

Policy concerning Prudent Management of Chatham Education Foundation Funds

In accordance with NJ P.L. 2009, Chapter 64

Approved by Board of Trustees 12/12/2013

1. a. Subject to the intent of a donor expressed in a gift instrument, Chatham Education Foundation, in managing and investing an institutional fund, shall consider the charitable purposes of Chatham Education Foundation and the purposes of the institutional fund.
- b. In addition to complying with the duty of loyalty imposed by law, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- c. In managing and investing an institutional fund, Chatham Education Foundation:
 - (1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
 - (2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
- d. Chatham Education Foundation may pool two or more institutional funds for purposes of management and investment.
- e. Except as otherwise provided by a gift instrument, the following apply:
 - (1) In managing and investing an institutional fund, the following factors, if relevant, shall be considered:
 - (a) general economic conditions;
 - (b) the possible effect of inflation or deflation;
 - (c) the expected tax consequences, if any, of investment decisions or strategies;
 - (d) the role that each investment or course of action plays within the overall investment portfolio of the fund;
 - (e) the expected total return from income and the appreciation of investments;
 - (f) other resources of Chatham Education Foundation;
 - (g) the needs of the Chatham Education Foundation and the fund to make distributions and to preserve capital; and
 - (h) an asset's special relationship or special value, if any, to the charitable purposes of Chatham Education Foundation.
 - (2) Management and investment decisions about an individual asset shall be made in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the

fund and to Chatham Education Foundation, and shall not be made in isolation from these considerations.

(3) Except as otherwise provided by law, Chatham Education Foundation may invest in any kind of property or type of investment consistent with this policy.

(4) Chatham Education Foundation shall diversify the investments of an institutional fund unless Chatham Education Foundation reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, Chatham Education Foundation shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of Chatham Education Foundation as necessary to meet other circumstances of Chatham Education Foundation.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

2. a. Subject to the intent of a donor expressed in the applicable gift instrument, Chatham Education Foundation may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by Chatham Education Foundation. In making a determination to appropriate or accumulate, Chatham Education Foundation shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of Chatham Education Foundation.

b. To limit the authority to appropriate for expenditure or accumulate under subsection a. of this section, a gift instrument shall specifically state the limitation.

c. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income,” “interest,” “dividends,” or “rents, issues, or profits,” or “to preserve the principal intact,” or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection a. of this section.

3. a. Subject to any specific limitation set forth in a gift instrument or in law, Chatham Education Foundation may delegate to an external agent the management and investment of an institutional fund to the extent that Chatham Education Foundation could prudently delegate under the circumstances. Chatham Education Foundation shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of Chatham Education Foundation and the institutional fund; and

(3) periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the scope and terms of the delegation.

b. In performing a delegated function, an agent shall owe a duty to Chatham Education Foundation to exercise reasonable care to comply with the scope and terms of the delegation.

c. Chatham Education Foundation recognizes that provided it complies with subsection a. of this section, it shall not be liable for the decisions or actions of an agent to which the function was delegated.

d. Chatham Education Foundation may delegate management and investment functions to its committees, officers, or employees as authorized by law.

6. a. If the donor consents in a record, Chatham Education Foundation may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund, so long as the release or modification does not allow a fund to be used for a purpose other than a charitable purpose of Chatham Education Foundation.

b. In accordance with NJ P.L. 2009, Chapter 64, a NJ court, upon application of Chatham Education Foundation, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the

fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. Chatham Education Foundation shall give notice to the NJ Attorney General in accordance with the Rules of Court of the application. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

c. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purpose of the institution or charitable intent of the donor. The institution shall give notice to the Attorney General of the application in accordance with the Rules of Court.

d. If Chatham Education Foundation determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, Chatham Education Foundation may, following 60 days notice to the NJ Attorney General, release or modify the restriction, in whole or in part, if:

- (1) the institutional fund subject to the restriction has a total value of less than \$250,000;
- (2) more than 20 years have elapsed since the fund was established; and
- (3) the institution uses the property in a manner consistent with the charitable purpose expressed in the gift instrument.

Definitions:

"Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose, the achievement of which is beneficial to the community.

"Endowment fund" means an institutional fund or any part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

"Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

"Institution" means: a person, other than an individual, organized and operated exclusively for charitable purposes; a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and a trust that had both charitable and non-charitable interests, after all non-charitable interests have terminated.

“Institutional fund” means a fund held by Chatham Education Foundation exclusively for charitable purposes. The term does not include: program-related assets; a fund held for an institution by a trustee that is not an institution; or a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, for-profit corporation, non-profit corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.