

BY-LAWS
of
THE WILDCAT FOUNDATION
(a Pennsylvania nonprofit corporation)

Adopted

January 7, 1999

Amended

June 14, 2000,

March 8, 2002,

and

February 3, 2017

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THE WILDCAT FOUNDATION

By-Laws

ARTICLE I **NAME AND PURPOSE**

SECTION 1.01. *Name.* The name of the corporation is The Wildcat Foundation (the “Foundation”), incorporated under the Pennsylvania Nonprofit Corporation Law of 1988 on March 19, 1998.

SECTION 1.02. *Purpose.* The Foundation was incorporated for the purpose of establishing a broad-based, nonprofit community organization to raise contributions from individuals, corporations, community organizations, foundations, or other entities to be used to strengthen the educational, cultural, wellness, and athletic programs of the Mechanicsburg Area School District (the “School District”). The Foundation is formed for religious, charitable, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code as the same may be amended and modified.

ARTICLE II **DIRECTORS**

SECTION 2.01. *Number, Election, Term of Office, and Classification.* The number of directors which shall constitute the Board of Directors of the Foundation (the “Board”) shall not be less than nine (9) nor more than twenty-one (21), the exact number to be set from time to time by resolution of the Board. The Superintendent of Schools of the School District, President of the Board of School Directors of the School District, Chief Financial Officer of the School District, and President of the Mechanicsburg Education Association shall be permanent members of the Board (the “Permanent Directors”). All other Members of the Board shall be elected for a term of three (3) years (the “Elected Directors,” and together with the Permanent Directors, the “Directors”). The Elected Directors shall serve staggered terms based on three (3) classes as near to equal in number as possible (each, a “Class”). Each Elected Director from a Class shall be elected for a term ending on the later of: (a) the third Annual Meeting (hereinafter defined) of the Foundation following such Director having taken office, or (b) until his or her successor has been elected; notwithstanding the foregoing, an Elected Director’s term shall end upon death, resignation, or removal for cause. The term of office of an applicable Class shall expire at the Annual Meeting of the Foundation in each year. Following nomination by the Nominating Committee (hereinafter defined), at each Annual Meeting of the Foundation, or at a regular or special meeting as soon thereafter as practicable, the successors to the Elected Directors of the Class whose term has expired shall be elected to serve as Directors. An Elected Director shall not serve more than two (2) consecutive three-year terms unless a maximum one-year additional term is approved by two-thirds of the Board.

SECTION 2.02. *Regular Meetings; Notice.* Regular meetings of the Board shall be held at such time and place as shall be designated by the Board from time to time. Notice of such regular meetings shall not be required, except as otherwise expressly required herein or by law, and except that whenever the time or place of regular meetings shall be initially fixed and then changed, notice of such action shall be given promptly by telephone or otherwise to each

Director not participating in such action. Any business may be transacted at any regular meeting.

SECTION 2.03. *Annual Meeting of the Board.* An annual meeting of the Board shall be held no later than the 15th of August of each year at such time and place as may be fixed by the Board (the “Annual Meeting”). The Annual Meeting shall be the annual organization meeting at which the Board shall organize itself and elect all officers of the Foundation, including the Elected Directors who shall serve as the Executive Officers (hereinafter defined). Any other business may be transacted at the Annual Meeting.

SECTION 2.04. *Special Meetings; Notice.* Special meetings of the Board may be called at any time by the President of the Board (the “President”) or by at least one-third of the Directors, to be held at such place, day, and hour as shall be specified by the President or vote of the Directors calling the meeting. Notice of every special meeting of the Board shall be given by the Secretary to each Director at least two days before the meeting. The general nature of the business to be conducted at a special meeting shall be provided in a notice of special meeting; however, any business may be transacted at any special meeting regardless of whether the notice calling such meeting contains a reference thereto, except as otherwise required by law.

SECTION 2.05. *Organization.* At all meetings of the Board, the presence of at least a majority of the Directors in office shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is not present at any time during a meeting, the meeting may be adjourned from time to time by a majority of the Directors present until a quorum shall be present, but notice of the time and place to which such meeting is adjourned shall be given to any Directors not present at least eight hours prior to the hour of reconvening. Resolutions of the Board shall be adopted, and any action of the Board upon any matter shall be valid and effective, with the affirmative vote of a majority of the Directors present at a meeting duly convened and at which a quorum is present. The President, if he or she is a Director and is present, or if not, a Director designated by the Board, shall preside at each meeting of the Board. The Secretary, or in his or her absence any Assistant Secretary, shall take the minutes at all meetings of the Board. In the absence of the Secretary and an Assistant Secretary, the presiding officer shall designate any person to take the minutes of the meeting.

