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### QUESTIONS AND ANSWERS RELATING TO PUBLIC SCHOOL ACADEMIES (CHARTER SCHOOLS) IN MICHIGAN

*First of Two Council Comments Regarding Charter Schools*

#### THE ISSUE IN BRIEF

In recent years, quality and accountability have become elements of the debate regarding elementary-secondary education reform. In 1993, the Legislature made a number of changes to the public school system as part of a comprehensive plan. One of the more controversial initiatives was legislative authorization for the establishment of public school academies, or charter schools. Public school academies have been advanced as an innovative means of improving educational outcomes and accountability, unfettered by the existing educational bureaucracy. At the same time, however, the state has found it necessary to subject academies to many of the same requirements applied to public schools in order to satisfy provisions of the state Constitution which govern elementary-secondary education. This poses a public policy dilemma because, to the extent that public school academies are subject to the same panoply of existing regulations as are traditional public schools, they may be less likely to achieve their intended purposes.

#### What is a public school academy?

Public school academies are a relatively new category of public school authorized by the Legislature. Historically, elementary-secondary education in Michigan has been provided through both the public and nonpublic school systems. Public school districts are units of local government which are funded by taxes and are accountable to the public through locally elected boards of education, while nonpublic schools are defined by state law as any elementary-secondary school not under the exclusive supervision and control of the officials having charge of the public schools of the state.

Academies possess some of the characteristics of both public and nonpublic schools. For example, academies are considered to be public schools for purposes of Section 2 of Article 8 and Section 11 of Article 9 of the state Constitution. The former provision requires the Legislature to “maintain and support a system of free public elementary and secondary schools as de-

finied by law” and prohibits the use of public funds to support nonpublic schools, while the latter provision establishes a school aid fund and defines the purposes for which the fund may be used. However, like nonpublic schools, academies are prohibited from levying taxes and are not governed by publicly elected boards of education.

#### Why were public school academies authorized?

Proponents of academies generally cite two characteristics which they believe distinguish such schools from traditional public schools. First, they note that because academies often are not subject to the full range of laws and regulations which apply to traditional public schools, academies are more readily able to adopt innovative ideas which better meet the needs of students. Second, because academy charters generally are granted for only a limited term of years, without any guarantee of renewal, proponents note that the continued existence of an academy depends upon the extent to which it is

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successful at achieving promised educational goals. Thus, it is argued that academies are subject to the beneficial forces of the marketplace, unlike public schools which are guaranteed what amounts to a perpetual existence regardless of performance.

### **When did the Michigan Legislature authorize public school academies?**

In 1993, as part of a comprehensive effort to improve the quality and accountability of elementary-secondary education in Michigan, the state Legislature amended the state school code to permit the establishment of public school academies. Later, the amendatory act was declared unconstitutional and the Legislature subsequently adopted a revised law in 1994.

**Table 1**  
**States Which Have Charter School Laws**

|               | <b>Year of Enactment</b> | <b>Number of Charters Issued</b> |
|---------------|--------------------------|----------------------------------|
| Alaska        | 1995                     | 0                                |
| Arkansas      | 1995                     | 0                                |
| Arizona       | 1994                     | 51                               |
| California    | 1992                     | 92                               |
| Colorado      | 1993                     | 27                               |
| Delaware      | 1995                     | 1                                |
| Georgia       | 1993                     | 3                                |
| Hawaii        | 1994                     | 1                                |
| Kansas        | 1994                     | 0                                |
| Louisiana     | 1995                     | 0                                |
| Massachusetts | 1993                     | 20                               |
| Minnesota     | 1991                     | 18                               |
| Michigan      | 1993                     | 57                               |
| New Hampshire | 1995                     | 0                                |
| New Mexico    | 1993                     | 4                                |
| Rhode Island  | 1995                     | NA                               |
| Texas         | 1995                     | 0                                |
| Wisconsin     | 1993                     | 4                                |
| Wyoming       | 1995                     | 0                                |

Source: Morrison Institute at Arizona State University; CRC, September 1995.

### **How is a public school academy established?**

One or more persons or an entity may apply to any authorizing body for a contract to organize and operate an academy. The statute defines an *entity* as “a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, trust, or other legal entity.” The application must contain, among other things, the name of the proposed academy, its governance structure, the educational goals, and the curriculum to be offered.

### **What public bodies are authorized to issue public school academy contracts?**

A contract for the establishment of an academy may be issued by the governing board of any local school district, intermediate school district, community college, or a state public university. However, a community college cannot authorize the establishment of more than one academy and state public universities, as a group, cannot authorize the establishment of more than 75 academies. In addition, an academy is prohibited from operating beyond the geographic boundaries of the local school district, intermediate school district, or community college by which it is established.

