

Office of the Inspector General

Appendices [A – D]

Supplemental Review and Financial Analysis of the South Carolina Governor's School for Science and Mathematics and its Supporting Foundation

CASE # 2018-2773-I

Appendix A

Office of the Inspector General

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Review of the South Carolina Governor's School for Science and Mathematics and the Organizational Relationship to its Supporting Foundation

I. Executive Summary

The South Carolina Office of the State Inspector General (“SIG”) initiated a review of the South Carolina Governor’s School for Science and Mathematics (“SCGSSM”) and the South Carolina Governor’s School for Science and Mathematics Foundation, Inc. (“Foundation”) based on a credible complaint that publicly funded school employees were assigned to and supervised by employees of the private nonprofit Foundation, and the SCGSSM and Foundation appeared to maintain a blended organizational structure. The scope of the review was to determine the appropriateness of the delegation of publicly funded programs and state employees to a private nonprofit entity, as well as provide observations on the appropriateness of the blended organizational structure.

The SCGSSM is a publicly funded secondary educational institution which was created by the South Carolina General Assembly in 1987 (SC Code of Laws, §§ 59-48-10 to 70) to provide accelerated instruction in science, technology, engineering, and math (“STEM”) in a residential setting for high school juniors and seniors, who are academically talented in science and math. The school is directed by a chief administrator (“president”) and is governed by a board of trustees (“Board”) who are appointed by the Governor of South Carolina. The school opened its doors with the beginning of the 1988-89 school year. In 2015, the school reached its maximum capacity of 288 residential students. In support of the school, the General Assembly also authorized the school to maintain an endowment (§59-48-70). This was accomplished in 1988, through the establishment of the Foundation as a charitable nonprofit organization to support the SCGSSM and establish the endowment. The Foundation is directed by a chief executive officer (“CEO”) and is led by a separate Board comprised of community and business leaders.

The SIG’s investigation determined for the period of 2005 – 2011, the Foundation nearly doubled the size of the endowment to \$11.7 million as the result of a second successful capital campaign under the current Foundation CEO’s direction. Beginning in 2010, the former SCGSSM president designated the Foundation CEO as Executive Vice President (“EVP”) for Strategic Direction at the school. Over the course of four years (2010 – 2014), the former SCGSSM president gradually delegated supervision of core school programs, functions and staff to the Foundation for oversight and direction. These publicly funded programs, and supporting school staff, were comprised of the marketing, outreach, and recruitment programs, as well as the student admissions process (not final selection). A total of eleven SCGSSM staff program directors and other staff were placed under the supervision of a private nonprofit organization without the approval of the SCGSSM Board. The SIG also determined the SCGSSM Board did not give approval for the designation of the Foundation CEO as the school’s EVP for Strategic Direction.

As with any change in organizational leadership, particularly following a successful and long tenured leader, challenges can arise as existing staff and external relationships adapt to a new style of management and organizational goals are re-prioritized. This was no more evident than with the installation of the new school president in April 2016. Over the ensuing 16 months, the communication and relationship between each entity’s leadership has deteriorated. This is most unfortunate as the sole focus of both groups should be the education of South Carolina students who are highly motivated in the field of STEM.

While there is no singular “how to” process in relationship building, a best practice among institutions and supporting organizations which can mediate these challenges is through the establishment of an operating agreement or memorandum of understanding (“MOU”). In this way, roles and responsibilities are delineated, and a clear understanding of the mission, priorities and strategy is understood by both groups. In the case of the SCGSSM and Foundation, these roles and responsibilities must be consistent with the established statutory authority of the school, as well as the laws and regulations governing charitable nonprofit groups such as the Foundation.

To identify best practices utilized by the nation’s leading secondary STEM schools, the SIG interviewed the leadership of three of the four founding members of the National Consortium of Secondary STEM Schools which was established in 1988 as an alliance of specialized high schools in the nation whose mission is to advance STEM education, of which the SCGSSM is an institutional member. In each instance, it was determined the school and its foundation utilized an operating agreement or MOU to delineate the roles and responsibilities for each organization. In addition, the SIG determined the South Carolina Governor’s School for the Arts and Humanities also employs this same best practice.

However, the SIG determined the SCGSSM and the Foundation did not have an operating agreement or MOU in place to set forth these roles and responsibilities. In the case of the SCGSSM and Foundation, the delegation of these school programs and staff, and the blending of each entity’s senior leadership was memorialized in two separate organizational charts (2003 & 2014) which provided for the SCGSSM president’s direct supervision of the Foundation CEO’s oversight of these school programs and staff.

The SIG requested the South Carolina Office of the Attorney General (“SCAG”) to provide a legal opinion on the appropriateness of the SCGSSM, a state funded agency, delegating its publicly funded programs and staff to the oversight of the Foundation, a private nonprofit organization. (*See Appendix D*) In its opinion, the SCAG concluded the school could only delegate ministerial and administrative functions to the Foundation. This delegation was subject to SCGSSM’s oversight and supervision, and SCGSSM “*may not constitutionally delegate its legislatively created authority to the Foundation. Thus ‘publicly funded programs’ may not be delegated to the Foundation.*”

The SCAG also opined it was inappropriate for SCGSSM to reassign publicly funded employees to the nonprofit Foundation. In a prior 1997 opinion, the SCAG opined an agency, “*must at all times maintain adequate supervision and control over [the agency’s employees] in carrying out the assigned tasks and...avoid the situation where the Foundation or nonprofit corporation possesses ultimate control over the State employees.*”

By all accounts, the SCGSSM and the Foundation have each achieved many successes over the past 29 years. To continue this excellence in secondary STEM education, both the SCGSSM and Foundation must begin by resolving the communication barriers between the two organizations and rebuild a relationship based on trust, collaboration, and coordination. In 2016, leadership on both Boards recognized the need to address the communication breakdown by convening a joint committee to provide resolve barriers negatively impacting the two organizations’ relationship. Efforts were already underway to construct an MOU prior to the SIG initiating

its review. In addition, the current SCGSSM president initiated realignment efforts of the staff members and programs previously delegated to the Foundation back under SCGSSM oversight. This is consistent with the SCGSSM's statutory authority outlined in the S.C. Code of Laws, §§59-48-10, et seq.

It is essential that administrators, staff members, and members of both organizations have a clear understanding of the statutory authority of the SCGSSM to prioritize and direct all programs of the school, and the role the Foundation plays in supporting the school in these endeavors. This is accomplished through the execution of an MOU which delineates the roles, responsibilities and authorities of each organization.

Second, the integration of the strategic and budget planning processes is another best practice that would benefit the SCGSSM/Foundation relationship. Staff and Board members of both organizations should participate in each organization's planning process in order to produce a better understanding of the school's priorities and the Foundation's challenges.

Finally, increasing transparency between the Foundation and the SCGSSM is essential to improving the relationship. The Foundation should create processes to affirmatively share financial information with SCGSSM, to include audited financial statements, annual IRS filings, final annual allocation amounts expended on behalf of the school, and requests from school staff for supplemental financial information should be responded to promptly and completely.

During the course of this review, the SIG identified the existence of a Foundation bank account utilized and maintained by SCGSSM staff, yet another example of the blending of the two organizations. The account was opened in the early 1990s when the Foundation had no staff and was used primarily for the deposit and expenditure of student activity funds. The Foundation was not aware of the account until 2016 when the requirement to provide an IRS Form 1099 was recognized for an individual paid from the account. SCGSSM's use of the account avoided certain administrative requirements of state government and the SC Department of Education, under which SCGSSM reports administratively.

Following this discovery, the Foundation closed the original account and opened a new Foundation account on 2/3/2016, with SCGSSM continuing to use it as before but under Foundation oversight. SCGSSM obtained an audit of the account for two years previous to discovery by the Foundation, along with recommendations from the auditor for the elimination of the account and use of a bank account compliant with state regulations and in compliance with state procurement and disbursement regulations. The auditor's recommendations would streamline administrative requirements for SCGSSM in handling the numerous student activity and trip transactions, some of which involve international travel. SCGSSM has not pursued all of the auditor's recommendations and has continued to use the Foundation account.

Correct mission alignment and authority are no less important than when fiscal transparency of a state governmental entity is at stake. The public expects the governmental entity to exercise fiduciary care and custody of its appropriated resources (i.e., personnel, financial, and fixed assets). As in the case of a Foundation account established by SCGSSM over two decades ago, the school's use of this account to accept and disburse

student activity fees, school program funds, etc., however well-intentioned, circumvented the State's accounting system and procurement code, which lowered the school's internal controls and elevated the risk to these funds for both SCGSSM and the Foundation. The State has mechanisms in place to assist the SCGSSM in handling these types of funds in an efficient manner without undue burden on the school while maintaining the requisite level of oversight, internal control, and accountability needed for a state governmental entity such as SCGSSM.

The SIG extends its appreciation to the leadership and staff of the SCGSSM and the Foundation for the cooperation and courtesies provided to the SIG during this review.

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Administrative Note: Responses by SCGSSM and the Foundation are located Internet links:

[SCGSSM Response to the Review](#)
[Foundation Responses to the Review](#)

II. Background

A. Predicate

The South Carolina Office of the State Inspector General (“SIG”) initiated a review of the South Carolina Governor’s School for Science and Mathematics (“SCGSSM”) and the South Carolina Governor’s School for Science and Mathematics Foundation, Inc. (“Foundation”) based on a credible complaint that publicly funded school employees were assigned to and supervised by employees of the private nonprofit Foundation, as well as the appropriateness of a blended organizational structure between SCGSSM and the Foundation.

B. Scope and Objectives

The scope of this review was to determine the following:

- The appropriateness of SCGSSM’s publicly funded employees being assigned to and supervised by the private nonprofit Foundation; and
- Provide observations and recommendations on the organizational structure and relationship between SCGSSM and its supporting Foundation.

C. Methodology and Initial Assessment

The methodology utilized in this review encompassed interviews of current and former leaders and staff members in both organizations, members of each governing Board of Trustees (“Board”), a review of statutes and regulations relative to each organization, as well as external research for best practices utilized by similar institutions with their supporting foundations. The research for best practices included studies of institution/foundation relationships at similar governor’s schools, interviews of those schools’ leaders, and studies of institution/foundation relationships in higher education.

In April 2017, the SIG’s initial assessment determined the relationship between SCGSSM and the Foundation was strained and serious communication issues existed between the leadership of both organizations. Questions raised by the school’s new president regarding oversight of several SCGSSM functions and personnel previously delegated to the Foundation appeared to have contributed to the contentious relationship from the outset following his installation as the new SCGSSM president in April 2016. As a result, plans were underway to realign the previously delegated oversight of school functions back under SCGSSM authority. Additionally, school personnel previously assigned to the Foundation had been realigned back under the school’s authority prior to the SIG initiating its review. Throughout most of fiscal year 2016-17, members of each entity’s Board, along with outside parties were working to resolve these conflicts and accurately define the relationship between the two entities, which included the development of a memorandum of understanding (“MOU”).

III. Historical Framework and Operations of SCGSSM and its Foundation

A. Legislative Creation of SCGSSM and its Foundation

The school was created as a state governmental entity by the South Carolina General Assembly in 1987 (SC Code of Laws, §§ 59-48-10 to 70) to provide accelerated instruction in science, technology, engineering, and math (“STEM”) in a residential setting for high school juniors and seniors who are academically talented in science and math. The school opened its doors with the beginning of the 1988-89 school year. The school is governed by a Board comprised of eighteen members with eleven appointed by the Governor, along with seven additional members serving in an ex-officio capacity to include the Foundation’s Board chairperson and a number of state public education officials. (See link: <http://www.scstatehouse.gov/code/t59c048.php>)

Through its statutory authority, the SCGSSM Board was authorized to:

- Establish the course of study;
- Set admission criteria, standards, and procedures;
- Adopt policies and regulations it considered necessary for the operation and management of SCGSSM;
- Select an administrative officer (“President”) to administer all the affairs of the SCGSSM subject to the policies, rules, and regulations adopted by the Board; and
- Establish and maintain an endowment fund for the school.