SECTION 2.06. *Meetings by Telephone.* One or more Directors may participate in any regular or special meeting of the Board or of a committee of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner by a Director will be considered to be attendance in person for all purposes, including establishing a quorum, under these By-Laws.

SECTION 2.07. *Unanimous Consent of Directors in Lieu of Meeting.* Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the Directors in office and shall be filed with the Secretary of the Foundation. The form of written consent (*i.e.*, a document requiring manual signature) may be transmitted as an attachment to electronic mail and may be re-transmitted electronically in signed form to the Secretary of the Foundation; however, communication solely by electronic means shall not constitute consent in writing.

SECTION 2.08. *Presumption of Assent.* Minutes of each meeting of the Board shall be made available to each Director at or before the next succeeding meeting. Each Director shall be

presumed to have assented to such minutes unless his or her objection thereto shall be made to the Secretary at or within two days after such succeeding meeting.

SECTION 2.09. *Catastrophe.* Notwithstanding any other provision of the Pennsylvania Nonprofit Corporation Law of 1988, the Articles, or these By-Laws, if any emergency resulting from warlike damage or an attack on the United States or any nuclear or atomic disaster, or any other national or local disaster, causes a majority of the Board to be incapable of acting as such because of death or other physical disability or difficulties of communication or transportation, the other Director or Directors shall constitute a quorum for the sole purpose of electing Directors to replace the Directors so incapable of acting. The Directors so elected shall serve until such replaced Directors are able to attend meetings of the Board or until the Board acts to elect Directors for such purpose. Questions as to the existence of such an emergency or disaster or as to the fact of such incapacity shall be conclusively determined by such other Director or Directors.

SECTION 2.10. *Resignations.* Any Director may resign by submitting his or her written resignation to the Secretary. Such resignation shall become effective upon its receipt by the Secretary or as otherwise specified therein. At the discretion of the Board, the Board may consider an Elected Director to have resigned after three consecutive unexcused absences from meetings of the Board.

SECTION 2.11. *Nominating Committee.* There shall be a five-person standing Nominating Committee of the Board (the "Nominating Committee"), consisting of two of the four Permanent Directors as selected by the Superintendent of Schools of the School District, the President, and two (2) Directors to be appointed by the President. The Nominating Committee shall be charged with establishing criteria by which a person's qualifications to serve as Director shall be measured, which criteria shall include business, marketing, fundraising, and other specialized skills or experience. The Nominating Committee shall also be charged with establishing a process for identifying and nominating potential Directors and officers of the Foundation, including the Executive Officers. Before presentation to the Board, the Nominating Committee shall submit notice of the nominee or slate of nominees to serve as Directors or officers of the Foundation at least thirty (30) days prior to voting upon the same at the Annual Meeting, or at a subsequent regular or special meeting, as applicable. In the event the Board does not approve by a majority vote the submitted nominee or slate of nominees, the Nominating Committee shall convene a meeting to prepare another nominee or slate of nominees for re-submission to the Board. The consent of any nominee must be obtained before his or her name is placed in nomination. Any member of the Nominating Committee who desires to be considered as a potential nominee for an office shall abstain from any discussion, deliberation, or vote on his or her nomination.

The Nominating Committee shall be permitted during intervals between meetings of the Board to meet to discuss and deliberate solely on matters pertaining to nomination of Directors and officers of the Foundation. At all meetings of the Nominating Committee, the presence of at least a majority of the members of such committee shall be necessary and sufficient to constitute a quorum for the transaction of business.

SECTION 2.12. *Executive Committee* There shall be a standing Executive Committee of the Board, consisting of the Executive Officers of the Foundation, Superintendent of Schools of the School District, and Chief Financial Officer of the School District. Such committee may

meet in executive session during a meeting of the Board, or shall be permitted during intervals between meetings of the Board, to meet to discuss and deliberate on the management of the business and affairs of the Foundation; however, the Executive Committee may not exercise the powers of the Board. A member of the Executive Committee shall make a general announcement during a meeting of the Board as to the reason for meeting in executive session prior to such meeting. An agenda for any Executive Committee meeting held outside of a meeting of the Board shall be made available to Directors at the Board meeting following such Executive Committee meeting. At all meetings of the Executive Committee, the presence of at least a majority of the members of such committee shall be necessary and sufficient to constitute a quorum for the transaction of business. The Executive Committee may reach preliminary decisions on matters relating to the Foundation by favorable vote of such committee, subject to vote and approval by the Board.