### **How are public school academies organized and governed?**

Academies are organized as nonprofit corporations under the Michigan nonprofit corporation act and are governed by a board of directors. Academies also are subject to the general supervision of the State Board of Education to the same extent as are other public schools.

### **How many public school academies have been authorized in Michigan thus far?**

Fifty-seven as of September 1995, according to data compiled by the Michigan Partnership for New Education. Of this total, 49 academies have been authorized by Michigan public universities, five by intermediate school districts, one by a community college, and two by local school districts. Thirty-six academies presently are in operation.

**Does the state Constitution restrict the extent to which the Legislature may authorize public school academies?**

Yes. As noted earlier, Section 2 of Article 8 of the state Constitution prohibits the use of public funds to support nonpublic schools. In addition, Section 3 of Article 8 vests in the State Board of Education general supervision of public education. Based upon these provisions, the Ingham County Circuit Court in November of 1994 declared the academy statute, Public Act 362 of 1993, to be unconstitutional. The court held that, notwithstanding a statutory declaration to the contrary, academies were not public schools as defined by state law because they were not under the exclusive control of the state. Furthermore, the court held that Act 362 usurped the constitutional responsibility of the State Board of Education to supervise public education in Michigan by granting supervisory authority over academies to authorizing bodies.

**Given the fact that Act 362 was declared unconstitutional, what is the present legal status of academies?**

In response to the circuit court decision, the state Legislature adopted Public Act 416 of 1994 to address the constitutional questions raised by the court. Act 416 specifies that academies are subject to the general supervision of the State Board of Education. Act 416 also added to the state school code a Part 6B which enumerates the activities the State Board may perform as part of that general supervision. Act 416 provides that Part 6B automatically will be repealed if the circuit court decision, which is on appeal, is overturned by the appellate courts.

Pending the outcome of that appeal, the constitutional issues raised by the circuit court underscore the fact that proponents of academies face certain fundamental dilemmas. On the one hand, proponents have sought to imbue academies with the attributes of *private* schools, believing them to be more worthy of emulation than traditional public schools. On the other hand, proponents have had statutorily to define academies as *public* schools so as not to violate the state

constitutional prohibition against using public funds to support nonpublic schools.

Similarly, proponents have sought to free academies from what they perceive to be a hide-bound educational bureaucracy so as to promote greater innovation in education. At the same time, however, the state has found it necessary to subject academies to certain aspects of the existing bureaucracy so as not to encroach upon the constitutional sphere of the State Board of Education. However, to the extent that academies are subjected to the same panoply of existing regulations as are traditional public schools, they may be less likely to achieve their intended purposes.

**How do the major statutory requirements imposed upon public school academies compare with those imposed upon public and nonpublic schools?**

Public Act 362 of 1993 was somewhat ambiguous concerning precisely which statutory requirements applied to academies. Although the state regulates schools districts principally by means of the state school code, Act 362 referred to only three sections of that code. It was not entirely clear whether the Legislature singled out the sections in question in order to underscore their particular importance or because it intended them to be the only sections of the school code that applied to academies. **Table 2**, below, summarizes the major statutory requirements imposed upon public schools, nonpublic schools, and academies while Act 362 was in effect.

The successor statute to Act 362, Public Act 416 of 1994, clarifies the extent to which academies are subject to other state laws. Although the act enumerates certain statutes to which academies are subject, it also provides that the enumeration does not exempt academies from other laws. Thus, absent an explicit exemption, academies now are governed by other state laws to the same extent as are other public schools. However, as was noted earlier, if the constitutionality of Act 362 is upheld on appeal, much of Act 416 will be repealed. In that event, uncertainties that existed under Act 362 regarding which statutory requirements applied to academies may reappear.

