SHIPMAN

TO: Dr. Joseph Macary, Superintendent, Middletown Public Schools
Policy Committee Members, Middletown Board of Education
Board Members, Middletown Board of Education

FROM: Dori Pagé Antonetti. Shipman & Goodwin, LLP

RE: Policy Manual Revision - Model Policy Project

DATE: October 2, 2026; Updated October 31, 2026

We write in response to your request for a legal opinion concerning the conversion by the Middletown Board of Education ("Board") to the Shipman & Goodwin Model Policy system ("Model Policies"). Specifically, you have asked us to provide you with our legal opinion concerning the use of policies to direct the operation of a school district and how the Board can transition to the Model Policies as its policy system. We provide the summary and analysis below for the Board and the Policy Committee's consideration and are happy to answer any additional questions you may have.

Policy Systems

I. Board Policies - Legal Standards

Boards of education are charged with the responsibility for adopting policies, which serve as "legislation" to regulate the affairs of the school district. The circumstances of an individual school district will determine how important a particular policy will be for that district; some policies are required by law, while others are highly advisable. In any event, it is important that boards of education regularly review their policies to ensure that they meet current legal requirements and that they are serving the best interests of the school district.

Aside from statutory requirements, boards of education are well-advised to develop policies to guide school officials in the daily operation of the school district. A board of education has a duty to be consistent in dealing with people. To do otherwise would subject the board to constitutional claims because people have the right to equal protection of the laws from governmental agencies, such as boards of education. For example, some districts permit students who move out of district during a school year to complete the semester or year in the district without paying tuition. A written policy can be invaluable in such situations to guide administrators and to inform parents as to the rules applicable in such a situation. Many boards of education also adopt policies that set expectations for staff members, such as acceptable use policies and codes of conduct. While not required by statute, such policies serve the important purpose of establishing expectations, putting staff members on notice of applicable rules, and guiding school officials in the consistent and equal treatment of personnel.

At the same time, policies must have some flexibility. It is impossible to predict with certainty every situation that may arise. Accordingly, boards of education should include in their bylaws provision for waiving policy provisions in particular situations. It makes sense that any decision to waive policies be made by special voting rules (e.g., a majority of the membership), given the significance of the action. However, that decision itself is a matter of policy for the board.

Finally, board members and school officials should be aware that adopting policies can raise liability concerns. Specifically, in adopting a policy, the board of education defines the standard for reasonable conduct. If a board of education adopts a policy and its agents act contrary to it, such action likely will be considered *per se* unreasonable, with the result that school officials may be liable for negligence or even violation of constitutional rights. If, for example, the youth suicide prevention policy provides that parents will be notified whenever the student assistance team convenes to consider a report of suicidal ideation, the policy has defined what action is reasonable under the circumstances. A failure to follow the policy will thus be considered unreasonable, increasing the likelihood that liability will be found if a person is injured. *See Girard v. Town of Putnam*, 2011 WL 783599 (Conn. Super. 2011) (guidance counselor had a ministerial duty to report suicidal ideation and thus could be liable for negligence for not reporting).

For all of these reasons, boards of education generally should be careful about adopting non-mandatory policies that might be difficult to administer and enforce given the risk that acting contrary to board policy could lead to a finding of *per se* negligence with respect to the matter addressed by the policy. Similarly, for mandatory policies, boards should be wary of imposing requirements that go above and beyond the requirements of law because the adopted higher standard may be difficult to meet. Generally, it is far better to do more than is set out in a policy than to do less, and policies should not express aspirations and hopes.

We have structured the Model Policies in such a way as to provide only mandatory policies (under federal or state law) and policies that, while not required by law, serve as a best practice for Connecticut school districts. We construct the Model Policies as simple policy statements, including only the information legally required and/or highly advisable, taking into account guidance from federal and state agencies and our extensive experience working with public school districts. The Board is free to build upon the Model Policies, either within an existing policy or through a separate policy on a different topic, in order to customize the policy manual to suit the Board's individual needs. We do not provide several options for each policy, but instead provide a base policy upon which clients can build to accommodate district-specific information.

II. Policies v. Administrative Regulations

Questions often arise about the difference between policies and administrative regulations. A recurring difficulty is how to distinguish between policy judgments, properly the responsibility of the board of education, and administrative decisions necessary to implement each policy.

Section 10-157 of the Connecticut General Statutes provides that the superintendent is the "chief executive officer" of the board of education, and the daily operation of the school district should be the superintendent's responsibility. The day-to-day operation of a school district requires prompt responses to situations as they arise. Boards of education are advised to draw a distinction between policy -- the broad, over-arching concepts that guide a school district -- and administrative, daily operational matters. The board of education is responsible for regulating the affairs of the school district by adopting policy, and the superintendent is responsible for implementing those policies in the superintendent's role as chief executive officer of the board of education.

