a) shall periodically review the Academy's portfolios of investment securities and other assets held for investment,

(b) may, on behalf of the Trustees, sell, manage and purchase investments (including investment real estate as well as securities and other kinds of assets) for the account of the Academy in accordance with their judgment as to the best interests of the Academy, relying to the extent they deem advisable on recommendations of the Academy's professional investment advisers,

(c) may appoint, retain and oversee one or more investment advisors or investment managers;

(d) shall, at each regular meeting of the Trustees, report to the Trustees on the activities of the Investment Committee, and

(e) may make recommendations to the Trustees, or seek the instructions of the Trustees, as to the general policy to be followed in the management of the Academy's endowment funds, in the light of current and future operating and capital requirements.

Section 4. The Investment Committee shall meet on call of its chair.

ARTICLE IX. The Buildings and Grounds Committee.

Section 1. The Buildings and Grounds Committee shall consist of not fewer than three Trustees.

Section 2. The Buildings and Grounds Committee shall watch over the Academy's buildings and grounds, and their furniture and equipment, to ensure the provision and maintenance of physical facilities for the educational purposes of the Academy and the housing of students and faculty.

Section 3. The Buildings and Grounds Committee shall,

(a) periodically inspect the Academy's buildings and grounds and their furniture and equipment,

(b) propose, for action by the Trustees, policies or transactions relating to the purchase, sale or rental of real estate other than investment real estate, having due regard, in the case of matters related to faculty and student housing, for the views of the Committee on Student and Employee Life,

(c) propose, for action by the Trustees, plans, designs and specifications for new facilities and substantial renovations, and cost estimates, construction contracts and agreements with architects and others as required for such new facilities or renovations, and

(d) periodically review the effectiveness of the Academy's program of maintenance and upkeep of buildings, grounds, furniture and equipment, and recommend action to the Trustees.

Recommendations of the committee that require the expenditure of funds shall be made with due regard for the current budget and if such expenditures are not provided for therein shall be made after consultation with the Budget and Finance Committee or its chair.

Section 4. The Buildings and Grounds Committee shall meet on call of its chair.

ARTICLE X. The Committee on Student and Employee Life.

Section 1. The Committee on Student and Employee Life shall consist of not fewer than three Trustees.

Section 2. The Committee on Student and Employee Life shall watch over the general policies of the Academy as to all matters concerned with the relationship of the Academy to its students and its faculty and non-academic employees, with particular attention to the Academy's commitment to cultivate and sustain an environment of inclusion.

Section 3. The Committee on Student and Employee Life, on the recommendation of the Principal, or without the Principal's recommendation if circumstances warrant, shall periodically examine all matters related to admissions policy, curriculum, diploma requirements and other academic matters, and student and faculty and non-academic employee life at the Academy. The committee shall make such recommendations to the Trustees as it shall deem appropriate. Recommendations of the committee which require the expenditure of funds shall be made with due regard to the current budget and if such expenditures are not provided for therein shall be made after consultation with the Budget and Finance Committee or its chair.

Section 4. The Committee on Student and Employee Life shall

(a) periodically review the Academy's compensation and benefits philosophy and practices for faculty and non-academic employees and recommend changes and improvements to the Trustees.

(b) Periodically review the Academy's approach to recruitment and hiring, professional development, the standards used in the performance evaluation of all Academy employees, retirement planning, and other policies and practices relevant to the span of employment and recommend changes and improvements to the Trustees.

Section 5. The Committee on Student and Employee Life shall meet on call of its chair.

ARTICLE XI. The Institutional Advancement Committee.

Section 1. The Institutional Advancement Committee shall consist of not fewer than three Trustees.

Section 2. The Institutional Advancement Committee shall watch over all matters concerned with the relationship of the Academy to its Alumni/ae and the development and implementation of both short and long-range plans for fund raising and enhancement of the financial resources of the Academy.

Section 3. The Institutional Advancement Committee shall,

(a) periodically examine into all matters related to Alumni/ae affairs and the generation of financial resources of all kinds adequate to support existing and contemplated academic programs of the Academy and the development and maintenance of the plant and facilities required in connection therewith, and

(b) propose, for action by the Trustees, policies, programs, methods and plans for developing and fostering a close and cordial relationship between the Academy and Alumni/ae and for obtaining gifts and bequests to help finance the operations of the Academy and the improvement and maintenance of its buildings, grounds, furniture, equipment and facilities.

Section 4. The Institutional Advancement Committee shall meet on call of its chair.

ARTICLE XII. The Committee on Trustees.

Section 1. The Committee on Trustees shall consist of not fewer than three Trustees, in addition to the President and the Principal.

Section 2. The Committee on Trustees shall regularly maintain a list of potential Trustees, to the end that candidates may at all times be available to fill vacancies among the Trustees, whether occurring by reason of the expiration of terms or otherwise.

Section 3. At least ten (10) days prior to each spring meeting, the chair of the Committee on Trustees shall transmit to all the Trustees a slate of nominees for election at the spring meeting in accordance with Section 2 of Article I.