Pursuant to its statutory authority (§59-48-70), the SCGSSM leadership chartered the Foundation in 1988 as a South Carolina nonprofit corporation. The Foundation’s stated purpose was enumerated in seven statements in its Articles of Incorporation, all related to providing support to the school. (*See Appendix A*) The Foundation applied for and received an exemption from federal income tax. In 1990, the Foundation’s charter was amended at which time it resolved that upon dissolution, the Foundation’s assets would be delivered to the school if still in existence, and if not, to the State of South Carolina for a public purpose. The Foundation is governed by its own Board which is currently comprised of 32 state business leaders and elected officials. In addition, the SCGSSM’s president and the SCGSSM’s Board chairperson serve as ex officio and non-voting members along with former Foundation Board members who also serve as ex officio and non-voting members. (See link: <https://www.scgssm.org/support/gssm-foundation-board>)

B. Core Functions and Activities

The SCGSSM

From 1988 through 2003, SCGSSM conducted operations in space provided by Coker College in Hartsville, South Carolina. In addition to their regular courses of study, rising seniors were required to conduct mentored summer research either nationally or internationally, and perform community service. Upon graduation, seniors received the standard state high school diploma and a special SCGSSM diploma.

In 2001, SCGSSM's immediate past president was hired and over the course of his 15 years of leadership the school achieved numerous milestones, which included:

- In 2003, the school moved into its own newly constructed campus in downtown Hartsville with a capacity for 128 residential students;
- In 2010, two new building wings were added to the campus, which increased the school's capacity to 288 residential students; and
- In 2015, the school reached its maximum residential capacity of 288 students.

In addition to its residential program, SCGSSM's outreach program was considered a fundamental core function of the school's mission. As part of its outreach efforts, the school conducted residential summer camps for middle school students, high school freshmen and sophomores, along with workshops for teacher professional development. In the early 2000s, following a strategic planning process, the school's Vice President ("VP") of Outreach and Research was charged with expanding the outreach program throughout the state, which included satellite camps. Other core functions of the school included the recruitment and admissions processes for new students, marketing, as well as liaison to the General Assembly on the school's budgeting, strategic planning, and educational priorities.

The Foundation

The Foundation's early efforts involved fund raising initiatives and included an initial \$6 million capital campaign to fund an endowment. Due to its early success, the Foundation hired two full time staff members – an executive director and a secretary. Annual fund raising campaigns, parent campaigns, and corporate campaigns were all established by the Foundation in its early years. During the 1990s and into the 2000s, the Foundation provided the school with an annual allocation and funded the summer research program required of the rising seniors. The Foundation's primary office location was moved to Columbia by its former executive director as a central base of operations for fundraising efforts.

Following the 2005 hiring of the current Foundation chief executive officer (CEO), the Foundation increased its activities which included a second successful capital campaign that nearly doubled the endowment to \$11.7 million as shown in the Foundation's Fiscal Year 2011 IRS Form 990 – Schedule D, Part V – Endowment Funds, Line 1g. The Foundation CEO, whose background was in marketing, increased the school's marketing effort, and worked with SCGSSM staff to promote its many programs, including SCGSSM's outreach efforts and management of the school's website.

IV. Delegation of Oversight of Publicly Funded Programs & Staff

A. Blended Organizational Structure and Expansion of Foundation CEO's Role

While the school and the Foundation were governed by separate Boards, an organizational hierarchy existed both in statute and through the incorporation of the Foundation. The Foundation was incorporated to support the school. (*See Appendix A*) The blending of the two organizations was memorialized in separate organizational charts from 2003 and 2014, which established the former school president's direct supervisory role over the Foundation CEO for those school programs and staff delegated to the Foundation. All other Foundation functions were directly supervised by the Foundation CEO under the oversight of the Foundation Board. (*See Appendix B*)

This blended relationship mutually benefited each entity through the Foundation CEO's success in fund raising, marketing, and board development. The school benefited by having the Foundation fund pilot programs for new SCGSSM programs not formally included in the school's state budget as a way of testing new programs without committing state funds. In turn, this informal arrangement allowed the Foundation CEO freedom to make school related decisions with minimal oversight from the former SCGSSM president.

However, a review of SCGSSM Board minutes did not identify where approval was given to the former SCGSSM president to delegate publicly funded programs and staff to the Foundation.

In 2010, the former SCGSSM president requested approval of the SCGSSM Board to create an executive vice president ("EVP") position for the school. At its June, 2010 meeting, the SCGSSM Board unanimously agreed to "create a new title at SCGSSM for an executive vice president and to support that position with a competitive salary." The following month, the Foundation Board announced it had changed the Foundation executive director's title to Foundation CEO, and simultaneously the former SCGSSM president unilaterally named the Foundation CEO to the position of EVP of Strategic Direction at the school. A review of prior SCGSSM Board meeting minutes did not identify approval of the Foundation CEO's appointment to this newly created SCGSSM position. Consequently, no state appropriated funds were provided to the Foundation as a supplement to the Foundation CEO's salary as part of her new SCGSSM role.

B. Delegation of Oversight of SCGSSM Programs and Staff to the Foundation

Initially, all necessary student recruitment efforts were minimal and were handled by the school's admissions director. With the 2010 building expansion at the school and the doubling of SCGSSM's residency capacity, a more significant recruitment effort was required. Given the expansion of capital campaign marketing efforts by the Foundation between 2005 and 2010, the former SCGSSM president delegated supervision of the student recruitment program to the Foundation and the recruitment efforts were incorporated into its marketing efforts.

In August 2012, the former SCGSSM president placed the school's VP of Outreach and Research, along with his staff of eight employees, under the supervision of the Foundation CEO for all SCGSSM outreach program activities. Once again a review of prior SCGSSM Board meeting minutes found no approval was given for the

delegation and reassignment of the supervision of these publicly funded programs and state personnel to the Foundation.

The practice of delegating supervision of SCGSSM programs and reassignment of SCGSSM personnel to the Foundation continued into 2014 when the school's former admissions director resigned and the oversight of the school's admission process, to include supervision of two school admissions employees, was delegated to the Foundation. The final decision making authority on student selection was retained by a select SCGSSM committee. Also occurring during this period was the Foundation CEO's added role of joint liaison to the General Assembly along with the former school president.

C. Foundation Bank Account Containing SCGSSM Funds

An additional example of the blending of the two organizations occurred in the early 1990s, when a bank account was opened in the name of the Foundation for the purpose of depositing and expending student activity and trip related funds. The account was opened at a point in time when SCGSSM staff performed the Foundation's administrative functions, prior to the Foundation having a staff. Although it was a Foundation account, SCGSSM staff made deposits to the account, wrote checks on the account, and maintained documentation of the account's activity. School staff believed the flexibility the bank account provided was essential in allowing SCGSSM to operate efficiently in dealing administratively with the collection of fees and the related expenditures associated with numerous student activities and trips, some of which involved international travel. SCGSSM's use of the account avoided certain administrative requirements of state government and the SC Department of Education (SC-DOE), under which SCGSSM reports administratively.

After the Foundation employed its own staff during the 1990s and began handling its own administrative activities, it lost awareness of the account as the school continued to administer the account. Consequently, the account was not recognized in the Foundation's accounting records or financial statements, and conversely, SCGSSM auditors did not audit the account because it was a Foundation account. This created an internal control weakness in SCGSSM's fiscal oversight and accountability of school funds with SC-DOE.

In 2016, SCGSSM staff recognized a requirement to provide an IRS Form 1099 to an individual who had been paid from the account. A request for the Foundation to provide the Form 1099 alerted the Foundation to the existence of the account and led to a joint Foundation/SCGSSM effort to determine the proper methods and processes to manage these funds. Advice was sought from the SC-DOE, the State Auditor's Office, and the State Comptroller General's Office. The Foundation requested that SCGSSM provide an audit of the past two years of account activity. The original account was closed and a new Foundation account was opened on 2/3/2016, under the Foundation's oversight and controls. An external auditor was engaged by SCGSSM to provide an agreed-upon procedures review of fiscal years 2015 and 2016, and make recommendations on the proper handling of the transactions within state rules and regulations. (*See Appendix E*)

The SIG reviewed transactions in the new account from its inception on 2/3/2016 through 9/30/2017. During this 20-month period, 211 checks were written totaling \$103,317, and 128 deposits were made totaling \$181,789. The new account began with a balance of \$30,308 from the original account and the ending balance on 9/30/2017 was \$108,780. The balances in the account varied from a low of \$25,579 on 3/31/2016, to a high

of \$108,780 on 9/30/2017. The account balance peaked in the falls of 2016 and 2017 following the collection of fees for the various student activities and trips during the remainder of each school year.

Funds deposited to and expended from the account included: vending commissions; student parking fees; student flu shot fees; PSAT test fees; yearbook fees; and other miscellaneous fees. However, the majority of deposits were for student activity and trip fees, which consisted of trips to Costa Rica; the Mediterranean; “Behind the Iron Curtain;” a sports trip to various college and professional sports events and venues; a “Tech Trek” to New York City; scuba training and a dive trip to Florida; as well as soaring training. The majority of expenditures were payments associated with student activities and trips, but also included: payments to AP test proctors; soccer referees; reimbursements for student “goody bags” and student “care packages;” and the payment for lost or damaged textbooks.

When the new account was opened, the Foundation required its use to be under the Foundation’s accounting rules, procedures, and audit requirements. The account was required to be an “in and out” account for funds restricted to student activities and no general revenues were to be deposited to the account. General (non-appropriated) funds had been deposited to the old account. Foundation staff and the SCGSSM CFO were given signatory authority. All checks and deposits were to be made by SCGSSM staff with records maintained by SCGSSM. Pre-authorization from the Foundation’s business director was required for all checks exceeding \$500. SCGSSM was required to utilize its existing approval and documentation procedures as well as provide receipts for all funds received. The Foundation engaged an external accounting service to reconcile the account since the Foundation’s business director was a signatory on the account. The cost of that service was paid from the account.

The Foundation treats the bank account as an agency fund – funds held for another entity. The balance of the account is shown in the Foundation accounting system as an amount “due to SCGSSM.” Likewise, SCGSSM should record a similar, offsetting asset amount in its accounting system. However, since the opening of the new bank account, no entries have been made to reflect this offsetting transaction in SCGSSM’s accounting system. Instead, SCGSSM records the transactions in a subsidiary ledger. The SIG’s review of a sample of the transactions in the new account determined that, with the exception of several transactions following the opening of the account, SCGSSM is complying with the documentation and approval requirements.

The SIG was advised by SCGSSM staff that collected fees equal expenditures for most activities and trips. However, the SIG was also advised in most cases any unspent activity or trip fees were carried over and spent at the discretion of the school sponsor for a similar future activity. The SIG is of the opinion this represents an internal control weakness, and that unspent fees collected for specific trips or activities should be refunded and not left to the discretion of a school sponsor. At no point in the last 20 months did the balance of this account approach zero as would be expected with an “in and out” account. Instead, it would appear the majority of the funds transferred to this new account in February, 2016 were still there, and actually may have grown. The SCGSSM staff advised they have records showing the composition of the balance.

In the review of the account, the SIG observed both the Foundation and SCGSSM received funds associated with student trips and the Foundation deposited those funds it collected to the student activity account. The

Foundation staff explained they were collecting credit and debit card trip payments from parents because SCGSSM did not have the capacity to process those payments.

In the audit report dated 8/9/2016, the auditor made several recommendations to SCGSSM to address the accounting and procurement concerns associated with this account. One recommendation was for SCGSSM to utilize a state travel credit card to pay for the fairly high volume of student travel, thereby eliminating the requirement to satisfy state procurement and disbursement regulations on student travel transactions. SCGSSM secured a state travel card and is currently using it for student travel.

