

Higher Education Data Sharing Consortium

I. Bylaws

Article I: Purposes

Section 1.01. Purposes. This Corporation is organized exclusively for charitable, educational and scientific purposes. It supports the educational goals of non-profit, accredited universities and colleges by providing assistance to member institutions in research and planning.

Article II: Members

Section 2.01. Classes of Members. Membership classes include Institutional and Individual memberships. Member privileges and recruitment priorities shall be established and defined by the Board of Directors in a public Membership Policies document, subject to the Bylaws. Institutional members of the Corporation are sometimes referred to herein as "member institutions".

Section 2.02. Membership Qualifications.

- (a) Institutional Membership: Institutional membership in the Corporation shall be restricted to colleges and universities that meet the core criteria of being private, non-profit, accredited institutions that grant bachelor degrees. In addition, institutions will meet other criteria established by the Board and published in the Corporation's Membership Policies. New members must be approved by the Board on recommendation by the Membership Committee.
- (b) Individual Membership: Individuals who have served for at least five years as a representative of one or a sequence of member institutions, and who have since retired, are eligible to become an emeritus member. Emeritus members must submit an application and be approved by the Board.

Section 2.03. Voting Rights. A dues-paying member institution is considered in good standing and is eligible to vote if it has maintained a current accreditation and is current in the payment of its dues. Each member institution in good standing shall be entitled to one vote on each matter submitted to a vote of the members.

- (a) Primary Contact. The voting representative of each institution will be the individual designated as the "primary institutional contact."
- (b) Substitute Voting. If the primary institutional representative is unable to attend an annual or special meeting, s/he may appoint a substitute representative to cast the institution's votes by submitting the substitute's name to the HEDS office at least one week prior to the date of the meeting.

Section 2.04. Membership Dues and Fees. The annual dues and initiation fee, if any, payable to the Corporation by the members will be in such amounts, and will be payable at such times as may be recommended by resolution of the Board of Directors and approved by the members. Payment of annual dues shall conform to the procedures laid out in the Membership Policies.

Section 2.05. Transfer of Membership. Membership in the Corporation is not transferable or assignable.

Section 2.06. Termination of Membership. Membership in this Corporation will terminate upon the occurrence of any of the following events:

- (a) The written notice of a member that it wishes to terminate its membership in the Corporation.
- (b) The failure of a member to pay its annual dues within sixty (60) days after mailing of written notice that such payment is due and owing.
- (c) The failure of a member to meet, on an annual basis, the core membership criteria set forth in Section 2.02.

- (d) By affirmative vote of two-thirds of the members in good standing on the grounds of a member's failure to comply with these Bylaws or any act of a member which is found to be prejudicial to the purposes, objectives or status of the Corporation, after an appropriate hearing by the Board of Directors. While the Board is reviewing a member institution's actions, the member's privileges will be suspended until the membership has voted for final determination of the institution's status.

Section 2.07. Non-members and Third-party Contracts. From time to time, the Board of Directors may approve the provision of limited data services to non-member institutions or associations, consistent with the Corporation's Statement of Understanding. The Board of Directors may from time to time authorize the Corporation to participate in contracts or grants with third-party organizations, or to engage the services of outside consultants.

Article III: Meeting of Members

Section 3.01. Annual Meeting. An annual meeting of the members shall be held during the period from January 2 to August 31 of each calendar year for the purpose of transacting such business as may come before the meeting.

Section 3.02. Time and Place of Annual Meeting. The Board of Directors may designate any date and hour during the period from January 2 to August 31 of each calendar year, and any place within the geographic boundaries of any of the fifty states in the United States, as the place of meeting for any annual meeting. If no designation is made, the place of meeting shall be the registered office of the Corporation in the Commonwealth of Pennsylvania.

Section 3.03. Special Meetings. Special meetings of the members may be called by either the Chair of the Board of Directors or by twenty-five percent (25%) of all members in good standing, and may be held at any time and at any place as shall be determined by the Chair.