Section 4. If a vacancy shall occur among the Trustees other than by reason of the expiration of a term, the President shall promptly notify the chair of the Committee on Trustees, who shall, at the next regular or special meeting of the Trustees, present the name of a candidate, or the names of candidates, to fill such vacancy.

Section 5. In addition to the duties described in Sections 2 through 4, the Committee on Trustees shall oversee evaluations of individual Trustees, including the President and Vice President, Trustee committees and the Trustees as a governing body in such manner as it determines to be appropriate, and shall watch over the practices and policies of the Trustees concerning the Trustees' governance of the Academy and related matters of conduct, ethics and conflicts of interest.

Section 6. The Committee on Trustees shall meet on the call of its chair.

ARTICLE XIII. The Committee on Student Safety.

Section 1. The Committee on Student Safety shall consist of not fewer than three Trustees.

Section 2. The Committee on Student Safety shall watch over all aspects of the Academy's response to allegations of misconduct affecting student safety committed by Academy faculty or non-academic employees. In addition, the Committee on Student Safety shall watch over the response by the Academy's administration to allegations of misconduct committed by students affecting student safety in the circumstances enumerated in subparagraphs (a) through (d) of Section 4 below.

Section 3. The Principal and Director of Student Safety shall on a regular basis provide to the Committee on Student Safety all available information related to allegations of misconduct affecting student safety by Academy faculty or non-academic employees. The Committee on Student Safety shall:

(a) Ensure that the Academy properly reports such allegations to all relevant government authorities as required by law, and that the Academy's own investigation into such matters is coordinated appropriately with government authorities; and

(b) Receive and review recommendations and reports by the Principal and the Director of Student Safety regarding the Academy's response to such allegations, which recommendations and reports shall address:

- (1) Whether to conduct an investigation;
- (2) The scope of any investigation;
- (3) The findings of fact and results of any investigation;
- (4) Whether appropriate services should be provided to victims;
- (5) Whether outreach to the Academy community is appropriate regarding such allegations; and
- (6) The appropriate action to be taken regarding faculty or non-academic employees responsible for engaging in such misconduct.

Section 4. The Principal and the Director of Student Safety shall provide the Committee on Student Safety with periodic reports regarding the manner in which the Academy has responded to allegations of misconduct by students affecting student safety, according to a format and schedule to be determined by the committee. In addition, they shall provide the committee with all available information related to a particular allegation of sexual misconduct by a student affecting student safety whenever:

(a) a report to government authorities is made, or an inquiry from any government authority is received by the Academy, any student, or any member of the faculty or non-academic employees;

(b) such allegation calls into question the conduct of faculty or non-academic employees in supervising students or responding to the allegation;

(c) a threat of litigation arising from such allegation is made, or litigation is commenced; or

(d) the committee shall determine, based on its review of the reporting described above, that additional oversight is required.

Section 5. The Committee on Student Safety, in coordination and after consultation with the Audit and Risk Committee, shall review and approve all reporting, whistleblower, hotline complaint, or other mechanisms maintained by the Academy to assure that any student who feels that his or her safety is threatened by any type of misconduct is encouraged to make a report. In addition, it shall review and approve procedures maintained by the Academy that require faculty and non-academic employees to report such misconduct, consistent with applicable law and Academy policy. It shall establish standards for evaluating the result of any investigation conducted regarding such reports, taking into account the reliability of the information collected and the effect on the individuals involved of any public disclosure.

Section 6. The Committee on Student Safety is authorized to retain legal counsel and experts in the investigation and response to allegations of sexual misconduct and any other matters affecting student safety, in order to enhance its oversight, and that of the Trustees as a whole, regarding such matters.

Section 7. The Committee on Student Safety shall report as needed to the Executive Committee, the Audit and Risk Committee, and to the Trustees as a whole. It shall, in consultation with the Executive Committee, recommend whether decisions regarding the Academy's response to allegations of misconduct affecting student safety should await the next regular or special meeting of the Trustees.

ARTICLE XIV. The Principal.

Section 1. The Principal is the chief executive officer of the Academy. The Principal shall have all the powers and perform all the duties imposed upon him or her by law or by these bylaws and also such other powers and duties as may be incident to the Principal's office. Subject to the authority of the Trustees, the Principal shall be responsible for the effective administration and operation of the Academy. The Principal shall be hired, reviewed and subject to dismissal by the Trustees. In the event of the absence or disability of the Principal for such periods as to require a substitute, or in the event of a vacancy in the office of Principal, the Trustees shall select an Acting Principal (in the case of absence or disability, or on an interim basis in the case of a vacancy) or a Principal (in the case of a vacancy).

ARTICLE XV. The Chief Financial Officer.

Section 1. The Chief Financial Officer is the chief fiscal officer of the Academy. The Chief Financial Officer shall be elected by the Trustees on the recommendation of the Principal and shall serve at the pleasure of the Trustees. Subject to the authority of the Trustees

and the Principal, the Chief Financial Officer shall be responsible for all financial affairs of the Academy. Among other duties, the Chief Financial Officer shall draft the budget for submission to the Principal, to enable the Principal to comply with the provisions of these bylaws, and shall have such powers and authority with respect to the execution of contracts, conveyances and other instruments and the care, custody and disbursement of Academy property and funds as shall be conferred upon the Chief Financial Officer by law, by these bylaws, or by resolution adopted from time to time by the Trustees.

