

## **Consideration of Approval of Request for Formal Opinion Relating to the Participation of Employees, Students, and Parents in the Governance Decisions Made by the Charter School Board**

### **BACKGROUND:**

At the Palisades Charter High School (“PCHS”) Board retreat held on September 12 of this year, there was an extensive Board discussion regarding questions that the Board and staff have about how to interpret conflict of interest laws made applicable to California charter schools as a result of the enactment of Education Code Section 47604.1 (“SB 126”). As an example, , there is confusion about how to interpret Section 47604.1(d) that allows employees to serve on the Charter School’s Board if the employee abstains from voting on or attempting to influence the vote on “all matters uniquely affecting” their employment. In order to resolve these questions definitively given the lack of statutory and regulatory guidance about how the California conflict of interest laws apply in a charter school setting, legal counsel recommended that we seek an official opinion from the Fair Political Practices Commission. This course of action was recommended because it would afford employees a greater degree of certainty about when they may participate in Board and Committee meetings, and help to mitigate the risk of fines and/or administrative or civil actions due to lack of clarity about when Board members should abstain from participating in the discussion and vote.

It was agreed at the retreat that all members would forward questions to the Board Chair to share with legal counsel, and that counsel would also develop some questions in an attempt to resolve as many questions as possible about when parents, students and employees could participate in discussions and votes. Following the retreat, the Board Vice Chair posed several questions that were answered by staff based on the charter document’s current provisions.

The PCHS charter provisions and/or adopted Board policies may contain conflict of interest requirements that are more stringent than what the State law requires; however, such requirements may not be less restrictive than Government Code 1090, the Political Reform Act, the Corporations Code, or implementing regulations. Thus, to the extent that the PCHS charter provides that employees, parents, or students cannot vote or participate in discussions on a particular item, this conflict of interest rule will apply until such time as the charter or Board policy is amended even if the FPPC says in their response opinion that state law does not prohibit participation. The purpose of seeking an FPPC opinion on these questions is to determine:

1. Whether proposals to change the PCHS charter or Board policies can be considered based on the changes to the law created by Education Code Section 47604.1 and the Fair Political Practices Commission’s interpretation of the Political Reform Act and Government Code Section 1090; or
2. Whether the Charter School may have some additional flexibility under State law to allow stakeholders to participate in discussions and votes at the Board and committee levels than the current charter provisions and school policies contemplate.

Further, it is our hope that seeking an opinion from the State will help to resolve longstanding conflicts among Board members and stakeholders relating to the interpretation of how these laws apply in a

charter school context and that this will, in turn, result in smoother Board meetings more focused on the substance of what is proposed than the process of how decisions are being made.

At the November 2020 meeting of the Board, the Board agreed to have Board members forward additional questions directly to counsel. Legal counsel has reviewed the questions submitted by the Board Vice Chair, Board Member John Rauschuber, and Board Member Izzy Gill. The questions submitted by the Board Vice Chair and Board Member Rauschuber have been incorporated into the attached request for an opinion, but have been reframed in some cases to fit the format and structure of the request and in some cases to provide additional details that are likely critical to FPPC's analysis.

The questions submitted by Ms. Gill do not relate to conflicts of interest associated with students serving on the Board, but rather to student participation in governance generally. These issues are not part of the FPPC's jurisdiction so may be addressed in a separate opinion to be shared with the full Board. The FPPC only answers questions relating to implementation of conflict of interest laws found in the Political Reform Act and Government Code Section 1090.

**RECOMMENDATION:**

That the Board approve sending the attached request for a formal legal opinion to the FPPC.