The primary recommendation was for SCGSSM to seek permission to utilize its own checking account, allowable if approved by the State Treasurer. Such an account, identified by the state as a composite reservoir bank account, was recommended for the deposit and disbursement of all student activity type funds, eliminating the use of the Foundation account. In addition, the auditor recommended SCGSSM seek a procurement exemption similar to that granted to higher education relative to “Athletic Funds” - SC Code § 11-35-710 (6). The definition of this exemption includes funds derived from “activities of student organizations.” If such an exemption were granted, SCGSSM would also be exempted from certain state disbursement regulations, further reducing the administrative workload of handling these funds. SCGSSM has taken no action to date on either the composite reservoir account or the procurement exemption recommendations.

D. No Documented Operating Agreement or Memorandum of Understanding

Critical to any successful transition of leadership where one entity [SCGSSM] depends upon another [Foundation] to execute program management of delegated functions is the need for an operating agreement or MOU between the two organizations which delineates the authority, roles, and responsibilities of each party in the relationship. Without an MOU, these informal practices, however well-intentioned and convenient between two leaders can “unintentionally undermine institutional integrity.”¹

The SIG determined there was no such operating agreement or MOU in place between SCGSSM and the Foundation which established the authorities, roles and responsibilities for the school and the Foundation. Additionally, there was no approval given by the SCGSSM Board for this informal oversight and program management of state funded programs and staff by the Foundation.

E. Reversal of Foundation Oversight of Previously Delegated SCGSSM Programs and Staff

Upon his arrival in April 2016, the new SCGSSM president implemented a strategic planning process and an “executive leadership team building retreat” where he questioned all members on their functions, philosophies, and priorities for the SCGSSM to familiarize himself with the operations of the school and its faculty and staff. Eventually, the president turned his attention to the school programs and staff previously delegated to the Foundation. For the period of 2010 – 2014, the SCGSSM delegated functions: marketing; school webpage management; student recruitment; supervision of outreach efforts and summer camps; supervision of the

¹ University of Texas System’s report titled, “Advisory Task Force Report on Best Practices Regarding University-Affiliated Foundation Relationships.”

administrative admissions process; and joint liaison to the General Assembly became integrated into the Foundation's core functions. These added functions resulted in the expansion of Foundation staff to take on these core school functions.

In December 2016, the current SCGSSM president reversed the 2012 delegation of oversight of the VP of Outreach and Research and his staff to the Foundation. In April 2017, the SCGSSM president appointed an interim director of enrollment to replace the former admissions director, who also was previously supervised by the Foundation CEO. Both of these positions are direct reports to the SCGSSM president and provide oversight for their respective programs. The school president notified the Foundation of these realignments and asked the Foundation to continue with recruitment activities for the 2017-18 school year to allow the school sufficient time to properly staff its recruitment program which was staffed by Foundation personnel.

F. Joint Committee on Alignment

A Joint Committee on Alignment ("Joint Committee") comprised of SCGSSM and Foundation Board members was created in the fall of 2016 after the school president raised concerns of "organizational/structural/functional misalignment between the two organizations" and "communication challenges" at the September, 2016 SCGSSM Board meeting. The Joint Committee focused on the organizational structure and made recommendations in a report dated 1/4/2017. (See Appendix C) Key recommendations made in the joint report were:

- Eliminating the EVP for Strategic Direction position.
- The Foundation was to maintain primary responsibility for recruitment and admissions.
- The Foundation would have primary responsibility for all off-campus programs, events, and activities.
- The Foundation would have primary responsibility for the day-to-day management of governmental affairs.

Per the January, 2017 SCGSSM Board meeting minutes the trustees approved the following motion: *"The GSSM Board would like to express sincere appreciation to the GSSM Foundation for its outstanding support of the Governor's School for Science and Mathematics. I move that we receive the Joint Committee's report as information and that the report be considered by President Flores as he develops an MOU [memorandum of understanding] between GSSM and the GSSM Foundation. The MOU should be prepared by the President in consultation with legal counsel for GSSM and be consistent with the GSSM's statutory authority and by-laws, which charge and empower the President with the school's overall direction, strategy, operations, and outcomes, subject to the policies, rules, and regulations of the Board. Additionally, the President is authorized by law and policy to coordinate all activities of the GSSM, directly, or through his designee."*

A draft of the MOU was approved by the SCGSSM Board's executive committee and a copy was forwarded to the Foundation Board chairman on 3/1/2017. Since then the two organizations have been in negotiations over the terms of the MOU.

However, when weighed against the research and findings of an opinion authored by the South Carolina Attorney General (SCAG) and obtained by the SIG, three of the four recommendations proposed by the Joint

Committee were prohibited, as these constituted the delegation of publicly funded programs, which the SCAG noted the “*SCGSSM may not constitutionally delegate its legislatively created authority to the Foundation.*” (See Appendix D)

G. South Carolina Attorney General’s Opinion on Delegation of Publicly Funded Programs

The South Carolina Office of the Attorney General was asked to provide a legal opinion on three key questions for this SIG review (See Appendix D):

- The appropriateness of SCGSSM employees, who are publicly funded employees, being reassigned to the supervision of employees at a nonprofit foundation;
- The appropriateness of delegating publicly funded programs at the SCGSSM to a nonprofit foundation; and
- The SIG’s authority to conduct a review of the Foundation, a nonprofit educational and eleemosynary corporation, based upon its support to the SCGSSM.

The SCAG concluded the school could only delegate ministerial and administrative functions to the Foundation. Furthermore, this delegation was subject to SCGSSM’s oversight and supervision, and SCGSSM “*may not constitutionally delegate its legislatively created authority to the Foundation. Thus ‘publicly funded programs’ may not be delegated to the Foundation.*”

Second, the SCAG opined it was inappropriate for SCGSSM to reassign publicly funded employees to the private nonprofit Foundation. In a prior 1997 opinion, the SCAG opined an agency “*must at all times maintain adequate supervision and control over [the agency’s employees] in carrying out the assigned tasks and...avoid the situation where the Foundation or nonprofit corporation possesses ultimate control over the State employees.*”

Finally, to answer the question of the SIG’s authority to conduct a review of the Foundation the SCAG concluded that since the Foundation was created pursuant to SCGSSM’s statutory authority, and SCGSSM was subject to the SIG’s review, then the Foundation was “also subject to investigation and review by the SIG.”

V. Best Practices Among Institutions and Supporting Organizations

A. Best Practices at other Publicly Funded Residential STEM Schools

The SIG contacted three publicly funded schools recognized as leaders among those providing residential secondary STEM education: the North Carolina School of Science and Mathematics; the Illinois Mathematics and Science Academy; and the Louisiana School for Math, Science, and the Arts. These schools represented three of the four founding members of the National Consortium of Secondary STEM Schools (“Consortium”) which was established in 1988 as an alliance of specialized high schools in the nation whose mission is to “advance STEM education by providing professional development and networking opportunities for educators

and learning experiences for students; to serve as a national resource for STEM schools and programs in partnership with education, corporate, and international organizations; and to inform policymakers on STEM education.” The SCGSSM is an institutional member of the Consortium.

To identify best practices employed by these national leaders each school was requested to provide information regarding its organizational relationship with its supporting foundation, along with the core functions performed by each school and its supporting foundation. This afforded the SIG the opportunity to compare these practices with those employed by SCGSSM and its Foundation. In addition, the SIG met with the president of the South Carolina Governor’s School for the Arts and Humanities to gain an understanding of its structure and relationship with its supporting foundation.

North Carolina School of Science and Mathematics (“NCSSM”)

The NCSSM opened its doors in 1980 as a two-year public residential high school program, and was the “first in the nation” STEM residential governor’s school. The NCSSM is led by a chancellor who has complete executive authority over the school and is subject to the direction and oversight of the NCSSM Board. The NCSSM Foundation, Inc. was created two years before NCSSM opened its doors for the purpose of raising funds to renovate an abandoned hospital that was donated to the school. The foundation is governed by a separate board of trustees. The NCSSM’s foundation staff consists of a president, who reports directly to the NCSSM chancellor, and two office staff. All NCSSM foundation employees, including the president, are state employees and the foundation maintains offices at the school. The foundation’s only function is to raise funds for its endowment. The recruiting, admissions process, outreach, and marketing programs, including website management, are all school functions and are managed by school staff. The school and its foundation have an MOU in place which delineates the roles and responsibilities for each entity in this relationship. In furtherance of its mission, the NCSSM focuses on educating teachers and students throughout North Carolina as part of its external programs and outreach.

The NCSSM chancellor advised the SIG the budget process for its foundation begins with the development of a budget by the school’s management, which includes the foundation president. The chancellor stated that most of the funding provided by the foundation is donor-restricted and is applied to the restricted purposes within the school. The school’s management, including the foundation president, develops a budget for unrestricted foundation funding based on NCSSM’s strategic plan. This budget is presented to the foundation Board for approval. The foundation’s funding support can be used for brick and mortar, but is mostly used for renovations to the NCSSM campus. The NCSSM does not delegate its state supported programs, staff or functions to its foundation.

Illinois Mathematics and Science Academy (“IMSA”)

The IMSA opened its doors to residential students in 1986. The school’s enabling legislation not only mandated the offering of a challenging education to students in math and science in its residential program, but it also mandated that IMSA “stimulate further excellence for all Illinois schools in mathematics and science.”

Because of this second mandate IMSA has an extensive outreach effort with approximately 20 school personnel dedicated to statewide outreach efforts.

The IMSA is led by a president who is directed by a board of trustees. The school's supporting foundation is known as the IMSA Fund and is headed by an executive director, who along with five employees, focus strictly on fundraising support to the school. No school function or program is managed by the IMSA Fund. Eighty-six percent (86%) of IMSA Fund employee salaries are paid by the school. The school president advised he evaluates the performance of the foundation's executive director using state of Illinois protocols. The president also advised a process is underway to better align IMSA and the IMSA Fund, and clarify what is funded by the IMSA Fund.

Louisiana School for Math, Science, and the Arts ("LSMSA")

The LSMSA opened its doors to new students in 1983. It was the second state supported residential school of its kind following the creation of NCSSM. The head of LSMSA is its executive director and LSMSA's affiliated support organization is the Louisiana School for Math, Science, and the Arts Foundation, Inc., which is headed by a CEO. The executive director advised that its foundation primarily conducts fundraising activities, but the foundation staff creates goodwill for the school and works side by side with the school's staff. No school functions are performed by the foundation. The foundation staff consists of the CEO and two employees, and the executive director advised he works closely with and communicates frequently with the foundation CEO. The foundation staff maintains offices at the school and reimburses the school the fair market value of its office space. The foundation does manage the alumni association, whose purpose is not fundraising but is to promote goodwill between the alumni and the school.

The school and its foundation have an MOU in place which clearly defines the relationship between the two organizations and the responsibilities of each organization. The executive director advised it was his goal to convert the foundation's employees into state employees to provide them better benefits.

South Carolina Governor's School for the Arts and Humanities ("SCGSAH")

Originally established in 1980 as a summer residential program, the SCGSAH was created by the South Carolina legislature in 1996 and opened its doors to new students for the 1999-2000 school year. The SCGSAH is led by its president and its supporting foundation is the Governor's School for the Arts Foundation, Inc. The president advised recruitment, admissions, alumni relations, and outreach are all managed by the school. The foundation's chartered purpose is to increase awareness of SCGSAH and raise revenues to support SCGSAH. The foundation staff consists of three employees – the director, an events employee, and an office manager. There are no direct reports from the foundation to the school's president, but he advised the foundation director meets regularly with him and the school's senior management. The foundation offices are located within the school.