ARTICLE XVI. Conflict of Interests.

Section 1. The Trustees shall conduct their business in a manner that ensures Trustees' business judgment and decision making is not influenced by undue personal interests and in compliance with applicable conflict of interest laws and regulations. To that end, the Trustees shall adopt and follow a comprehensive conflict of interest policy.

ARTICLE XVII. Indemnification.

Section 1. To the fullest extent that the laws of the State of New Hampshire, as now in effect or as hereafter amended, permit elimination or limitation of the liability of Trustees no Trustee of the Academy shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Trustee.

Section 2. The provisions of this Article shall be deemed to be a contract with each Trustee who serves as such at any time while this Article is in effect and each such Trustee shall be deemed to be so serving in reliance on the provisions of this Article. Any amendment or repeal of this Article or adoption of any bylaw or provision of the Academy's charter which has the effect of increasing Trustee liability shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, bylaw or provision.

Section 3. Except as otherwise provided hereinafter, each person who has served, serves or shall serve at any time as a Trustee, officer, employee or agent of the Academy or at its request as a Trustee, director, officer, employee or agent of another organization in which the Academy has an interest, shall, to the extent permitted by law and without prejudice to any other rights such person might have, be entitled to be reimbursed by the Academy for, and indemnified by the Academy against, all costs and expenses reasonably incurred by such person in connection with any claim made, or any action, suit or proceeding threatened or brought against such person, or in which such person may be involved as a party or otherwise, by reason of any action alleged to have been taken or omitted by such person as such Trustee, director, officer, employee or agent, whether or not such person continues to be such at the time of incurring such costs and expenses, including amounts paid or incurred by such person in connection with reasonable settlement of any such claim, action, suit or proceeding. Any rights to reimbursement and indemnification granted under this Article to any person shall extend to such person's executors, administrators and legal representatives. No such reimbursement or indemnification

shall be provided for any person with respect to any matter as to which such person shall be finally adjudged in any action, suit or other proceeding, or shall be found by a majority of the disinterested Trustees, not to have acted in good faith in the reasonable belief that such person's action was in the best interests of the Academy. Reimbursement or indemnification hereunder shall include payments by the Academy of costs and expenses incurred in defending a civil or criminal action, suit or other proceeding in advance of the final disposition of such action, suit or other proceeding, upon receipt of a binding undertaking by the person indemnified to repay such payment if a majority of the disinterested Trustees shall conclude or a court of competent jurisdiction finally adjudges that such person is not entitled to reimbursement or indemnification hereunder. Nothing herein contained is intended to, or shall, prevent a settlement by the Academy prior to final adjudication, of any claim against it, including any claim for reimbursement or indemnification under this Article, when such settlement appears to be in the best interests of the Academy. No Trustee or officer of the Academy shall be liable to anyone for making in good faith any determination or finding or reaching any conclusion as to the existence or absence of liability of the Academy hereunder or as to facts relative thereto or for making or refusing to make any payment pursuant to this Article in reliance upon advice of counsel.

Section 4. The Academy shall have the power to purchase and maintain insurance to indemnify the Academy for any obligation which it incurs as a result of its indemnification of Trustees and officers pursuant to Article XVII, or to indemnify such persons in instances in which they may be indemnified pursuant to Article XVII.

ARTICLE XVIII. Amendments.

Section 1. Amendments to these bylaws may be adopted at any regular meeting, or at any special meeting, of the Trustees if written notice of the amendments proposed shall have been sent in accordance with Article II, Section 5 to the Trustees at least ten (10) days before the meeting, or if written waivers of such notice, signed by each Trustee, whether or not present at the meeting at which such amendments shall be adopted, shall be filed with the Clerk, either before or after the meeting at which such amendments shall be adopted.

ARTICLE XIX. Non-Profit Status and Effect of Dissolution.

Section 1. The Academy is organized and shall be operated as a nonprofit educational institution under the laws of the State of New Hampshire. Further, the Academy shall be operated as an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the Code). Notwithstanding any other provision of these bylaws, the Academy shall not carry on any activity not permitted to be carried on by an entity exempt from federal income tax under Section 501(c)(3) of the Code.

Section 2. The dissolution of the Academy (whether by the transfer of substantially all of the assets or funds of the Academy or otherwise) shall be accomplished consistent with the intent that the assets or funds of the Academy be held and used for the purposes of a public

charity and said termination shall not be effected so as to cause any tax to be imposed under Section 507(a) of the Code, or any successor provision. Subject to the foregoing sentence, in the event of a dissolution of the Academy for any reason, the property then held by the Academy (after payment or provision for payment of all liabilities) shall be disposed of exclusively for charitable purposes, or to such qualified charitable organization or organizations as (a) the Trustees shall select, and (b) with respect to any property not so disposed of, as the court which has jurisdiction over the Academy shall select.