SECTION 2.13. *Other Committees.* By resolution adopted by a majority of the entire Board, other standing or temporary committees, consisting of at least two Directors may be appointed by the Board from time to time following nomination by the Nominating Committee. Other committee members pursuant to this section are not required to be a Director of the Foundation. Each such committee shall have and exercise such authority of the Board in the management of the business and affairs of the Foundation as the Board may specify from time to time, which may include any action which the Pennsylvania Nonprofit Corporation Law of 1988 provides shall or may be taken by the Board. The Board may designate one or more Directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee, and in the event of such absence or disqualification, the member or members of such committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Any action taken by any committee shall be subject to alteration or revocation by the Board; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

SECTION 2.14. *Vacancies.* Any vacancy that shall occur in the Board by reason of death, resignation, removal, increase in the number of Directors, or any other cause, shall be filled by a majority of the then members of the Board following nomination by the Nominating Committee, and each person so elected shall be a Director until his or her successor is elected at the next Annual Meeting of the Board or until his or her prior death, resignation, or removal for cause.

SECTION 2.15. *Personal Liability of Directors.*

(a) Elimination of Liability. To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of directors, no Director of the Foundation shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a Director.

(b) Nature and Extent of Rights. The provisions of this Section shall be deemed to be a contract with each Director of the Foundation who serves as such at any time while this Section is in effect and each such Director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any By-Law or provision of the Articles of the Foundation which has the effect of increasing Director 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, By-Law or provision.

SECTION 2.16. *Compensation.* No Director shall receive, directly or indirectly, any compensation for his or her services as a Director. The Board may authorize reimbursement of reasonable expenses incurred by Board members in connection with their responsibilities on the Board of Directors.

SECTION 2.17. *Indemnification.*

(a) Right to Indemnification.

(1) As used herein, the word “Action” shall mean any action, suit, or proceeding, administrative, investigative, or other, (i) to which such person is a party (other than an action by the Foundation) or (ii) in connection with which such person is not a party but is a witness, subject to investigation, or otherwise involved, in either case by reason of such person being or having been a director or officer of the Foundation.

(2) Unless in a particular case indemnification would jeopardize the Foundation’s tax-exempt status under Section 501(a) of the Code or result in the Foundation’s failure to be described in Section 501(c)(3) of the Code, and except as prohibited by law, each Director and officer of the Foundation shall be entitled as of right to be indemnified by the Foundation against expenses and any liability paid or incurred by such person (i) in the defense of any Action to which such person is a party or (ii) in connection with any other Action.

(3) A person who is not a Director or officer of the Foundation may be similarly indemnified in respect of service to the Foundation to the extent the Board at any time designates such person as entitled to the benefits of this Section.

(4) As used in this Section, “indemnitee” shall include each Director and each officer of the Foundation and each other person designated by the Board as entitled to the benefits of this Section; “liability” shall include amounts of judgments, excise taxes, fines, penalties, and amounts paid in settlement; and “expenses” shall include fees and expenses of counsel incurred by the indemnitee only (i) if the Foundation has not at its expense assumed the defense of the Action on behalf of the indemnitee with reputable and experienced counsel selected by the Foundation, or (ii) if it shall have been determined pursuant to Section (c) hereof that the indemnitee was entitled to indemnification for expenses in respect of an action brought under that Section.

(b) Right to Advancement of Expenses. Unless in a particular case advancement of expenses would jeopardize the Foundation’s tax exempt status under Section 501(a) of the Code or result in the Foundation's failure to be described in Section 501(c)(3) of the Code, every indemnitee shall be entitled as of right to have his or her expenses in defending any Action paid in advance by the Foundation, as incurred, provided that the Foundation receives a written undertaking by or on behalf of the indemnitee to repay the amount advanced if it should ultimately be determined that the indemnitee is not entitled to be indemnified for such expenses.

(c) Right of Indemnitee to Initiate Action; Defenses.

(1) If a written claim under paragraph (a) or paragraph (b) of this Section is not paid in full by the Foundation within thirty days after such claim has been received by the

Foundation, the indemnitee may at any time thereafter initiate an action to recover the unpaid amount of the claim and, if successful in whole or in part, the indemnitee shall also be entitled to be paid the expense of prosecuting such action.

(2) The only defenses to an action to recover a claim for indemnification otherwise properly asserted under paragraph (a) shall be (i) that the indemnitee's conduct was such that under applicable law the Foundation is prohibited from indemnifying the indemnitee for the amount claimed, or (ii) that indemnification would jeopardize the Foundation's tax exempt status under Section 501(a) of the Code or result in the Foundation's failure to be described in Section 501(c)(3) of the Code, but the burden of proving any such defense shall be on the Foundation.