The common characteristics identified in these four schools in comparison to the SCGSSM/Foundation organizational relationship is set forth in Table A below.

TABLE A

Common Traits Identified / School → ↓	<u>SCGSSM</u>	<u>NCSSM</u>	<u>IMSA</u>	<u>LSMSA</u>	<u>SCGSAH</u>
MOU or Operating Agreement exists between the school and its supporting foundation		X	X	X	X
Foundation executive director reports to the school's chief executive / administrator		X	X		
Foundation employees are state employees		X	X		
The recruitment, admissions process, outreach and marketing programs are directly managed by the school		X	X	X	X
Foundation staff size	13	3	6	3	3

B. Best Practices – Universities and University-Affiliated Foundations

Numerous examples of institutions and affiliated nonprofit support organizations occur in the area of publicly supported colleges and universities. Virtually all higher education institutions of any size have supporting foundations, and many have multiple foundations serving the institutions in different ways.

The most current and comprehensive report addressing best practices found by the SIG was the University of Texas System's report titled, "*Advisory Task Force Report on Best Practices Regarding University-Affiliated Foundation Relationships.*"² While it is noted that SCGSSM and its supporting Foundation are not part of a university system, the basic principles and best practices identified in the report are applicable and adaptable to SCGSSM and the Foundation. Three key areas identified for best practices for institution and foundation relationships were:

- Mission alignment through the development of an MOU;
- Increase transparency and openness between the institution and the foundation; and
- Good governance and executive board leadership.

Mission Alignment and the MOU

To assure mission alignment, the task force recommended each institution and foundation jointly develop an MOU, that "(a) clearly defines the relationship between the university and its affiliated foundation(s), (b) assures the preservation of mission alignment over time; and (c) is periodically reviewed, assessed, and adapted in keeping with changing circumstances and the passage of time." In that respect, the MOU should summarize

² University of Texas System's "*Advisory Task Force Report on Best Practices Regarding University-Affiliated Foundation Relationships.*" (see link: [Best Practices Regarding University-Affiliated Foundation Relationships](#))

how the foundation’s resources and efforts serve the institution’s mission, and define the foundation’s role in fundraising along with any other services to be provided.³

Increase Transparency and Openness

Institutions and foundations should “implement practices that increase transparency, openness, and disclosure to the supported institution and the public. Each entity should provide for the sharing, consistent with applicable laws and donor privacy, of financial information, audits, annual IRS filings, and other records with each other and outside parties.”⁴

Good Governance

Two best practices identified in the area of good governance and executive Board leadership were:

“1. Ensure that the work of the foundation is aligned with the strategic priorities of the supported university.

2. Collaborate to establish strong periodic orientation programs to educate new university officials and all new foundation board members about the foundation’s mission, legal requirements, and fiduciary duties.”⁵

The SIG also identified in the accreditation standards utilized by the Southern Association of Colleges and Schools (“SACS”) Commission on Colleges, “*Principles of Accreditation: Foundation for Quality Enhancement.*” Section 3.2.12 of the SACS’ standards states “*The institution demonstrates that its chief executive officer controls the institution’s fund-raising activities.*”⁶ Additionally, SACS accreditation standard Section 3.2.13 states, “*For any entity organized separately from the institution and formed primarily for the purpose of supporting the institution or its programs, (1) the legal authority and operating control of the institution is clearly defined with respect to that entity; (2) the relationship of that entity to the institution and the extent of any liability arising out of the relationship is clearly described in a formal, written manner; and (3) the institution demonstrates that (a) the chief executive officer controls any fund-raising activities of that entity or)b) the fund-raising activities of that entity are defined in a formal, written manner which assures those activities further the mission of the institution.*”⁷

VI. Way Forward

As with any change in organizational leadership, particularly following a successful and long tenured leader, challenges can arise as existing staff and external relationships adapt to a new style of management and organizational goals are re-prioritized. As with the relationship between SCGSSM and the Foundation, one

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Southern Association of Colleges and Schools Commission on Colleges “Principles of Accreditation: Foundation for Quality Enhancement” standard 3.2.12. (see link: <http://www.sacscoc.org/pdf/2012PrinciplesOfAccreditation.pdf>)

⁷ Ibid.

would think each entity would be immune from any significant challenge given the successes attained by both groups. Since 2005, these successes have included the doubling of school's endowment; the expansion of the summer satellite camp programs through the combined efforts of the school's VP of Outreach and Research and the Foundation; as well as, the implementation of the Accelerate Engineering Program, which originated with the former school president and Foundation CEO as a pilot program. This program was approved by the SCGSSM Board, the current school president, and incorporated into the school's budget priorities.

Unfortunately, these successes become easily hidden when individual conflicts expand into mistrust among each entity's staff members toward each other. Everything from "repurposing of personnel" to intentional disengagement only exacerbates the problem instead of reconciling the issue. Joint meetings of Foundation and SCGSSM staff have been reduced or eliminated, and the Foundation CEO has moved from her SCGSSM office. Most recently, a press release issued by the Foundation on 8/1/2017, described the Foundation as "*...a hybrid, forward-looking organization of creative and driven individuals working to retain and return our alumni to South Carolina. Our goal is to positively impact economic development across the state and in the Pee Dee while also providing unwavering support for the Governor's School for Science & Mathematics and its students, faculty and programs.*" While statewide economic development and efforts to retain and return the school's alumni to the state are important, they are not currently a stated priority of SCGSSM.

Regardless, when leaders of organizations such SCGSSM and the Foundation engage in a "tug of war" for ownership of mission and ideas where there should instead be a synergy of ideas to support the broader mission, they only affect those who can least afford the impact – **the SCGSSM students.** [SIG emphasis]

When an organization loses focus or lacks clarity resulting in "mission drift" a time honored process is to take an "operational pause" and "get back to basics." For the SCGSSM and the Foundation, this process begins by looking at the General Assembly's enabling legislation in S.C. Code of Laws §59-48-10, which states:

"There is established a special school of science and mathematics for the purpose of fostering educational development of high school juniors and seniors in this State who are academically talented in the areas of science and mathematics and who show promise of exceptional development in these subjects. The school shall provide accelerated instruction in mathematics and science in a residential educational setting."

The authority to determine the mission, priorities, programs, and direction of SCGSSM is vested in the school's board of trustees and its chief administrative officer. The Foundation was created to build an endowment, fundraise and support SCGSSM, its students, and the academic programs of SCGSSM as set forth in its charter. (See Appendix A)

Correct mission alignment and authority are no less important than when fiscal transparency of a state governmental entity is at stake. The public expects the governmental entity to exercise fiduciary care and custody of its appropriated resources (i.e., personnel, financial, and fixed assets). As in the case of a Foundation account established by SCGSSM over two decades ago, the school's use of this account to accept and disburse student activity fees, school program funds, etc., however well-intentioned, circumvented the State's accounting system and procurement code, which lowered the school's internal controls and elevated the risk to these funds for both SCGSSM and the Foundation. The State has mechanisms in place to assist the SCGSSM in handling

these types of funds in an efficient manner without undue burden on the school while maintaining the requisite level of oversight, internal control, and accountability needed for a state governmental entity such as SCGSSM.

The first step is to resolve the communication issue and build a relationship based on trust, collaboration, and coordination. This is accomplished through the “best practice” of establishing an MOU between SCGSSM and the Foundation. It is essential that administrators, staff members, and members of both organizations have a clear understanding of the role and functions of the Foundation in support of the SCGSSM and its authorities found in the S.C. Code of Laws.

Second, the integration of the strategic and budget planning processes is another best practice that would benefit the SCGSSM/Foundation relationship. Staff and Board members of both organizations should participate in each organization’s planning process in order to produce a better understanding of the school’s priorities and the Foundation’s challenges.

Increasing transparency between the Foundation and the SCGSSM is essential to improving the relationship. The Foundation should create processes to affirmatively share financial information with SCGSSM, to include audited financial statements, annual IRS filings, final annual allocation amounts expended on behalf of the school, and requests from school staff for supplemental financial information should be responded to promptly and completely.

VII. Findings and Recommendations

Finding #1a: Between 2012 and 2014, the SCGSSM delegated supervision of a number of school staff to the Foundation for program management purposes which resulted in a private nonprofit organization supervising publicly funded state employees. This delegation of supervision of publicly funded state employees was inappropriate and potentially in violation of state law.

Finding #1b: Between 2010 and 2014, the SCGSSM delegated oversight of a number of SCGSSM programs and functions to the Foundation which resulted in a private nonprofit organization supervising publicly funded programs which went beyond ministerial or administrative duties. This delegation of oversight of publicly funded programs was inappropriate and potentially in violation of state law.

Recommendation #1: SCGSSM leadership should finalize the process of realigning supervision of the school’s programs, functions, and staff previously delegated to the Foundation back under SCGSSM oversight.

Finding #2: The SCGSSM and Foundation have operated under an informal arrangement which resulted in a blended organizational structure. The failure to document this operational relationship either through a memorandum of understanding or operating agreement which delineates the roles and responsibilities of each entity has resulted in a lack of clarity in the relationship between each entity; the appropriate roles, responsibilities, and authorities; and the organizations’ missions may no longer be aligned.

Recommendation #2: The current process involving the development of an MOU should be completed collaboratively by the Foundation and SCGSSM, and be done following the recommended best practices found in various guidance on institution/foundation relationships, highlighted in this report and elsewhere with the primary goal of assuring mission alignment over time.

Finding #3: A communication issue has developed between the SCGSSM president and the Foundation CEO which has negatively affected each organization.

Recommendation #3: The Foundation CEO should re-engage with the SCGSSM president and school staff and work collaboratively to strengthen the relationship between the Foundation and SCGSSM following the principles and framework established by the president relative to outreach and marketing, and all other interrelationships between the two organizations.

Finding #4: The financial activities of the Foundation are not transparent to the SCGSSM. There is no affirmative process followed by the Foundation to provide basic financial information to the school, including audited financial statements, annual IRS information returns, and final yearly expenditures of those programs and activities managed by the Foundation. Over the last year there has been a hesitancy to provide specific requested information related to those functions delegated to the Foundation.

Recommendation #4: The Foundation should create processes to affirmatively provide full financial disclosure to the school on Foundation activities, consistent with any need to protect donor privacy. Requests from SCGSSM for supplemental information should be responded to promptly and in the spirit of sharing between affiliated, and collaborative entities working toward a common purpose.

Finding #5: SCGSSM utilized a Foundation bank account to deposit and expend student activity type funds and general, non-appropriated revenues. In doing so SCGSSM avoided certain state procurement and disbursement rules and regulations along with an increased administrative workload. Currently, general revenues are being processed through the SCGSSM system, but student activity funds continue to be deposited and expended through a new Foundation bank account, under the oversight of the Foundation. The Foundation is properly accounting for the funds as an agency fund due to SCGSSM. However, SCGSSM only records the transactions in a subsidiary ledger, but is not recognizing the complimentary asset amount in its accounting system. SCGSSM has received outside audit advice recommending the use of a composite reservoir checking account for the student activity type funds, and to seek certain procurement and disbursement exemptions allowed higher education for similar funds. SCGSSM has not pursued these recommendations.

Recommendation #5a: SCGSSM should eliminate the use of the Foundation bank account for student activity funds, pursue the recommendation of the outside auditor in seeking approval to institute the use of a composite reservoir bank account for those funds, and in all circumstances comply with state procurement and disbursement regulations.

Recommendation #5b: The Foundation should close the student activity bank account and transfer the balance of the existing funds being held on behalf of SCGSSM to the school's composite reservoir account when it is established.

Recommendation #5c: SCGSSM should seek a procurement exemption similar to that granted higher education, but with a limit appropriate to the average transaction size of the expenditures of the student activity funds.

Recommendation #5d: SCGSSM should recognize in its accounting system the balance as well as the inflows and outflows of student activity funds processed in the new Foundation bank account since its creation and going forward, as long as the Foundation account is in use.