Section 3.04. Notice of Meetings. Written or printed notice stating the place, date and hour of any meeting of the members shall be delivered to each member entitled to vote at such meeting, not less than thirty (30) days before the date of such meeting, by or at the direction of the Chair, or the Secretary, or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these Bylaws, the purpose for which the meeting is called shall be stated in the notice.

Section 3.05. Quorum. The representatives of member institutions holding twenty-five percent (25%) of the votes which may be cast at any meeting shall constitute a quorum at any meeting or special meeting. If a quorum is not present at any special meeting of the members, a majority of the members in good standing present may adjourn the meeting without further notice.

Section 3.06. Manner of Acting. Each member institution shall appoint a primary institutional contact, who will represent it at each meeting of the members. The act of the majority of the members in good standing present at a meeting at which a quorum is present shall be the act of all members except as otherwise provided by law or these Bylaws.

Section 3.07. Proxies. At all meetings of the members, a member in good standing is entitled to vote only through the presence of its primary institutional contact or a substitute authorized according to Section 2.03b of the Bylaws. No member shall be entitled to delegate its voting authority by written proxy.

Section 3.08. Ballots. Mail or electronic ballots may be used for any proposed action as determined by the members or the Board and for any matters of business undecided at a regular or special meeting because of a lack of a quorum. Such ballots will be open for voting for not less than thirty (30) days after mailing.

Section 3.09. Actions Reserved to Members. The following actions are subject to the approval of the members: annual budget and policies with regard to the sharing and use of data, including the statement of "Understandings Regarding the Use of Information Gathered for HEDS."

Section 3.10. Procedures at Meetings. Robert's Rules of Order as revised from time to time shall govern the conduct of all meetings of the members.

Article IV: Directors

Section 4.01. General Powers. The business affairs of the Corporation shall be managed by its Board of Directors except as otherwise provided by law or by these Bylaws.

Section 4.02. Number of Directors. The Board of Directors shall consist of nine (9) persons from member institutions in good standing, elected in accordance with provisions in the Election and Term of Directors section of the Bylaws (Section 4.03), and the Board Policies document.

Section 4.03. Election and Term of Directors.

- (a) **Normally Expiring Terms.** Each of the member institutions in good standing served by the Corporation shall have the right to cast one vote for the election of directors to the Board. The election process will be completed in advance of the annual meeting of the members, including notification of the outcomes of the election first to the candidates and then to the general membership, according to procedures described in the Board Policies document, Section 3 (Board election procedures).
- (b) **Resignations from Unexpired Terms.** In the event there are more than three vacancies at the time of election as a consequence of resignations from unexpired terms, the nominating committee shall add at least two (2) additional nominees to the ballot for each such vacancy. After determining the three directors elected for regular terms as described in (a) above and beginning with the longest unexpired term, the remaining candidate having the highest number of votes shall be declared elected to fill the remainder of that term. This process shall be repeated until all seats are filled.
- (c) **The Board of Directors shall be divided into three (3) equal election cohorts.** The term of office for directors in each cohort shall be three years, and new directors shall be elected to fill the directorships in one cohort each year. Terms of office for directors commence at the annual meeting of members.
- (d) **Directors are limited to two (2) consecutive terms not including partial terms.** Directors who have completed two (2) consecutive full terms may stand for election, provided there has been an interval of at least one year since the expiration of their last term.

Section 4.04. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this bylaw provision at the same time and place as the annual meeting of the members. The Board of Directors may provide by resolution the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 4.05. Special Meetings. Special meetings of the Board of Directors may be called by the Chair or requested by a majority of the directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place within the geographic boundaries of any of the fifty states in the United States as the place for holding any special meeting of the Board of Directors.

Section 4.06. Notice of Special Meetings. Notice of any special meeting shall be given at least fifteen (15) days previous thereto.

Section 4.07. Quorum. A majority of the directors at the time in office shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Directors provided that if less than a majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting without further notice.

Section 4.08. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors except as otherwise provided by law or these Bylaws.

Section 4.09. Vacancies. Any vacancy that may occur on the Board of Directors by reason of death, resignation, or otherwise, will be filled by the members at the next regular election, as described in Section 4.03(b). Should the Board of Directors deem it necessary, the directors may temporarily fill such a vacancy with an interim appointment until the next regular election, or call for a special ballot, as provided for in Section 3.08.