(3) The only defense to an action to recover a claim for advancement of expenses otherwise properly asserted under paragraph (b) shall be that the indemnitee failed to provide the undertaking required by paragraph (b).

(d) Non-Exclusivity; Nature and Extent of Rights. The rights to indemnification and advancement of expenses provided for in this Section shall (i) not be deemed exclusive of any other rights to which any indemnitee may be entitled, (ii) be deemed to create contractual rights in favor of each indemnitee who serves the Foundation at any time while this Section is in effect (and each such indemnitee shall be deemed to be so serving in reliance on the provisions of this Section), and (iii) continue as to each indemnitee who has ceased to have the status pursuant to which he was entitled or was designated as entitled to indemnification under this Section and shall inure to the benefit of the heirs and legal representatives of each indemnitee.

ARTICLE III **OFFICERS AND EMPLOYEES**

SECTION 3.01. *Executive Officers.* The Executive Officers of the Foundation shall be the President, the Secretary, and the Treasurer, and may include one or more Vice Presidents as the Board may from time to time determine, all of whom shall be elected by the Board. Each Executive Officer shall hold office for a period of two (2) years, or until his or her death, resignation, or removal for cause. No Permanent Director shall be elected an officer of the Foundation.

SECTION 3.02. *Additional Officers; Other Agents and Employees.* The Board may from time to time appoint or employ such additional officers or assistant officers for one-year terms, or agents, employees, and independent contractors as the Board deems advisable, including an Executive Director; the Board or the President shall prescribe their duties, conditions of employment, and compensation; and the Board shall have the right to dismiss them at any time, without prejudice to their contract rights, if any. The Executive Director shall be an ex-officio member of the Board and Executive Committee without voting authority.

SECTION 3.03. *President.* The President shall be the chief executive officer of the Foundation and shall preside at all meetings of the Board as provided herein. Subject to the control of the Board, the President shall have general supervision of and general management and executive powers over all the property, operations, business, affairs, and employees of the Foundation, and shall see that the policies and programs adopted or approved by the Board are carried out. The President shall exercise such further powers and duties as from time to time may be prescribed in these By-Laws or by the Board.

SECTION 3.04. *Vice Presidents.* The Vice Presidents may be given by resolution of the Board general executive powers, subject to the control of the President, concerning one or more or all segments of the operations of the Foundation. The Vice Presidents shall exercise such further powers and duties as from time to time may be prescribed in these By-Laws or by the Board or the President. At the request of the President, or in his or her absence or disability, the senior Vice President shall exercise the powers and duties of the President.

SECTION 3.05. *Secretary and Assistant Secretaries.* It shall be the duty of the Secretary (a) to keep an original or duplicate record of the proceedings of the Board, and a copy of the Articles and of the By-Laws; (b) to give such notices as may be required by law or these By-Laws; (c) to be custodian of the corporate records and of the seal of the Foundation and see that the seal is affixed to such documents as may be necessary or advisable; and (d) to exercise all powers and duties incident to the office of Secretary; and such further powers and duties as from time to time may be prescribed in these By-Laws or by the Board or the President. The Board may delegate tasks incident to the position of Secretary to agents or employees of the Foundation, including the Executive Director, but responsibility for performance of the duties of Secretary remain with such officer. The Secretary by virtue of his or her office shall be an Assistant Treasurer. Each officer of the Foundation by virtue of his or her office shall be an Assistant Secretary. The Assistant Secretaries shall assist the Secretary in the performance of his or her duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board, the President or the Secretary. At the direction of the Secretary or in his or her absence or disability, an Assistant Secretary shall exercise the powers and duties of the Secretary.

SECTION 3.06. *Treasurer and Assistant Treasurers.* It shall be the duty of the Treasurer (a) to keep the Foundation's contracts, insurance policies, leases, deeds, and other business records; (b) to see that the Foundation's lists, books, reports, statements, tax returns, certificates, and other documents and records required by law are properly prepared, kept and filed; (c) to be the principal officer in charge of tax and financial matters, budgeting, and accounting of the Foundation; (d) to have charge and custody of and be responsible for the Foundation's funds, securities and investments; (e) to receive and give receipts for checks, notes, obligations, funds, and securities of the Foundation, and deposit monies and other valuable effects in the name and to the credit of the Foundation, in such depositories as shall be designated by the Board; (f) to cause the funds of the Foundation to be disbursed by payment in cash or by checks or drafts upon the authorized depositories of the Foundation, and to cause to be taken and preserved proper vouchers for such disbursements; (g) to render to the President and the Board whenever they may require it an account of all his or her transactions as Treasurer, and reports as to the financial position and operations of the Foundation; (h) to keep appropriate, complete and accurate books and records of account of all the Foundation's business and transactions; and (i) to exercise all powers and duties incident to the office of Treasurer; and such further duties from time to time as may be prescribed in these By-Laws or by the Board or the President. The Board may delegate tasks incident to the position of Treasurer to the Chief Financial Officer of the School District or to agents or employees of the Foundation, including the Executive Director, but responsibility for performance of the duties of Treasurer remain with such officer. The Assistant Treasurers shall assist the Treasurer in the performance of his or her duties and shall also exercise such further powers and duties as from time to time may be prescribed by the Board, the President or the Treasurer. At the direction of the Treasurer or in his