Finding #6: The new student activity bank account appears to have maintained the majority of the \$30,308 balance transferred from the old account in February, 2016, and has not been reduced to near zero, which is expected at the end of a school year for a student activity account. The carry forward balance may actually have grown. SCGSSM staff advised any unspent funds from various activities and trips are carried over and spent at the discretion of the school sponsor for the original purpose. SCGSSM staff advised they typically do not have significant over collections or under collections on trips and activities and that refunds are rarely given. They also advised they keep records which show the breakdown of account's balance by individual activities and trips.

Recommendation #6a: SCGSSM should establish a formal policy on the handling of any over collections of student activity or trip funds recognizing the funds were requested and provided for a specific purpose and any excess funds should be refunded, unless the payers are advised in advance that nominal unspent amounts below a specific threshold may be retained for similar activities.

Recommendation #6b: SCGSSM staff should review their analysis of the balance of the student activity checking account and determine whether or not any portion of the balance should be refunded. The SCGSSM President should approve any unspent balances to be retained. Should any portion of the balance have resulted from non-student activity revenues, or general revenues inadvertently deposited to the account, that amount should be removed and deposited to the SCGSSM general revenue account.

Recommendation #6c: The school sponsor of a student activity or trip should not be given discretion over spending any over collections that are not refunded. Any over collections from a prior activity may be a component of the budget for a future similar activity and be considered in SCGSSM's normal management approval process for that activity.

Finding #7: The Foundation is utilizing its credit card payment handling process to receive credit card payments on behalf of SCGSSM for student activities and trips, and transferring those payments to the student activity bank account.

Recommendation #7: SCGSSM should establish a credit card payment handling process to accept those payments in conjunction with the opening of a composite reservoir bank account. Consideration should be given also to the practicality of utilizing payment card processing provided by the state contractor for the state government portal – SC.gov.

List of Appendices

A. Foundation Articles of Incorporation , By-Laws, and IRS Form 990-FY2016

B. SCGSSM Organizational Charts (2003 and 2014)

C. Joint Committee on Alignment Recommendations

D. SC Attorney General's Opinion, dated 8/22/2017

E. WebsterRogers LLP - Review of Foundation Bank Account Usage

(Appendices A – E located at Internet link:

https://oig.sc.gov/sites/default/files/Documents/Reports/2017/GSSM_Appendices_A-E.pdf)

F. SCGSSM Response to the Review

(Appendix F located at Internet link: https://oig.sc.gov/sites/default/files/Documents/Reports/2017/GSSM-Appendix_F_GSSM_Response.pdf)

G. Foundation Responses to the Review

(Appendix G located at Internet link:

https://oig.sc.gov/sites/default/files/Documents/Reports/2017/GSSM_Appendix_G_Foundation_Responses.pdf)

Appendix B



ALAN WILSON
ATTORNEY GENERAL

August 22, 2017

Mr. Brian D. Lamkin, Inspector General
Office of the Inspector General
111 Executive Center Drive
Suite 204
Columbia, SC 29210

Dear Inspector General Lamkin:

You have requested our opinion regarding “the authority of the Office of the State Inspector General (SIG) to conduct a review of a non-profit, charitable foundation created for the specific purpose of supporting a [publicly]-funded state agency.” By way of background, you provide the following information:

In March 2017, a member of the South Carolina Senate requested the SIG undertake a review of the organizational structure of the South Carolina Governor's School for Science and Mathematics (SCGSSM) and the South Carolina Governor's School for Science and Mathematics Foundation, Inc. (“GSSM Foundation”), which appeared to be a blended structure between the school and its non-profit supporting foundation. Specifically, the request pertained to reviewing the appropriateness of SCGSSM's publicly funded employees being supervised by employees of the non-profit GSSM Foundation. The SIG was asked to provide a review and opinion on the appropriateness of this structure.

Governing Statutes

The governing statutes for the SIG are found in S.C. Code of Laws, §1-6-10 through §1-6-100. The governing statutes for the SCGSSM are found in S.C. Code of Laws, §59-48-10 through §59-48-70.

SCGSSM

The SCGSSM was created in 1988 by the South Carolina General Assembly as a statewide special school for the purpose of providing accelerated instruction in science, technology, engineering, and math (STEM) in a residential setting for high school juniors and seniors in the State who are academically talented in the areas of science and mathematics. The school receives state appropriations each year to educate approximately 288 high school juniors and seniors in science and mathematics. The SCGSSM is overseen by an eleven-member Board of Trustees (“BoT”), which is comprised of nine members appointed by the Governor, the State

Superintendent of Education, and the Executive Director of the Commission on Higher Education. In addition, ex officio members include the provost or vice president for academic affairs from Clemson University, the University of South Carolina, and the Medical University of South Carolina, and the president of the GSSM Foundation.

Daily operations are overseen by a president of the school, who is hired by the SCGSSM BoT.

GSSM Foundation

The GSSM Foundation was incorporated in November 1988 as a non-profit corporation for educational and eleemosynary purposes. Among the stated purposes of the GSSM Foundation are the support for the charitable, educational, scientific, and outreach purposes of SCGSSM; to provide academic and other scholarships to students; to support the educational programs of SCGSSM; and “to build an endowment fund, the income from which would be expended annually by the Board for the exclusive benefit of the School.” (See [Appendix A](#))

The GSSM Foundation is overseen by a BoT and the daily operations are directed by a chief executive officer (CEO) who is hired by the GSSM Foundation BoT. The GSSM Foundation is staffed by approximately twelve employees, to include the CEO, none of whom are state employees. The GSSM Foundation does not receive any state appropriations for its operations and salaries.

SCGSSM and GSSM Foundation Structural Relationship

By statute, §59-48-20 (B)(1), the GSSM Foundation BoT president is an ex officio member of the SCGSSM BoT. However, the chief administrative officer for all SCGSSM affairs is the SCGSSM director. (See §59-48-50)

From approximately 2001 through his retirement in April 2016, SCGSSM was directed by President Murray Brockman. Following a national search, the SCGSSM BoT hired Dr. Hector Flores as the SCGSSM president in April 2016.

In 2005, Kim Bowman was hired as the GSSM Foundation CEO and continues in this capacity today. Between July 2010 and September 2010, Brockman gave Bowman the title of Executive Vice President (EVP) for Strategic Direction of SCGSSM. In July 2017, Dr. Flores named a new EVP and advised Bowman he intended to change her title to Vice President (VP) of Development for SCGSSM.

Over the course of Mr. Brockman's tenure, certain SCGSSM functions were delegated to the GSSM Foundation by agreement between him and Mrs. Bowman. Specifically, beginning on or about 2010, Mr. Brockman transferred the student recruitment program to the GSSM Foundation, which was followed by the outreach program in 2012, and the student admissions process in 2014. The transfer of the school's outreach and admissions programs included the realignment of the corresponding SCGSSM employees under Mrs. Bowman's supervision. The employees continued as SCGSSM employees with their salaries paid by the school through state appropriated funds.

Beginning in 2003, the SCGSSM organizational structure included direct supervision of GSSM Foundation activities associated with the school. Specifically,

the GSSM Foundation CEO at that time held the title of VP of Institutional Advancement. In addition, the GSSM Foundation BoT maintained an indirect oversight relationship of the SCGSSM through the SCGSSM BoT. (Appendix B)

In 2014, former President Brockman realigned the organizational structure to more clearly define EVP Bowman's SCGSSM role and supervision of SCGSSM employees. This organizational structure detailed the SCGSSM Board's oversight of SCGSSM, its president and EVP Bowman's role as it pertained to those programs previously delegated to the Foundation, as well as the realignment of SCGSSM employees associated with these programs. Furthermore, it provided clarity as to the oversight role of the GSSM Foundation BoT and differentiated its direct/indirect supervision of EVP Bowman and GSSM Foundation operations. (Appendix C)

GSSM Foundation Support to SCGSSM

The GSSM Foundation provides financial support to SCGSSM through ongoing fund-raising campaigns and the management of an endowment. By statute (§59-48-70), the General Assembly authorized SCGSSM to establish and maintain an endowment to support the school. This endowment was created through the incorporation of the GSSM Foundation and is maintained by the GSSM Foundation.

As a member of the SCGSSM leadership team, EVP/CEO Bowman is part of the strategic development process for the school, as well as the prioritization of programs in need of financial support from the Foundation. Each year, the school puts forth a financial support request to the Foundation based on anticipated needs in the forthcoming school year which are aligned with its strategic plan and priorities. This request is then presented to the GSSM Foundation BoT for consideration or modification. Approximately half of the financial support provided to SCGSSM is represented by expenditures made by the Foundation on behalf of the school for various programs and activities as opposed to direct transfers of funds to the school. Included in the support is the cost of Foundation employees allocated to the programs and activities.

In an April 2017 report to the GSSM Foundation BoT, EVP/CEO Bowman identified her many accomplishments throughout the 2016-17 fiscal year on behalf of the Foundation and the school. Among those identified were: (a) Government Affairs: presented before the education subcommittees in the House and Senate, and the Ways and Means committee for additional staffing of outreach coordinators; requested human resource staffing increases, admissions software and a new engineering building; hosted legislative breakfast for 42 General Assembly members and staff; (b) fundraising outcomes, to include an alumni and parent campaigns, as well as a satellite camps campaign; and (c) outcomes associated with SCGSSM programs, such as the "accelerate" engineering program, recruiting and admissions programs, as well as SCGSSM staffing oversight.

Consistent with EVP/CEO Bowman's roles and responsibilities to the GSSM Foundation, input was provided by former SCGSSM president Brockman on EVP/CEO Bowman's job performance, in particular as it pertained to the school's outsourced programs to the Foundation.

The working relationship between the school and the Foundation has matured over the years. With the increase in student enrollment to its full capacity of 288

students in grades 11 and 12, the complexity of this relationship has also increased. However, this relationship and intertwined organizational structure has never been memorialized through a Memorandum of Understanding (MOU) or operational agreement which specified the roles and responsibilities, and oversight of each entity, much less its leadership. Consequently, the 2016 change in leadership at SCGSSM exposed the pitfalls in not having this MOU in place. Most recently, the GSSM Foundation has refocused its efforts on priorities and programs not directly related to the strategic plan and priorities of SCGSSM. These have been initiated by EVP/CEO Bowman without the approval and the authority of the SCGSSM's leadership which is contrary to the Foundation's stated purposes.

Your questions are as follows:

1. The appropriateness of SCGSSM employees, who are publicly funded employees, being reassigned to the supervision of employees at a non-profit foundation;
2. The appropriateness of delegating publicly funded programs at the SCGSSM to a non-profit foundation; and
3. The SIG's authority to conduct a review of the GSSM Foundation, a non-profit educational and eleemosynary corporation, based upon its support to the SCGSSM.

Law/Analysis

Authority of SIG

We will first address your third question, whether the SIG possesses “authority to conduct a review of the GSSM Foundation, a non-profit educational and eleemosynary corporation, based upon its support of the SCGSSM.” We conclude that the SIG possesses such authority.

As you note, the governing statutes for the SIG are found in S.C. Code Ann. §§ 1-6-10 through 1-6-100. Section 1-6-20(B) provides that “[t]he State Inspector General is responsible for investigating and addressing allegations of fraud, waste, abuse, mismanagement, misconduct, violations of State or federal law and wrongdoing in agencies.” (emphasis added). An “agency” is defined by § 1-6-10(1) to mean:

. . . an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive department of state government, including administrative bodies. “Agency” includes a body corporate and politic established as an instrumentality of the State. “Agency” does not include:

- (a) the judicial department of state government;
- (b) quasijudicial bodies of state government;
- (c) the legislative department of state government;
- (d) political subdivisions.

