



CCSA GOVERNANCE ACADEMY 2022

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CCSA Governance Academy 2022: Part Two



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Topics we covered Tuesday in Part One

- A. SB 126 and its effect on all this
- B. Roles and Responsibilities of Board Members and CEO
- C. Running public meetings (Brown Act)
- D. Questions?

Topics we'll cover today in Part Two

- A. SB 126 and its effect on all this
- B. Public Records
- C. Duty of Care (informed decision-making)
- D. Duty of Financial Oversight
- E. Duty of Loyalty (conflicts, confidentiality)
- F. Questions?

SB 126

- The charter “transparency” bill became effective January 1, 2020
- Applies to all charter schools and “entities managing charter schools”
 - Brown Act (plus extras), Public Records Act, conflict of interest rules under Political Reform Act and Gov. Code 1090, incompatible offices
 - We’ll cover more specifics when we hit each topic

“Entity Managing a Charter School” and SB126

- You’re likely an “entity managing a charter school” under SB 126 if the entity does or provides any of the following:
 - “(i) Nominating, appointing, or removing board members or officers of the charter school.
 - (ii) Employing, supervising, or dismissing employees of the charter school, including certificated and non-certificated school personnel.
 - (iii) Managing the charter school’s day-to-day operations as its administrative manager.
 - (iv) Approving, denying, or managing the budget or any expenditures of the charter school that are not authorized by the governing body of the charter school.
 - (v) Providing services to a charter school before the governing body of the charter school has approved the contract for those services at a publicly noticed meeting.”

The Public Records Act

- The Public Records Act is California’s primary mechanism for members of the public to inspect or obtain copies of many records typically maintained by public agencies. Enacted in 1968 to ensure accountability of government, acknowledging that secrecy is antithetical to a democratic system of “government of the people, by the people and for the people.”
- Are the Charter School’s records open to the public? Yes and no.
- The Public Records Act applies to your charter school under SB 126
- But lots of *exempt* records:
 - Containing student personal info (FERPA)
 - Personnel
 - Preliminary drafts
 - Pending litigation / privileged
- But e-mail, contracts, and material kept in ordinary course of business may be public
 - *What about my private e-mail account?*
 - *What about text messages?*

Public Records Act, cont.

- When/how do I respond?
 - Send determination about whether you've got responsive records within 10 (or maybe 24) days from receipt of the request, but you have a reasonable period of time to produce any responsive, non-exempt records.
- Costs
 - You can charge reasonable per-page copy cost, e.g., \$0.25/page (adopt admin policy for that), but generally not for staff time
 - If request seeks electronic data extraction, then requestor should pay costs

Public Records Act, cont.

- “Word-search” requests
- Responding during periods when school closed
- Consequences for non-compliance
- New for 2023: AB 2647
 - Writings distributed to board less than 72 hours in advance of regular meeting
 - Available for inspection
 - Post on website

Legal duties of directors

Directors' duties to the corporation—

- Duty of care
- Duty to provide financial oversight
- Duty of loyalty

Standard of care for a nonprofit board member:

- Act with care, skill, prudence and diligence
- Under the circumstances
- Of a prudent person acting in a like capacity
- With familiarity with those matters, and
- Considering the background and experience of the individual

Board member exposure to personal liability?

- There is broad nonprofit law immunity for volunteer board members for board decisions
 - Schools engaged in tax-exempt bond financing may have additional disclosure obligations under federal securities law
- D&O insurance to defend claims against board members acting within scope of duties
 - Make sure your organization has it

Board members should avoid:

- Acting outside course and scope of duties (such as managing rank-and-file employees, rather than policy-making)
- Breaching duty of care
- Conflicts of interest creating personal benefit
- Intentional or willful misconduct

Board members can rely on staff, but...

- Board members can and do rely upon agency staff
 - How deep should director look into agency business, transactions, and exposures?

What a Board Member Needs to Know: Duty of Care

Be informed, stay informed and be proactive in your role.