Table 2

**Major Statutory Requirements for Public Schools, Nonpublic Schools, and Public School Academies before Public Act 362 of 1993 was declared to be unconstitutional**

| <u>Instructional Requirements</u>                                     | <u>Public</u> | <u>Nonpublic</u> | <u>Academy</u> |
|---|---------------|------------------|----------------|
| 1. English as basic language of instruction                           | X             | X                | -              |
| 2. Program of bilingual instruction                                   | X             | -                | -              |
| 3. Instruction in government and history                              | X             | X                | -              |
| 4. Instruction in spread of communicable diseases                     | X             | -                | -              |
| 5. Instruction in physiology and hygiene                              | X             | -                | -              |
| 6. Instruction in the humane treatment of animals                     | X             | -                | -              |
| 7. Minimum of 180 days of instruction                                 | X             | -                | X              |
| 8. Instruction in health and physical education                       | X             | -                | -              |
| 9. Special education services   | X             | -                | X              |
| 10. Core curriculum by 1997-98  | X             | -                | X              |
| 11. Performance standards compatible with core curriculum             | X             | -                | -              |
| 12. Standards for state endorsed diploma                              | X             | -                | X              |
| 13. Minimum hours of instruction                                      | X             | -                | X              |
| 14. Driver education instruction                                      | X             | -                | -              |
| <u>Management Requirements</u>  |               |                  |                |
| 15. Comprehensive budget system                                       | X             | -                | -              |
| 16. Annual financial report   | X             | -                | -              |
| 17. Annual financial and membership audit                             | X             | -                | X              |
| 18. Annual education report to state board of education               | X             | -                | X              |
| 19. Certificated teachers   | X             | X <sup>1</sup>   | X <sup>2</sup> |
| 20. Lunch programs for all students                                   | X             | -                | -              |
| 21. Breakfast programs for low-income students                        | X             | -                | -              |
| 22. Competitive bid for supplies and capital outlay                   | X             | -                | X              |
| 23. Auxiliary services for nonpublic students                         | X             | -                | -              |
| 24. Transportation for nonpublic students                             | X             | -                | -              |
| 25. School buses must be painted yellow                               | X             | X                | -              |
| 26. Compulsory school attendance                                      | X             | -                | -              |
| 27. Transportation for special education students                     | X             | -                | -              |
| 28. Site-based decision making team                                   | X             | -                | -              |
| 29. Three to five year school improvement plan                        | X             | -                | X              |
| 30. Local schools accreditation                                       | X             | -                | X              |
| 31. Written sexual harassment policy                                  | X             | -                | -              |
| 32. School building construction approval, including health standards | X             | X                | X              |
| <u>Other Requirements</u>   |               |                  |                |
| 33. Immunization against certain diseases                             | X             | X                | X <sup>3</sup> |
| 34. United States flag must be displayed at all school buildings      | X             | -                | -              |
| 35. Provide list of nonpublic students' names and ages                | -             | X                | -              |

<sup>1</sup>Certification is not required if religious objection exists. <sup>2</sup> Noncertificated individuals may teach in an academy operated by a university or community college or in other situations in which a school district is permitted to use noncertificated personnel. <sup>3</sup> Based upon public health code provisions.

**Table 3**  
**Chartering Authority, Proposed Curriculum, and Projected**  
**Student Enrollment for Charter Schools in Michigan**

| <b>Academy Name</b>             | <b>Chartering Authority</b>   | <b>Proposed Curriculum/Target Group</b> | <b>Enrollment</b> |
|---------------------------------|-------------------------------|---|-------------------|
| Anselm Academy                  | Washtenaw Intermediate        | Liberal Arts                            | 125-250           |
| Academy of Detroit              | Central Michigan University   | Individualized Instruction              | 60                |
| Academy of Detroit              | Central Michigan University   | Individualized Instruction              | 90                |
| <i>Aisha Shule-W.E.B.</i>       | Detroit School District       | Afrocentric                             | 190               |
| Applied Technology              | Central Michigan University   | Manufacturing                           | 210               |
| <i>Bahweting School</i>         | Northern Michigan University  | Native American Culture                 | 206               |
| Bay Mills Ojibway               | Bay Mills Community College   | Native American Culture                 | 250               |
| <i>Benito Juarez Academy</i>    | Central Michigan University   | Individualized Instruction              | 49                |
| Business & In. Studies          | Central Michigan University   | Business/International                  | 200               |
| <i>Casa Maria Academy</i>       | Wayne Intermediate            | Alternative School                      | 60                |
| <i>Community High School</i>    | Bay-Arenac Intermediate       | Holistic Learning                       | 100               |
| Concord Academy                 | Central Michigan University   | Music and Art                           | 100               |
| <i>Concord Academy</i>          | Central Michigan University   | Music and Art                           | 115               |
| Countryside Charter School      | Central Michigan University   | Natural Sciences                        | 150               |
| Crystal Academy                 | Central Michigan University   | Dance and Art                           | 50                |
| <i>da Vinci Institute</i>       | Central Michigan University   | Manufacturing                           | 80                |
| Detroit Arts & Sciences         | Central Michigan University   | Edison Project Based                    | 500               |
| <i>Detroit-Oak Park</i>         | Central Michigan University   | Individualized Instruction              | 260               |
| <i>Detroit-Southfield</i>       | Central Michigan University   | Business/Entrepreneurship               | 260               |
| Educational Options             | Central Michigan University   | GED Alternative                         | 40                |
| <i>El-Hajj El-Shabazz</i>       | Central Michigan University   | Afrocentric                             | 80                |
| <i>Excel Charter Academy</i>    | Grand Valley State University | Technology                              | 80-120            |
| Great Lakes Academy             | Central Michigan University   | Articulated Curricula                   | 200               |
| <i>Honey Creek Comm. School</i> | Washtenaw Intermediate        | Integrated Theme                        | 36                |
| <i>Kenquest Academy</i>         | Central Michigan University   | Pregnant/Parenting Teens                | 7                 |
| Liberty Charter School          | Central Michigan University   | Student-Directed Learning               | 85                |
| <i>Livingston Technical</i>     | Central Michigan University   | Manufacturing                           | 100               |
| <i>Macomb Academy</i>           | Central Michigan University   | Transitional Education                  | 100               |
| <i>Manoogian School</i>         | Central Michigan University   | Physical Education, Art                 | 150               |
| Merle Academy                   | Central Michigan University   | Art                                     | 1,100             |
| <i>Michigan Automotive</i>      | Central Michigan University   | Technical Automotive                    | 50                |
| <i>MI. Early Elementary</i>     | Central Michigan University   | Individualized Instruction              | 40                |
| <i>Midland Academy</i>          | Central Michigan University   | Values-Driven Education                 | 161-175           |
| Monroe Developmental            | Central Michigan University   | Develop/Interdisciplinary               | 250               |
| <i>Nah Tah Wahsh</i>            | Northern Michigan University  | Native American Culture                 | 150               |