Section 4.10. Action by Directors Outside Meetings.

- (a) Unless specifically prohibited by the Articles of Incorporation or these Bylaws, any action required to be taken at a meeting of the Board of Directors, or any other action which may be taken at a meeting of the Board of Directors, may be taken by other means of voting with the signed consent of all the directors entitled to vote on the action. Any such consent

signed by all of the directors shall have the same effect as the unanimous vote of the directors, and may be stated as such in any documents filed with the Secretary of State.

- (b) The Board of Directors may periodically conduct and vote on the business of the Corporation by means of conference telephone call, electronic mail, by other unanimously agreed-upon form of audio, video, or textual electronic communication or conferencing. Minutes shall be taken at any conferencing when voting occurs.

Section 4.11. Compensation. Members of the Board of Directors shall not receive any compensation for their Board service, but the Board of Directors may authorize reimbursement for any expenses incurred by a member of the Board in the performance of her/his Board duties.

Section 4.12. Termination of Directorship. A director's position will be considered vacant and the incumbent's tenure terminated:

- (a) Upon said director's death, resignation or termination of employment with a member institution;
- (b) Upon the termination of the member organization which said director represents;
- (c) Upon the director's failure to attend three (3) consecutive Board of Director's meetings;
- (d) By removal from office, upon affirmative vote by two-thirds of the Board of Directors after a charge of dereliction of duty, violation of the Bylaws of the Corporation, or other action that is seriously detrimental to the interests of the Corporation;
- (e) By removal from office by the membership, upon submission of a petition signed by institutional representatives in good standing from at least sixty percent of the current institutional members.

Section 4.13. Personal Liability of Directors.

- (a) General Rule. A director of the Corporation shall not be personally liable for monetary damages for any action taken or any failure to take any action, except to the extent that exemption from liability for monetary damages is not permitted under the laws of the Commonwealth of Pennsylvania as now or hereafter in effect. The provisions of this subsection (a) are intended to exempt the directors of the Corporation from liability for monetary damages to the maximum extent permitted under the Pennsylvania Director's Liability Act (42 Pa. C.S. Section 8361 et seq.) or under any other law now or hereafter in effect.
- (b) Specific Rule Under Director's Liability Act. Without limitation of subsection (a) above, a director of the Corporation shall not be personally liable for monetary damages for any action taken or any failure to take any action, unless: (i) the director has breached or failed to perform the duties of the office under Section 8363 of the Directors' Liability Act, and (ii) the breach or failure to perform constitutes self dealing, willful misconduct or recklessness. The provisions of the preceding sentence shall not exempt a director from: (i) the responsibility or liability of a director pursuant to any criminal statute; or (ii) the liability of a director from the payment of taxes pursuant to local, state or federal law.
- (c) Modification or Repeal. The provisions of this section may be modified or repealed in accordance with the procedures for amending these Bylaws; provided, however, that any such modification or repeal shall not have any effect upon the liability of a director relating to any action taken, any failure to take any action, or events which occurred prior to the effective date of such modification or repeal.

Section 4.14. Conflict of Interest. No contract or transaction between this Corporation and one or more of its members, directors or officers shall be void or voidable solely because the member, director or officer has a financial interest in such contract or transaction or is present at or participates in a meeting of the members or Board of Directors which authorizes such contract or transaction provided one of the following conditions is met:

- (a) The material facts as to the relationship or interest as it relates to the contract or transaction are disclosed or are known to the Board of Directors and the Board in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors; or
- (b) The material facts as to the relationship or interest as it relates to the contract or transaction are disclosed or are known to the members entitled to vote thereon and the contract or transaction is specifically approved in good faith by a vote of the majority of members; or

- (c) The contract or transaction is fair to this Corporation at the time it is authorized, approved or ratified by the Board of Directors or the members.

Interested directors may not be counted in determining the presence of a quorum at a meeting of the Board of Directors which authorizes such contract or transaction.