Mr. Brian D. Lamkin, Inspector General
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There is little doubt that the SCGSSM is an “agency” pursuant to this broad definition. As you note, the enabling statutes for the SCGSSM are found at S.C. Code Ann. §§ 59-48-10 et seq. Section 59-48-10 provides:

[t]here is established a special school of science and mathematics for the purpose of fostering educational development of high school juniors and seniors in this State who are academically talented in the areas of science and mathematics and who show promise of exceptional development in these subjects.

(emphasis added). We have noted in an opinion that the Board of Trustees for the Governor’s School of Science and Mathematics is “clearly a ‘governmental body’ as defined in the Procurement Code in that the Procurement Code applies to ‘any state government . . . board. . .’” Op. S.C. Atty. Gen., 1987 WL 342736 (December 1, 1987).

The real question is whether the SIG also possesses the power to investigate the non-profit foundation, GSSM. Section 59-48-70 authorizes the SCGSSM to “establish and maintain an endowment fund for the school.” It is well recognized that

[o]ur courts have long held that an agency created by statute is limited to the authority granted to it by the Legislature. Med. Society of South Carolina v. Med. Univ. of South Carolina, 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999); Nucor Steel, a Div. of Nucor Corp. v. South Carolina Pub. Service Comm’n., 310 S.C. 539, 543, 426 S.E.2d 319, 321-22 (1992). “An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose. Bazzle v. Huff, 319 S.C. 443, 445, 472 S.E.2d 273, 274 (1995).

Op. S.C. Att’y Gen., 2006 WL 1207269 (April 14, 2006). And, in Carolina Water Service, Inc. v. S.C. Pub. Serv. Comm., 272 S.C. 81, 87, 248 S.E.2d 924, 927 (1978), the Court quoted with approval Beard-Laney, Inc. v. Darby, 213 S.C. 380, 49 S.E.2d 564 (1948), which stated:

[e]ven a governmental body of admittedly limited powers is not in a strait jacket in the administration of the laws under which it operates. Those laws delimit the field which the regulations may cover. They may imply or express restricting limitations of public policy. And of course they may contain express prohibitions. But in the absence of such limiting factors, it is not to be doubted that a body possesses not merely the powers which in terms are conferred upon it, but also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it. 49 S.E.2d at 567.

In this instance, the SIG possesses, pursuant to § 1-6-10 et seq., the express authority to investigate state agencies of which SCGSSM is one. The SCGSSM is given express power, pursuant to § 59-48-70 to “establish and maintain an endowment fund. . . .” Thus, it must be certainly implied that the SIG’s authority includes the operation of that endowment and whether state and federal laws concerning SCGSSM’s operation and maintenance are being complied

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with. Therefore, in our opinion, the SIG possesses authority to examine the operation of the GSSM Foundation, which has been created by SCGSSM.

Unlawful Delegation

Your other two questions involve the operation of the GSSM Foundation and its interaction with SCGSSM. In one instance, you are concerned with whether “publicly funded” programs at the SCGSSM may be delegated to GSSM, a non-profit corporation. We have addressed the governing law on this issue in previous opinions.

The seminal opinion regarding the authority of an administrative agency or body to delegate certain powers or authority to a private corporation in Op. S.C. Att’y Gen., 1985 WL 166051 (No. 85-81) (August 9, 1985). There, we addressed the authority of the Department of Corrections to operate a privately run prison. We stated:

. . . a private corporation ‘may be employed to carry a law into effect.’ 16 C.J.S., Constitutional Law § 137. As stated in Amer. Soc. P.C.A. v. City of N.Y., 199 N.Y. 728, 738 (1933),

While it is true that strictly governmental powers cannot be conferred upon a corporation or individual . . . still it has been held by a long line of decisions that such corporations may function in a purely administrative capacity or manner.

While ‘an administrative body cannot delegate quasi judicial functions, it can delegate the performance of administrative and ministerial duties...’ Krug v. Lincoln Nat. Life Ins. Co., 245 F.2d 848, 853 (5th Cir. 1957); see also 73 C.J.S. Public Adm. Law and Procedure, § 53; McQuillin, Municipal Corporations, § 29.08, n. 6. This is consistent with the law in South Carolina. See, Green v. City of Rock Hill, 149 S.C. 234, 270, 147 S.E. 346 (1929) (contract between a city and a private company for the control, management and operation of waterworks plant is valid). This law has been applied to analogous situations such as the administration of hospitals. . . .

[I]n Bolt v. Cobb, 225 S.C. 408, 415, 825 S.E.2d 789 (1954), [our] own Supreme Court upheld a contract between a county and a private entity for the ‘performance of a public, corporate function,’ i.e. medical services in the form of a hospital. . . . [I]n S.C. Farm Bureau Marketing Assoc. v. S.C. State Ports Auth., 278 S.C. 198, 293 S.E.2d 854 (1982), our Court found a contract between a private association and the State for the management and operation of a grain elevator and storage facilities to be constitutionally valid. As mentioned earlier, our Court has upheld a contract between a city and a corporation for the management of a water plant. Green v. City of Rock Hill, *supra*. See also 16 C.J.S., Constitutional Law, § 137 (a state may validly use a private corporation

as an agent for the treatment of inebriates). See also Murrow Indian Orphans Home v. Children, 171 P.2d 600 (Okl. 1946). In these instances, the governmental entity maintained supervision and control of the corporation by virtue of an contractual agreement.

Moreover, in State ex rel. Medlock v. South Carolina State Family Farm Development Auth., 279 S.C. 316, 306 S.E.2d 305 (1983), our Supreme Court dealt with the question of an alleged unlawful delegation “of governmental functions to private persons and institutions.” The Supreme Court explained that any such delegation was not unconstitutional because the Authority maintained control over the private entities:

[u]nder the Act the Authority may delegate the implementation of the loan programs to governmental agencies and financial institutions, but the Authority retains ultimate responsibility for the programs through regulation and contractual agreement with the lenders. A lending institution cannot loan Authority funds to someone not in the prescribed class nor to an unworthy credit risk. All loans must be made at an interest rate sufficient to pay principal and interest on the bonds and the Authority’s administrative costs. The Authority, not the lending institution, must determine that each loan is not otherwise available to the borrower on reasonably equivalent terms. The Authority determines whether and on what terms a loan may be assumed, whether to include a due-on-sale clause and the method of securing the loan. Each loan must comply with all the Authority’s regulations. In short, the Authority maintains final control over the management of its loan programs, while delegating the ministerial duties for which lending institutions possess the necessary organization and experience.

We have held that delegation of administrative and ministerial duties is not unconstitutional. Clarke v. S.C. Public Service Authority, et al., 177 S.C. 427, 181 S.E. 481 (1935); Green et al. v. City of Rock Hill, et al., 149 S.C. 234, 147 S.E. 346 (1929). Since the legislature in this instance delegated only administrative duties, the Act is not violative of Article III, § 1 of the South Carolina Constitution.

279 S.C. at 322, 306 S.E.2d at 609-10.

Thus, the answer to this question, as to any unlawful delegation, will obviously depend upon the facts – i.e. what powers have actually been delegated. This Office is unable to resolve factual issues in an opinion. See e.g. Op. S.C. Att’y Gen., 1999 WL 986738 (September 3, 1999). However, it is clear from the foregoing authorities that an administrative agency may delegate only ministerial or administrative functions and may not delegate the powers which the General Assembly has delegated to it. In short, a private entity may assist the agency, but cannot replace it. Accordingly, “publicly funded programs” may not be delegated by SCGSSM.

Supervision of SCGSSM Employees

Your final question relates to “the appropriateness of SCGSSM employees, who are [publicly] funded employees, being reassigned to the supervision of employees at a non-profit foundation.” This is not appropriate, in our opinion.

It is well known that many state colleges and universities, as well as state agencies, have established foundations for the support of the agency’s mission. We have addressed the authority of a particular agency to create such a foundation in various opinions. See Op. S.C. Att’y Gen., 2014 WL 4787521 (September 21, 2014) (Fifth Circuit Solicitor’s Office, Op. S.C. Att’y Gen., 2004 WL 2451471 (October 22, 2004) (Hunley Commission)); Op. S.C. Att’y Gen., 2006 WL 148723 (January 11, 2006) (Union County); Op. S.C. Att’y Gen., 1997 WL 87934 (January 16, 1997). Each of these Opinions addressed the enabling statute or statutory authority of the agency or political subdivision and determined if that agency possessed the requisite authority to create the foundation or endowment.

In South Carolina, the creation of such foundations has been occurring for many years. Audits have been highly critical over time as to the merging of functions, employees and revenues between the foundation and the agencies. Over thirty years ago, the Legislative Audit Council issued a comprehensive report, entitled “A Review of the Relationship Between State Agencies and Associated Endowments,” (March 2, 1983). There, the Audit Council stated the purpose of its Report as follows:

[d]espite the fact that private endowments are separate from associated agencies, it has been a matter of concern that operations often are not independent. The adequacy of controls has been brought into question, ensuring that legislative intent is not circumvented through resources made available to agencies outside State oversight.

Report at 10. The Report made a number of recommendations including that “State agencies should strictly adhere to statutes and regulations governing their relationship to privately chartered endowments by operating ‘at arm’s length.’” Report at 3. In this regard, the Audit Council identified three major problems in this regard:

- (1) the intermingling of State resources and private endowment funds,
- (2) the diversion of State funds and resources to private endowments,
- and
- (3) the fact that agency personnel serve on endowment boards.

Consistent with the Audit Council Report, we have stated in the past that “this Office has issued previous opinions concluding that public funds may not be issued to private foundations or other such corporations except payment for goods and services unless the agency has specific statutory authority.” Op. S.C. Att’y Gen., 2014 WL 4787521 (September 12, 2014), (citing Ops. Att’y Gen., 2000 WL 1205928 (May 1, 2000); 1993 WL 720111 (May 21, 1993); 1976 WL 23033

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(August 3, 1976); 1973 WL 21052 (August 10, 1973)). In addition, we have commented on your specific question as follows:

[t]he use of agency employees as part of their prescribed duties to assist the Foundation would also be for a valid public purpose presuming the agency maintains sufficient supervision and control over the employees of its agency [citing cases]. . . . The appropriation of public funds to these private entities is, in effect, in effect, an exchange of value which results in the performance by those entities of a public function for the State [citing cases]. . . .

Op. Att’y Gen., Nov. 16, 1983. The same reasoning of the above Opinion would also apply as well to the use of an agency’s employees by a nonprofit corporation for a public purpose. Of course, the agency or agencies in question must at all times maintain adequate supervision and control over such employees in carrying out the assigned tasks and you would want to avoid the situation where the Foundation or nonprofit corporation possesses ultimate control over State employees.

Moreover, in carrying out this proposal, I would advise that you must be careful to insure that all State Personnel regulations and statutes are complied with in full. I would suggest that you may wish to speak with legal counsel at State Personnel in this regard. While I am satisfied that PRT possesses sufficient legal authority to create the nonprofit corporation and agency employees can be used in carrying out the public purpose enumerated above, so long as supervision and control is maintained, the day to day details of carrying out the project would need to be carefully monitored by your own counsel as well as State Personnel officials to insure that all pertinent rules and regulations are complied with. . . .

Op. S.C. Att’y Gen., 1997 WL 87934 (January 16, 1997) (emphasis added). Thus, an agency cannot be placed in the position of Foundation employees supervising the employees of that agency.

Conclusion

Based upon the foregoing authorities, our conclusions are as follows:

1. SIG possesses authority to conduct a review of the GSSM Foundation. The Foundation was created by SCGSSM pursuant to its statutory authority. Thus, the Foundation, created by the agency, which is subject to SIG review, is also subject to investigation and review by the SIG.
2. The SCGSSM may only delegate ministerial or administrative duties to the GSSM Foundation. Even then, such ministerial or administrative delegation is subject to SCGSSM oversight and supervision. Certainly, SCGSSM may not constitutionally

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delegate its legislatively created authority to the Foundation. Thus, “publicly funded programs” may not be delegated to the Foundation.