One common approach is to have the board of education manage the broad issues of responsibility through policies, and to have the superintendent and staff adopt administrative regulations, where appropriate, to implement those policies. This approach distinguishes policy from operational issues and provides the district with needed flexibility. By utilizing administrative regulations for operational issues, school districts can avoid troublesome delays in responding to changed circumstances, as most board bylaws do not require a board vote to adopt administrative regulations. However, many board bylaws require the superintendent to bring to the board's attention any new, revised or deleted administrative regulations to ensure they are consistent with board policy. In this manner, a board can retain limited oversight of the regulation process, even though it is not generally authorized to adopt or revise administrative regulations.

For purposes of the Model Policies, we include in our sample policies those matters required by statute, federal or state agency guidance, or best practice to be addressed through a board-approved policy. We generally write our policies as broad statements to allow the board to address a concept, while reserving the details of implementation and day-to-day operation to the school district administration through administrative regulations. Oftentimes, our sample administrative regulations mirror the requirements of federal or state statutes, regulations or agency guidance, which may change quickly and require immediate compliance by the school district.

The Model Policy System - Technical Aspects and Conversion

I. The Online System

The Model Policies are developed by attorneys in Shipman & Goodwin's School Law Practice Group and are housed on the Firm's password protected Extranet. The Extranet includes an index of current policies and administrative regulations; current policies listed by series, and then alphabetically within each series; redline comparisons explaining changes made to each policy, listed by year; memoranda explaining the annual policy changes; and sample forms and notifications. Because the Board is a Model Policies subscriber, designated individuals within the district can view and download all of the documents, in either Word or PDF, modify them as needed, and upload them onto the Board's website once approved by the Board.

We comprehensively review the Model Policies annually, during the summer, after the Connecticut legislature concludes its session, and generally provide updated policies by October

of each year. We also provide interim updates when changes in the law or specific practices warrant policy revision.

II. Transitioning to the Model Policies

Boards of education take different approaches to transitioning to the Model Policies. While some boards elect to review each existing policy and determine whether to use all or part of the Model Policies, other boards elect to conduct a wholesale repeal of their existing policies and replace them completely with the Model Policies.

To adopt the entire Model Policy system (either at once or in phases), the Board will still need to undergo a process to ensure compliance with current bylaws relative to adoption and repeal of policies (and bylaws), and to ensure the Board retains those aspects of the existing policies it deems necessary or appropriate. Below we provide a suggested process for adoption of the Model Policy system:

1) ***Policy Committee and/or Administration review all of the Model Policies through the Extranet and customize them as needed.*** Many of the policies have optional language or require individualized information to be included (ex: name of the Title IX Coordinator). This step should also involve removing from the document any "notes to the client" or optional language not being used (we generally include optional language in ***bold italics***), and any administrative regulations (to be adopted by the Administration, with notice to the Board), and forms or notices that do not require Board approval. During this process it should also be determined whether the Board intends to propose adopting the Model Policies Board Bylaws or maintain its current Bylaws.

2) ***Policy Committee and/or the Administration review the existing Board policy manual and determine which existing policies it recommends be retained during the transition process (and ensuring that any such policies are legally compliant and do not conflict with Model Policies slated for adoption).*** This should also include determining whether any of these existing policies might conflict with any of the Model Policies proposed for adoption by the Board. We understand that the district is beginning this process and would be happy to discuss further, if helpful.

3) ***Develop a comprehensive packet of policies proposed for adoption and for repeal by the Board.*** We recommend providing online access to all of the Model Policies, customized for the Board's needs, through a shared drive or Dropbox, for example. We further recommend developing an easy-reference chart for the Board to quickly review which policies are proposed for repeal and which are proposed for adoption. Any existing policies that the Policy Committee and/or Administration propose to maintain may also be included in the chart, clearly marked as being slated to be retained. We have also included, as Appendices A and B to this memorandum, high-level reviews of (1) the Board's 1000, 2000, and 3000 series, and (2) the Board's 4000 and 5000 series. *Please note: Some of the policies and regulations recommended for repeal and replacement already reflect a version of our model*

policy or regulation. For purposes of efficiency and thoroughness, we have recommended full repeal and replacement, rather than line-by-line revision to reflect potential updates. If you would like us to run comparisons to the Board's current policies to see if and where any particular revisions should be made, or any district-specific revisions might be retained, we would be happy to do so.

4) ***As a reminder, the Board must consider the proposed changes to policies, bylaws, and any Board-approved regulations in accordance with Board Policy 9311, 9312, and 9313.***

5) ***The Administration must follow a similar process when considering and making changes to administrative regulations, in accordance with Board Policy 9313.***

The Board is advised to consider the appropriate timeline for this policy review process. We often recommend, for example, that revisions to the Students and Personnel series be adopted over the summer, so that students and staff have notice of any new policies before the start of the school year. If the Board agrees with this approach, it may wish to "work back" from its scheduled August Board meeting so that it has ample time to engage in the process outlined above.

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We hope this information is helpful. We are happy to assist with any of the steps listed above, per request by the Board or Administration. Thank you.

Appendix A

Middletown Board of Education – Overview of 1000, 2000, and 3000 Series

Appendix B

Middletown Board of Education – Overview of 4000 and 5000 Series