Article V: Officers

Section 5.01. Composition. The offices shall consist of a Chair, Vice Chair/Secretary, and Treasurer, and such other assistant officers as determined by the Board of Directors from time to time. Except for the other assistant officers appointed from time to time, all officers shall be chosen from among the members of the Board of Directors.

Section 5.02. Election of Officers and Term. Officers are to be elected by the Board of Directors at the regular meeting of the Board that coincides with the annual meeting of the members, according to the guidelines in the current Board Policies document. All such officers shall serve for a period of one year or until their successors are elected.

Section 5.03. Chair. The Chair shall preside at all meetings of the Board of Directors and of the members and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chair shall make an annual report to the members with regard to actions taken by the Board since the last annual meeting.

Section 5.04. Vice Chair/Secretary. In the Chair's absence, the Vice Chair shall be called upon to preside at meetings of the Board of Directors and of the members. When necessary, the Vice Chair also may be called upon to perform other duties assigned to the Chair.

The Vice Chair/Secretary shall act as Secretary of the Board of Directors and shall keep a record of all proceedings. The Secretary shall see that due and proper notice is given of all meetings, and shall perform all the duties usually performed by the Secretary of a like corporation, and such other duties as may be required from time to time by the Board of Directors. The Board of Directors may appoint assistant officers to assist the Vice Chair/Secretary in the performance of his/her duties.

Section 5.05. Treasurer. The Treasurer shall be responsible for oversight of the corporate accounts and finances and for making such reports to the Board as shall be requested by the Board concerning the financial condition and operations of the Corporation. The Treasurer shall make an annual financial report to the members.

Section 5.06. General Duties of Officers. In general, the powers and duties of the officers of the Corporation shall be those usually incident to their respective offices.

Section 5.07. Officer Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Corporation will be served thereby. Removal from a Board Office will be by simple majority vote; termination of Board of Directors membership will be as stipulated in Section 4.12.

Section 5.08. Officer Vacancies. In the event of a vacancy in a Board office, the Board members will elect a replacement from the Board to fill the position for the remainder of the term.

Article VI: Committees of the Corporation

Section 6.01. Committees. The Board of Directors may by resolution create such committees as may be deemed by it appropriate to carry out the purposes of this Corporation. The resolution or resolutions creating any such committees shall specify the duties and responsibilities thereof including, but not limited to, provisions with respect to membership of such committees, selection of committee officers, and the conduct of committee business. Any such resolution may be amended or repealed by the Board of Directors.

Article VII: Indemnification of Directors and Officers

Section 7.01. General Rule. Subject to the provisions of the immediately following sentence, the Corporation shall, to the fullest extent permitted under the laws of the Commonwealth of Pennsylvania as now or hereafter in effect, indemnify any person (and said person's heirs, executors and administrators) who was or is a party, witness or other participant or is threatened to be made a party, witness or

participant to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, actions by or in the right of the Corporation) by reason of the fact that said person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees, court costs, transcript costs, fees of experts and witnesses, travel expenses and all other similar expenses), judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by said person in connection with such action, suit or proceeding. Indemnification shall not be provided in any case where the conduct giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct, recklessness or self-dealing.

Section 7.02. Advance Payment of Expenses. The Corporation shall advance all reasonable expenses (including attorneys' fees, court costs, transcript costs, fees or experts and witnesses, travel expenses and all other similar expenses) reasonably incurred in connection with the defense of or other response to any action, suit or proceeding referred to in Section (1) above upon receipt of an undertaking by or on behalf of the person seeking the advance to repay all amounts advanced if it shall ultimately be determined upon final disposition of such action, suit or proceeding that said person is not entitled to be indemnified by the Corporation.

Section 7.03. No Duplication of Payments. The Corporation shall not be liable under this Article to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that the person seeking indemnification has otherwise actually received payment therefor under any insurance policy, contract, agreement or otherwise. In the event that the Corporation makes an advance payment of expenses to a person, such person shall repay to the Corporation the amount so advanced, if and to the extent that said person subsequently receives payment therefor under any insurance policy, contract, agreement or otherwise.