3. As we stated in our 1997 Opinion, an agency “must at all times maintain adequate supervision and control over [the agency’s employees] in carrying out the assigned tasks and . . . avoid the situation where the Foundation or nonprofit corporation possesses ultimate control over State employees.” We believe it best, as recommended by the Audit Council, for the agency to maintain an “arms length” relationship.

The creation of a non-profit foundation can serve a valuable purpose in assisting an agency in carrying out its mission. However, legal concerns arise when the Agency loses its ability to supervise and control, or when the function of the Agency and the Foundation become blurred. The tail cannot wag the dog. In short, it is the Agency to which the General Assembly has assigned particular functions, not to the Foundation. The Agency cannot allow the Foundation to perform its legislatively assigned powers.

Sincerely,



Robert D. Cook
Solicitor General

Appendix C

Article 29.

The North Carolina School of Science and Mathematics.

§ 116-230.1. Policy.

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills and careers in science and mathematics among the people of the State.(1985, c. 757, s. 206(b); 2006-66, s. 9.11(j).)

§ 116-231. Reestablishment of the North Carolina School of Science and Mathematics as a Constituent High School of The University of North Carolina.

The North Carolina School of Science and Mathematics is hereby reestablished, as a constituent high school of The University of North Carolina, and shall be governed by the Board of Governors as prescribed in this Chapter and a Board of Trustees as prescribed in this Article.(1985, c. 757, s. 206(b); 2006-66, s. 9.11(k).)

§ 116-232. Purposes.

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development and global leadership through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; and to provide instruction, methods, and curricula designed to improve teaching and learning in North Carolina and the nation with an emphasis on distance education and programs that expand pathways for students into careers in science and mathematics.(1985, c. 757, s. 206(b); 2006-66, s. 9.11(l).)

§ 116-233. Board of Trustees; appointment; terms of office.

(a) Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of up to 30 members as follows:

- (1) Thirteen members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district.
- (2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina.
- (3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter.
- (4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter.
- (5) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. (1985, c. 757, s. 206(b); 1991 (Reg. Sess., 1992), c. 879, ss. 1, 2; 1995, c. 490, s. 45; c. 509, s. 65; 2003-57, ss. 1, 2; 2006-66, s. 9.11(m); 2007-278, s. 4; 2015-30, s. 1; 2016-126, 4th Ex. Sess., s. 36.)

§ 116-234. Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least three times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) Notwithstanding the provisions of G.S. 116-32, the Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3) and G.S. 116-233(a)(8), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) and G.S. 116-233(a)(8) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b); 1995, c. 509, s. 66; 2006-66, s. 9.11(n); 2015-30, s. 2.)

§ 116-235. Board of Trustees; additional powers and duties.

(a) In addition to the powers enumerated in Chapter 116, Article I, Part 3, the Board of Trustees shall have the powers and duties set out in this section.

(a1) Academic Program. –

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term.

(b) Students. –

(1) Admission of Students. – The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the Armed Forces, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified applicants is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of qualified applicants offered

admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

- (2) **School Attendance.** – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The Chancellor of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.
- (3) **Student Discipline.** – Rules of conduct governing students of the School shall be established by the Board of Trustees. The Chancellor, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) through (h) Repealed by Session Laws 2006-66, s. 9.11(s), effective July 1, 2007.

(i) **The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance.** – The Board of Trustees shall adopt policies to require (i) the display of the United States and North Carolina flags in each classroom when available, (ii) the recitation of the Pledge of Allegiance on a daily basis, and (iii) the instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1; 2002-126, s. 9.12(c); 2005-318, s. 2; 2005-445, s. 8.1; 2006-66, ss. 9.11(o)-9.11(s); 2006-137, s. 5; 2011-183, s. 88.)

§ **116-236:** Repealed by Session Laws 2006-66, ss. 9.11(t) through 9.11(v), effective July 1, 2007.

§ **116-237:** Repealed by Session Laws 2006-66, ss. 9.11(t) through 9.11(v), effective July 1, 2007.

§ **116-238:** Repealed by Session Laws 2006-66, ss. 9.11(t) through 9.11(v), effective July 1, 2007.

§ **116-238.1:** Repealed by Session Laws 2009-451, s. 9.6(b), effective July 1, 2014.

§ **116-238.5:** Repealed by Session Laws 2007-484, s. 30, effective August 30, 2007.

§ **116-239:** Reserved for future codification purposes.

§ 116-239.1: Reserved for future codification purposes.

§ 116-239.2: Reserved for future codification purposes.

§ 116-239.3: Reserved for future codification purposes.

§ 116-239.4: Reserved for future codification purposes.

Appendix D

Required Elements of University-Associated Entity Relationship

The University of North Carolina encourages the establishment of private organizations, known for purposes of these regulations as Associated Entities, to support the constituent institutions and other units of the University, consistent with G.S. 116-30.20. Associated Entities engage in activities that are critical to and aligned with the mission, goals, and objectives of the constituent institutions and institutional units with which they are associated. Activities undertaken by Associated Entities include fundraising, provision of services to students and campus organizations, research support, and collaborating with organizations outside the University to promote and support initiatives and activities that are related to the University's mission of teaching, research, and service. Associated Entities and the constituent institutions and units of the University with which they are associated rely on the dedicated guidance, support, and leadership of Associated Entity directors, officers, donors, and volunteers to pursue shared goals and objectives.

Each Associated Entity becomes affiliated with either a constituent institution or General Administration pursuant to the written approval of the chancellor (in the case of an entity associated with a constituent institution) or the president (in the case of an entity associated with General Administration). Associated Entities are in turn, subject to the direction of the applicable Associated Entity's governing body and provide funding and other support to the Approving Institution. In recognition of and to facilitate such support, Associated Entities are permitted in accordance with these regulations and pursuant to written agreements with Approving institutions, to represent that they are affiliated with the University or a constituent institution. In addition, many Associated Entities benefit from resources of the constituent institution in carrying out their activities.

These regulations establish a framework of cooperation and coordination within which the chancellor or the president of the Approving Institution are expected to structure the Approving Institution's engagement with its Associated Entities. The authority and responsibility for establishing and maintaining cooperative and mutually beneficial relationships between the Approving Institution and its Associated Entities rests with the chancellor or, as the case may be, the president, of the applicable Approving Institution. These regulations recognize the independence of each Associated Entity as an organization that is separate from the Approving Institution, while ensuring the Approving Institution maintains essential oversight and control over the Approving Institution's name, marks, resources, and activities that could impact accreditation standards, and compliance responsibilities applicable to the Approving Institution. Further, these regulations recognize that funds raised by Associated Entities are to be used to support the Approving Institution consistent with donor intent and applicable law. Accordingly, these regulations articulate standards for governance and operations of Associated Entities in their support of and interaction with their Approving Institutions, and create pathways of communication to ensure that the University and its constituent institutions are informed about the activities of its Associated Entities so that those activities remain aligned with the mission, goals, and objectives of the Approving Institution. The president adopts these regulations to apply to any University Associated Entity.

A. Definitions. As used in these regulations:

1. An "Associated Entity" means any foundation, association, corporation, limited liability company (LLC), partnership, or other nonprofit entity that was: (a) established by officers of the University; or (b) that is controlled by the University; or (c) that raises funds in the name of the University; or (d) that has a primary purpose of providing services or conducting activities in furtherance of the University's mission pursuant to an agreement with the University; or (e) that has a tax-exempt status that is based on being a support organization for the University.
2. An "Athletically Related Associated Entity" means an Associated Entity that supports or conducts activities in furtherance of an Approving Institution's intercollegiate athletics program, as determined by the chancellor of the Approving Institution.

3. "Approving Institution" means (a) a constituent institution of the University of North Carolina that approves an Associated Entity, or (b) the General Administration for an Associated Entity approved by the president.
4. "General Administration" means the Office of the President and the affiliated programs of the University associated with General Administration that are not centers or institutes of a constituent institution.
5. "Major Associated Entity" means an Associated Entity which has annual expenditures of \$100,000 or more.
6. "Minor Associated Entity" means an Associated Entity which has annual expenditures of less than \$100,000.
7. "Special Purpose Entity" means an Associated Entity (including any approved subsidiary or affiliate of an Associated Entity) that is: (a) established by an Approving Institution or is controlled by an Approving Institution; (b) undertakes a specified activity for the Approving Institution as its sole purpose (e.g., constructing or managing facilities, research development, or intellectual property management); and (c) does not engage in fundraising activities.
8. "State" means the State of North Carolina.
9. "University" means the University of North Carolina, including its constituent institutions.
10. When "president or chancellor" is used in these regulations, it means the chancellor if the Approving Institution is a constituent institution and it means the president if the Approving Institution is the General Administration.

B. Creation and Approved Status of Associated Entities

1. **Associated Entity Must be Approved.** An Associated Entity (including any subsidiary or affiliate of an existing Associated Entity) must be approved in writing by the president, the chancellor, or the president's or chancellor's designee. An Associated Entity must be approved in order to receive University-provided services or to be able to use any University names, logos, or marks.
2. **Abide by Relevant University Policies; Alignment with Mission and Goals.** In order to obtain approved status, the Associated Entity must agree, pursuant to a written agreement also described in subpart F.1., to abide by the policies or regulations established by the University and by the Approving Institution, including the requirements of these regulations, and to assure that the activities of the Associated Entity align with the mission, goals, and standards of or applicable to the Approving Institution, including accreditation standards applicable to institution-related entities, and athletics conference standards applicable to intercollegiate athletics programs. Approving Institutions should make reasonable efforts to notify Associated Entities of the accreditation standards, athletic conference standards, and/or the institutional policies that may affect Associated Entities' operations.
3. **Removal of Approved Status.** The head of the Approving Institution may adopt policies or provide in written agreements with any Associated Entity that an Associated Entity's approved status shall be removed only upon advance written notice specifying material noncompliance with or breach of: (a) these regulations; (b) the applicable policies of the University and the Approving Institution; or (c) the written agreement required by sections B.2., or F.1. The advance written-notice period, if any, required by a written agreement or policy shall not exceed sixty (60) days, during which time the Approving Institution may consider and accept or reject a corrective action plan submitted by the Associated Entity. In the absence of any such authorized provision in the Approving Institution's written agreement with the Associated Entity and/or the Approving Institution's policies, the head of the Approving Institution may remove the approved status of an Associated Entity of that Approving Institution.
4. **Compliance with Policies, Regulations, and Agreements.** The head of the Approving Institution (chancellor or president) shall be responsible for taking reasonable steps to ensure that the Approving Institution and its Associated Entities operate in accordance with all requirements of these regulations, the applicable policies of the University and the Approving

Institution, and the written approvals and agreements between the Approving Institution and each Associated Entity.

C. Organizational Requirements of an Associated Entity

1. **Purpose to Benefit University.** The Associated Entity must be organized for the primary purpose of (a) supporting the University or one or more of its constituent institutions or programs, and/or (b) conducting activities that are in furtherance of the mission of the University or of one or more of its constituent institutions or programs.

2. **State Nonprofit Entity.** The Associated Entity must be organized on a nonprofit basis as a separate legal entity recognized under and in compliance with North Carolina law. If a constituent institution proposes to establish or approve an Associated Entity on a for-profit basis, it must receive prior approval from the Board of Governors.

3. **Tax-Exempt Status.** Except as provided in paragraph C.2. (concerning Associated Entities established on a for-profit basis), an Associated Entity must either (a) apply for, receive, and maintain both federal and State tax-exempt status, or (b) be eligible to utilize the tax-exempt status of one or more constituent institutions or tax-exempt Associated Entities.