Table 3 (Continued)

**Chartering Authority, Proposed Curriculum, and Projected  
Student Enrollment for Charter Schools in Michigan**

| <b>Academy<br/>Name</b>             | <b>Chartering<br/>Authority</b> | <b>Proposed Curriculum/<br/>Target Group</b> | <b>Enrollment</b> |
|-------------------------------------|---------------------------------|--|-------------------|
| <i>Nataki Talibah</i>               | Central Michigan University     | “Whole Child” Approach                       | 140               |
| <i>New Branches Academy</i>         | Central Michigan University     | Student-Directed Learning                    | 92                |
| New Horizon Academy                 | Central Michigan University     | Alternative High School                      | 200               |
| <i>New Creative Learn. School</i>   | Central Michigan University     | Language Arts                                | 11                |
| <i>Noah Webster Academy</i>         | Fractional School District A    | Distance Learning                            | 5                 |
| <i>Northlane Math &amp; Science</i> | Central Michigan University     | Experimental Learning                        | 38                |
| <i>Pansophia Academy</i>            | Central Michigan University     | Great Books Emphasis                         | 220               |
| <i>Plymouth Ed. Center</i>          | Central Michigan University     | State Standards Mastery                      | 61                |
| Renaissance Academy                 | Central Michigan University     | Team Teaching                                | 150               |
| Saginaw Chippewa                    | Central Michigan University     | Montessori                                   | 55                |
| <i>Sankofa Shule</i>                | Central Michigan University     | Afrocentric                                  | 122               |
| <i>Sierra Leone</i>                 | Central Michigan University     | Special Learning                             | 125               |
| Sunshine Academy                    | Central Michigan University     | Creative Learning                            | 220               |
| <i>Technology &amp; Enterprise</i>  | Saginaw Intermediate            | Manufacturing/Engineering                    | 300               |
| <i>Thomas Gist Academy</i>          | Central Michigan University     | Free Market Economy                          | 175               |
| Traverse Bay School                 | Saginaw Valley St. University   | Character Development                        | 80                |
| <i>TriValley Academy</i>            | Grand Valley State University   | Cognitive Curriculum                         | 144               |
| <i>University Public School</i>     | Wayne State University          | High School Preparation                      | 130               |
| <i>Walden Green Day</i>             | Central Michigan University     | Montessori                                   | 40                |
| <i>West MI. Environmental</i>       | Central Michigan University     | Environmental Character                      | 300               |
| <i>West MI. Hospitality</i>         | Grand Valley State University   | Hospitality Industry                         | 100-120           |
| Woodward Academy                    | Central Michigan University     | Residential School                           | 100               |

Source: Michigan Partnership for New Education, East Lansing, Michigan, September 25, 1995. Academies denoted in italics were in operation as of September 1995.