Section 7.04. Insurance. The Corporation may purchase and maintain at its own expense one or more policies of insurance to protect itself and to protect any director, officer, employee or agent of the Corporation or of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in such capacity, whether or not the corporation would have the authority to indemnify such person against any such expense, liability or loss under this Article or under the laws of the Commonwealth of Pennsylvania.

Section 7.05. Indemnification Agreements. The Corporation shall have authority by vote of a majority of the directors to enter into an Indemnification Agreement with any person who may be indemnified by the Corporation pursuant to the provisions of this Article or otherwise. Any such Indemnification Agreement may contain such terms and conditions as a majority of the directors shall, in the exercise of their discretion, determine to be necessary or appropriate. Such terms and conditions may include provisions for greater or lesser indemnification than provided for in this Article, provisions establishing procedures for the processing or approval of indemnification claims, and other provisions. The fact that the Corporation has not entered into an Indemnification Agreement with any person shall not in any way limit the indemnification rights of such person under this article or otherwise.

Section 7.06. Non-Exclusivity. The right to indemnification and to the payment of expenses incurred on defending against or otherwise responding to any action, suit or proceeding in advance of its final disposition as set forth in this Article shall not be exclusive of any other rights which any person may now have or hereafter acquire under any agreement, vote of shareholders, vote of disinterested directors, or under any applicable law or under the articles of Incorporation of the Corporation, or otherwise.

Section 7.07. Survival of Rights. The indemnification rights provided to a person under the provisions of this Article shall continue after such person ceases to be a director, officer, employee or agent of the Corporation or of another entity, as to any action taken, any failure to take action, or any events which occurred while such person was a director, officer, employee or agent of the Corporation or of another entity.

Section 7.08. Modification or Repeal. The provisions of this Article may be modified or repealed in accordance with the procedures for amending these Bylaws; provided, however, that any such modification or repeal shall not have any effect upon the indemnification rights of any person as they relate to any action taken, any failure to take action, or events which occurred prior to the effective date of such modification or repeal.

Article VIII: Alterations, Amendments and Revisions of Articles

Section 8.01. Alteration, Amendments and Revisions of Bylaws. These Bylaws may be altered, amended or revised by a vote of two-thirds of the members in good standing present at a regular or special meeting of the members, provided that written notice of the proposed alteration, amendment or revision has been mailed or delivered to all members at least thirty (30) days in advance of the meeting, and provided further that the proposed amendments as to which proper notice has been given may be further amended at the meeting, but only by a vote of two-thirds of the members present at the meeting.

Section 8.02. Amendment of Articles of Incorporation. Amendment of the Articles of Incorporation shall require a vote of two-thirds of the members in good standing, after written notice of the proposed amendment to the Articles of Incorporation has been mailed or delivered to all members at least thirty (30) days in advance of the meeting, provided that proposed amendments as to which proper notice has been given may be further amended at the meeting, but only by a vote of two-thirds of the members in good standing.

Article IX: Miscellaneous

Section 9.01. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July in each year and end on the last day of June in each succeeding year.

Section 9.02. Notice. Notice shall be deemed to have been properly given to a director or member when delivered personally to the director or member's authorized representative, as the case may be; or when deposited in the United States mail, first class, postage prepaid, directed to the address appearing on the books of the Corporation or supplied by the director or member to the Corporation for the purposes of notice; or when delivered by overnight express service; or when sent via facsimile transmission; or when sent by electronic mail with confirmation. If the notice is sent by mail it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail.

Section 9.03. Waiver of Notice. Whenever any written notice is required to be given to a director or member, a waiver thereof in writing, signed by said person, either before or after the time stated therein, and whether before or after the meeting, shall be deemed equivalent to the giving of due notice. Attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where a person entitled to notice attends the meeting for the express purpose of objection to the transaction of any business because the meeting was not lawfully called or convened.

Section 9.04. Participation by Telephone Conference. A Board member may participate in a meeting of the Board of Directors by means of conference telephone or similar communication equipment so long as all persons participating in the meeting can hear and speak to each other. Participation in a meeting in this manner shall constitute presence in person at such meeting.