4. **Dissolution of Associated Entity.** The Associated Entity's governing documents including but not limited to the articles of incorporation or by-laws if a corporation, and the articles of organization or operating agreement if a limited liability company, must address dissolution and provide that upon dissolution of the Associated Entity, unless otherwise designated by the donor of an asset, all of its assets will revert to (a) the Associated Entity's Approving Institution, (b) another Associated Entity named in the governing documents of the dissolving Associated Entity, which Associated Entity shall be approved by the same Approving Institution as the dissolving Associated Entity, and/or (c) some combination of the above.

5. **Requirements for Members of Associated Entity Governing Body; Board Members for Athletically Related Associated Entities**

a. **All Associated Entities.** At least one senior academic or administrative officer (SAAO) of the Approving Institution or a designee of the president or the chancellor of the Approving Institution must sit as an ex-officio (either voting or nonvoting) or regular member of the Associated Entity's governing body.

b. **Athletically Related Associated Entities.** Prior to appointing members to serve on the governing body of an Athletically Related Associated Entity, the president or chair of the Athletically Related Associated Entity's governing body shall consult with the chancellor of the Approving Institution concerning such appointment.

6. **Audit Committee Required**

a. **A Major Associated Entity's by-laws** must provide for a standing audit committee or other committee with an audit function. The audit committee must receive the report of the individual or firm that conducts the Associated Entity's annual audit and relevant tax forms to be submitted by the Associated Entity.

b. **A Minor Associated Entity's by-laws** must provide for a committee which has these audit functions.

c. **No employee of the Associated Entity** may serve on an audit committee or a committee with an audit function. If practical, each audit committee or committee with an audit function should have a financial expert as a member.

d. **A Special Purpose Entity** is not required to have an audit committee provided that it is subject to independent audit at the request of one or more designated trustees, sureties, insurers, certificate holders or bondholders, or is audited during the Approving Institution's audit.

e. **A single member LLC** is not required to have an audit committee provided its operations are audited in connection with the audit of the member.

D. Financial and Accounting Controls

1. **Sound Accounting and Business Principles.** An Associated Entity must use sound fiscal and business principles, ensure that a sound internal control structure is in place, and follow generally accepted accounting procedures.
2. **Annual CPA Audit.** A Major Associated Entity and its single member subsidiaries (LLC or corporations) must be audited on an annual basis by an independent CPA firm in good standing with the North Carolina Board of CPA Examiners and with substantial experience in performing audits for organizations of similar scope and complexity to the Major Associated Entity. A Minor Associated Entity must have an annual audit conducted either by the Approving Institution's internal auditor, another University internal auditor, or an independent CPA firm. A Special Purpose Entity must be audited every two years. A Special Purpose Entity which has annual expenditures of \$100,000 or more must be audited by an independent CPA firm. A CPA firm providing an audit for a Major Associated Entity may not provide nonauditing services to the Associated Entity other than tax preparation services that are preapproved by the audit committee.
 - a. An Associated Entity of a constituent institution must provide copies of the audit report, management letters, and responses to management letters to the chancellor of the Approving Institution, through the chancellor to the governing board of the Approving Institution and the president, and through the president to the Board of Governors.
 - b. An Associated Entity of the General Administration must provide copies of the audit report, management letters, and responses to management letters to the president, and through the president to the Board of Governors.
3. **Annual Budgets.** Each Associated Entity must create an annual operations and capital budget. If requested to do so, an Associated Entity shall meet with the head of the Approving Institution (or designee) to review the Associated Entity's proposed annual operations and capital budget, and any subsequent proposed material changes to such annual operations and capital budget. Each Associated Entity in setting its budget shall consider in good faith all suggestions offered by the head of the Approving Institution (or designee) regarding the proposed budget of the Associated Entity and how the budget might be better aligned with the mission, goals, and objectives of the Approving Institution.
4. **Officer and Employee Compensation.** All salary and nonsalary compensation provided by the Associated Entity to its officers or employees must be approved by the Associated Entity's governing board. The Associated Entity must comply with Board of Governors Policy Section 300.1.1 concerning the prohibition of payments to specified University employees. This requirement does not prohibit the Associated Entity from reimbursing its officers or employees for expenditures made on behalf of the Associated Entity. Each Athletically Related Associated Entity shall, if requested, make available for inspection information detailing the salary and nonsalary compensation and reimbursements provided to each officer and each employee of the Associated Entity and each employee of the University assigned to the Associated Entity for the prior year.
5. **Indemnification of University.** The Approving Institution may require an Associated Entity to indemnify and hold the Approving Institution and the University harmless from any damages or liabilities that the Approving Institution or the University incurs as a result of the Associated Entity's actions.
6. **University-Associated Entity Monetary Transfers.** All transfers of funds from the Associated Entity to the University or to the Approving Institution must be documented in writing or electronically in a form that has a retrievable transaction trail. Each Athletically Related Associated Entity shall, if requested by the chancellor of the Approving Institution, submit an annual report summarizing transfers of funds from the Associated Entity to the Approving Institution or to third parties for the benefit of the Approving Institution for the prior year.
7. **Whistleblower Protection.** An Associated Entity must have a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the entity's financial management and must prohibit punishment of or retaliation against any employee for reporting problems.

8. **Chief Executive Officer.** The chief financial officer of the Approving Institution may not be the chief executive officer of an Associated Entity.

9. **Acquisition of Debt.** A Minor Associated Entity may not acquire debt in excess of \$100,000 that is not to be publicly traded without first notifying the president or the chancellor or designee of the Approving Institution and consulting with the vice president for finance of the University. A Major Associated Entity may not acquire debt in excess of \$500,000 that is not to be publicly traded without first notifying the president or the chancellor or designee of the Approving Institution and consulting with the vice president for finance of the University. In determining the level of scrutiny to give to the proposed transaction, the vice president shall take into account the amount of the debt in relationship to the Associated Entity's assets and income and the extent of experience of the Associated Entity in entering into similar debt transactions. A Special Purpose Entity that issues debt to construct facilities for the University must provide a financial or construction audit to the vice president for finance of the University at the vice president's request or to the governing board of the Approving Institution at the request of the chair of the governing board.

10. **Audit Findings.** Within 90 days of the issuance of an audit report with audit findings, the Associated Entity must demonstrate to the president or the chancellor of the Approving Institution and to the vice president for finance that satisfactory progress has been made to implement a corrective action plan. Failure of an Associated Entity to receive an unqualified audit opinion, to comply with the reporting requirements of this regulation, or to satisfactorily implement a corrective action plan in response to an audit finding may result in the Associated Entity's losing its approved status.

E. Insurance and Bonding

1. **Bonding Required.** Officers and employees of Major Associated Entities who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Associated Entity's governing body, in collaboration with the Approving Institution. The governing body of a Minor Associated Entity should consider requiring bonding of appropriate employees.

2. **Insurance.** The governing body of an Associated Entity, working in collaboration with the Approving Institution's insurance and risk management personnel, should evaluate the potential risks arising from the operation of the Associated Entity and obtain commercially reasonable amounts of general liability and directors'/officers' insurance.

F. Provision of Administrative and Other Services by University for Associated Entity

1. **Written Agreement Required.** The Associated Entity must enter into a written agreement with the Approving Institution in which the Associated Entity agrees to abide by the policies and regulations established by the University and by the Approving Institution. An Associated Entity may only use University or constituent institution assets, facilities, and personnel pursuant to the terms of the written agreement.

2. **Reimbursement of Costs.** Any reimbursement to the Approving Institution or the University for services the Approving Institution or the University provides to the Associated Entity must be made pursuant to a written agreement between the University or the Approving Institution and the Associated Entity entered into before the service is provided.

3. **Control of University Personnel.** When University personnel provide services for the Associated Entity and there arises a conflict between the University and the Associated Entity, the University's employee must comply with the policies, regulations, and directives of the University.

G. Acceptance of Gifts by Associated Entity

1. **Direction and Control of Fundraising and Development Activities.** The fundraising and development activities of the Associated Entity shall be conducted subject to the policies and regulations of the Approving Institution and the University and coordinated with the Approving Institution's development office. Absent prior approval from the Approving Institution, the Associated Entity may not engage in fundraising or development activities that impose obligations on the Approving Institution, or receive gifts that impose obligations on the Approving Institution.
2. **Restricted or Conditional Gifts that Require University Approval.** An Associated Entity may not accept any restricted or conditional gifts that impose an obligation on the University or the Approving Institution or the State to expend resources in addition to the gift or that impose an obligation on the University's or the Approving Institution's operations without the Approving Institution's prior approval. In addition, an Associated Entity may not accept a gift which has any restriction that is unlawful.
3. **Notification to Donors of Restricted Gift Policies.** An Associated Entity must advise prospective donors of all restricted or conditional gifts to the Associated Entity if acceptance of the gift is conditioned upon the Approving Institution's approval.

H. Conflict of Interest and Ethics Policies

1. **Policies Required.** The Associated Entity must have in place conflict of interest and ethics policies, as approved by the Approving Institution, pertaining to relationships between the Approving Institution, the Associated Entity, members of the governing body of the Associated Entity and persons doing business with the Associated Entity, and establishing required ethical standards for the members of the governing body and employees of the Associated Entity.
2. **Transactions Between Associated Entity and its Employees.** All transactions (other than reimbursements as provided in section D.4.) between the Associated Entity and an individual member, manager, officer, director, or employee of the Associated Entity must be approved by the Associated Entity's governing body. For the avoidance of doubt, only an individual designated as a member pursuant to state law shall be considered a "member" for purposes of this section.
3. **Recusal from Business Decisions.** No Associated Entity individual member, manager, officer, director, or employee having a private business interest in an Associated Entity business transaction may be involved in the decision with respect to whether the Associated Entity should enter into such transaction.
4. **Associated Entity Scholarships.** No Associated Entity scholarship or fellowship award may be made to an individual member, manager, officer, director, or employee of the Associated Entity or to a family member of such person unless the recipient of the award is determined by an independent awards committee or is overseen by the Approving Institution's Financial Aid and Scholarship Office. For the avoidance of doubt, only an individual designated as a member pursuant to state law shall be considered a "member" for purposes of this section.

I. Reports Required to be Submitted by Associated Entity to University

1. The Associated Entity must file annual reports with the president or chancellor of Approving Institution covering the following items:
 - a. A list of all members of the Associated Entity's governing body;
 - b. A copy of the publicly disclosed portion of the Associated Entity's Form 990, or other series 990 form or other similar information return; and
 - c. A copy of the Associated Entity's CPA audit report and related management letters and responses to management letters.
2. At the request of the chancellor, president, or the chair of governing body of the Approving Institution, the Associated Entity must meet with the requesting person, his or her designee, or the internal auditor of the Approving Institution and allow that person to inspect any information requested.

J. Miscellaneous Requirements

1. **Associated Entity Communications.** An Associated Entity must conduct business in its own name and all correspondence, advertisements, and other communications by the Associated Entity must clearly indicate that the communication is from the Associated Entity, and not from the Approving Institution or the University.
2. **Lobbying and Political Activities.** An Associated Entity must comply with all provisions of the Internal Revenue Code and all State laws regarding lobbying and political activity.
3. **Associated Entity Courses and Seminars.** An Associated Entity may not offer any course or seminar in which the University's name is used without first obtaining the permission of the institution(s) whose name(s) will be used.
4. **Record Retention Schedule.** An Associated Entity must have a policy governing retention and destruction of documents including electronic files and which prohibits destruction of documents if an audit other than in the ordinary course, investigation into wrongdoing, or litigation is anticipated or underway.

K. Waiver

If the application of any of the requirements of these regulations to a particular Associated Entity in specific circumstances is of limited benefit and is unduly burdensome, the president may waive that requirement as to that specific Associated Entity under circumstances that are set out in writing and supported by the Approving Institution.

L. Effective Date

Every Associated Entity shall be in compliance with these regulations no later than July 1, 2015.