or her absence or disability, an Assistant Treasurer shall exercise the powers and duties of the Treasurer.

SECTION 3.07. *Vacancies.* Any vacancy in any office or position by reason of death, resignation, removal for cause, disqualification, disability or other cause shall be filled by the Nominating Committee as provided in Section 2.10.

SECTION 3.08. *Delegation of Duties.* The Board may in its discretion delegate the powers and duties of any officer to another officer, agent, or employee of the Foundation.

ARTICLE IV
MISCELLANEOUS CORPORATE TRANSACTIONS AND DOCUMENTS

SECTION 4.01. *Execution of Notes, Checks, Contracts, and Other Instruments.* All notes, bonds, drafts, acceptances, checks, endorsements (other than for deposit), guarantees, and all evidences of indebtedness of the Foundation whatsoever, and all deeds, mortgages, contracts, and other instruments requiring execution by the Foundation, may be signed by the President, any Vice President, or the Treasurer, and authority to sign any of the foregoing, which may be general or confined to specific instances, may be conferred by the Board upon any other person or persons. Any person having authority to sign on behalf of the Foundation may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons if authorized to do so by the Board, which authority may be general or confined to specific instances. Facsimile signatures on checks may be used if authorized by the Board.

SECTION 4.02. *Voting Securities Owned by Foundation.* Securities owned by the Foundation and having voting power in any other Foundation shall be voted by the President or any Vice President, unless the Board confers authority to vote with respect thereto, which may be general or confined to specific investments, upon some other person. Any person authorized to vote such securities shall have the power to appoint proxies, with general power of substitution.

ARTICLE V
GENERAL PROVISIONS

SECTION 5.01. *Offices.* The principal business office of the Foundation shall be at 100 East Elmwood Avenue, Mechanicsburg, PA 17055. The Foundation may also have offices at such other places within or without the Commonwealth of Pennsylvania as the business of the Foundation may require.

SECTION 5.02. *Corporate Seal.* The Board shall prescribe the form of a suitable corporate seal, which shall contain the full name of the Foundation and the year and state of incorporation.

SECTION 5.03. *Fiscal Year.* The fiscal year of the Foundation shall be the 12-month period ending June 30 of each year.

SECTION 5.04. *Annual Report.* The President and Treasurer shall present an annual report to the Board in accordance with Section 5553 of the Pennsylvania Nonprofit Corporation Law of 1988.

SECTION 5.05. *Dissolution.* In the event that the Foundation shall be dissolved or liquidated, the Board, after paying or making provision for payment of all of the known liabilities of the Foundation, may transfer or dispose of the Foundation's property and assets to (a) such one or more corporations, trusts, funds or other organizations which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and, in the sole judgment of the Foundation's Board, have purposes similar to those of the Corporation or (b) the federal government, or to a state or local government for such purposes. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively to one or more of such corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, and which are organized and operated for such purposes, or to

the federal government or to a state or local government for such purposes. No private individual shall share in the distribution of any Foundation assets upon dissolution or sale of the assets of the Foundation.

SECTION 5.06. *Additional Policies and Procedures.* The Board may create and implement additional policies and procedures of the Foundation, but at a minimum shall maintain the following policies: (1) conflict of interest; (2) whistleblower protection policy; (3) document retention/destruction policy; and (4) gift acceptance policy (collectively, "Policies"). In the event of any inconsistency between these Bylaws and Policies, these Bylaws shall control.

ARTICLE VI **AMENDMENTS**

SECTION 6.01. *Amendments.* These By-Laws may be amended, altered, or repealed, and new by-laws may be adopted, by a two-thirds vote of the entire Board at any regular or special meeting. No action shall be taken to amend these bylaws unless written or electronic notice of, and a copy of, the proposed amendment(s) shall be given to the Directors at least ten (10) days prior to the meeting. No provision of these By-Laws shall vest any property or contract right in any person.