- Ask questions to seek clarity before voting.
- Listen to all perspectives and test your understanding of information and implications.
- “Own your decision”
- Board members should **not** get involved with day-to-day business operations of the school

What a Board Member Needs to Know: Duty of Financial Oversight

Charter School Finances

- Annual budget is blueprint for school year, setting spending priorities and goals
 - Board monitors annual budget and finances throughout year
- Understand budget, balance sheets, cash flow/position, etc.
 - Back office provider should provide tutorial to new board members
- Review financial reports presented to the Board, such as balance sheet, income statement, cash flow

Board Must Ensure Adherence to Fiscal Policies and Sound Financial Management

- Lots of talk about charter (mis)management of finances
 - Emphasizes how important this topic is
- Your authorizer will likely seek background information about your board members to help ensure they have sufficient “capacity” to manage finances of the school
- Scrutiny of and adherence to sound financial policies is the norm

Duty of Financial Oversight

- Potential for charter revocation due to failure to meet GAAP, or “fiscal mismanagement.”
 - Ed. Code, § 47607(c)(1)(C)
- Chartering authority to assess and monitor fiscal condition of charter school.
 - Ed. Code, §§ 47604.32(d) & 47604.33(b)
- Periodic financial reports are required.
 - Ed. Code, § 47604.33(a)
- Annual, independent financial audits are required.
 - Ed. Code, § 47605(m)

Charter School Finances – Audits

- Required annually.
- Validates the schools reported finances.
- Also used to validate the charter schools internal controls.
- Board must approve Audit Agreement in Spring of the each year.
- Board must approve the audit prior to submittal to oversight agencies.

What a Board Member Needs to Know: Duty of Loyalty

Duty of Loyalty

- General Rule: Individuals in a position of public trust must avoid conflicts of interest which prevent them from fulfilling their duties in an impartial manner.
- Legal presumption is that a person with a conflict of interest cannot be impartial. So the laws and regulations follow that presumption.

Duty of Loyalty—avoid conflicts of interest

- Directors' duty of loyalty
 - Conflicts of interest must be avoided. How?
 - disclosure of personal financial interests
 - “interested” directors can't be board majority

Nonprofit directors' “self-dealing” transactions:

- As background, for most charitable nonprofits (*not* charters):
 - Majority of Board must affirm “fairness” of self-dealing transaction
 - Is it “material” to business of corporation?
 - Financially interested board member must disclose and disqualify
- ...but wait*, for charters there's more!

Political Reform Act

- Public officials are disqualified from participating in government decisions in which they have a financial interest. Fair Political Practices Commission regulates and enforces the Act
- Attempts to cover both actual and apparent conflict-of-interest situations between an official's public duty and private interest
- Requires disclosure, disqualification from any decision that may materially affect financial interests

Political Reform Act: Disclosures

- Charters should adopt a conflict of interest “code”
 - Many charters historically latched on to authorizer’s COI code (SB 126 now disallows that)
 - Opportunity to establish appropriate parameters for your school
 - » Pros and cons
 - » What are the steps?
 - » Charters process through County Clerk or FPPC
- Requires annual financial disclosures by designated officials (the “**Form 700**”)—which includes board members and management employees
 - Spouse’s interests count
 - Deadline to file is April 1
- Each official files his or her Form 700 based upon the “disclosure categories” for his or her position
 - several “exempt” economic interests (no disclosure), including personal residence, government income, mutual funds.

Gov. Code section 1090

- Section 1090 provides that a public agency officer or employee may not make, participate in making, or attempt to influence a contract in which he or she is financially interested
 - Disclosure and recusal not enough
 - But look closely at the exceptions
- SB 126 applies GC 1090 to charter school officials
 - Many charter petitions and MOUs already require compliance
 - Explicit carve-out for conflicts created by employment relationship (OK for employees to be board members)
- Conflicted contracts are voided
- GC 1099 “incompatible offices” rule

Charter School Governance Best Practices

Best Practices in Charter Schools

- Board helps recruit diversity of expertise and experience on Board
 - Political
 - Financial
 - Fundraising
 - Goal-setting/vision
 - Community outreach

Best Practices in Charter Schools

- Board meets monthly or less often (e.g., quarterly)
 - Varies with maturity of organization
 - New charter boards tend to meet more often
 - More mature boards tend to meet less often
- Board reviews and approves annual management goals, in line with vision/goals of organization, as part of CEO evaluation

Best Practices in Charter Schools

- Board members and management receive governance training
- Board stays informed on financial condition of school
- School has system of evaluation for administrators/ teachers/ staff, and key vendors
- Administrators/ teachers/ staff receive professional development
- School has robust stakeholder communication system (e.g., key documents available on website, active parent council)

Best Practices in Charter Schools

- CEO in charge of certain levels of contracting within budget (e.g., vendor contracts up to \$_____ dollar amount)
- CEO (not board) hires/fires/disciplines rank-and-file employees
- CEO sets certain non-mandatory school policies (e.g., employee absence protocol, etc.)
- Management meets Board expectations

The End

- Any questions about these topics?
- For CCSA members-only, find our governance resources, in our Member Portal. Contact your School Administrator for access, or email help@ccsa.org for school access.

Thank you!

Questions?



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