# PALISADES CHARTER HIGH SCHOOL

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December 9, 2020

Richard C. Maidich, Chairperson  
Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811

**RE: Request for Opinion on How SB 126 (Education Code Section 47604.1) Applies to Ongoing Governance of Palisades Charter High School**

Dear Chairperson Maidich:

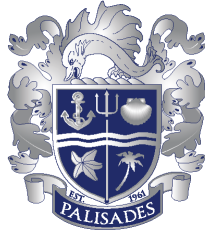
I am writing on behalf of Palisades Charter High School ("Charter School"), a California public charter school authorized by the Los Angeles Unified School District, to request a formal opinion of the Fair Political Practices Commission regarding the implementation of the provisions of SB 126, which were codified in Education Code section 47604.1(b) and (d). As you know, prior to SB 126 being signed into law, there was some ambiguity about whether the Political Reform Act and Government Code 1090 applied to charter schools and the nonprofits that operate them. SB 126 resolved this in the affirmative. But SB 126 also contained an important carve out now contained in EC section 47604.1(d) which expressly allows charter school employees to serve on the Board of the same charter school that employs them provided that they do not vote on, or influence or attempt to influence another member of the governing body regarding "all matters uniquely affecting that member's employment".

The Charter School has employees of the Charter School serving on its Board of Directors, which is charged with a number of functions under its charter. You will find information about the roles and responsibilities of the Board and its committees contained in the attached charter document. The charter functions as the governing document of the school, much as a city charter serves as the governing document of a city.

The Charter School also has standing committees of the Board who are charged with making recommendations about items in their respective jurisdictions. Employees serve on some of these committees and have requested the ability to serve on others. Parents and students also serve on some of these committees.

The Charter School wishes to be compliant with the law in all of its operations, and does not want parent, student, or employee members of the Board or Board committees to be personally at risk of fines or criminal prosecution. Given the lack of guidance regarding implementation of SB 126, the Charter School hereby requests a formal opinion from the FPPC regarding the following questions:

**Parent Members of a Charter School Board**



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- 1) May a member of the Charter School board who has a child attending the Charter School as a student influence their Board colleagues, attempt to influence their Board colleagues, or vote on the following items on the Charter School Board's agenda:
  - a. Curriculum of the school that their child as a student will receive.
  - b. Graduation requirements for students enrolled at the Charter School.
  - c. The academic calendar and length of the school day that their child will abide by.
  - d. Contracts for school lunch providers where their child participates in the free and reduced lunch program and it would impact how much they need to pay for lunch for their child.
  - e. Employee discipline or terminations relating to their child's teacher.
  - f. The rates charged to parents for school transportation services if their child receives services from the school busing program.
  - g. Settlement agreements relating to legal claims of their children or other parents.
  - h. Suspension or expulsion of their child.
  - i. The budget of the Charter School.
  - j. An E-learning policy that provides for distance learning for students during the pandemic and which might arguably have a negative academic impact on their child.

## **Student Members of the Board or Board Committees**

- 2) May a member of the Charter School board who is a student enrolled at the Charter School influence their Board colleagues, attempt to influence their Board colleagues, or vote on the following items on the Charter School Board's agenda:
  - a. Curriculum of the school that the student will receive.
  - b. The academic calendar and length of the school day that the student will be required to abide by.
  - c. Contracts for school lunch providers where the student participates in the free and reduced lunch program and it would impact how much they or their family pay for lunch.
  - d. Employee discipline or terminations relating to the student's teacher(s).
  - e. The rates charged to parents for school transportation services if the student themselves received services from the school busing program.
  - f. Settlement agreements relating to legal claims of the student, the student's teachers, or fellow students.
  - g. The budget of the Charter School.
  - h. Suspension or expulsion of their fellow students.
  - i. An E-learning policy that provides for distance learning for students during the pandemic and which might have a negative academic impact on the student's own education
- 3) May student members of a Board committee influence, attempt to influence or vote on the above items?
- 4) Are there any conflict of interest laws that apply differently to student members due to the students being under the age of 18?



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## **Employee Members of the Board**

5) May a member of the Charter School board who is an employee of the Charter School influence their Board colleagues, attempt to influence their Board colleagues, or vote on the following items on the Charter School Board's agenda:

- a. Curriculum of the school that the employee will be responsible for delivering, particularly if the vote might impact the number of hours the employee will need to spend to prepare and deliver such curriculum.
- b. The academic calendar and length of the school day that the employee will be obligated to work.
- c. Contracts for health/vision/dental plans that the employee and their fellow employees would be eligible to participate in as employees.
- d. Contracts for investment advisors and companies that would be retained by the school to invest funds to cover retiree health benefit costs of employees.
- e. Employee discipline or terminations relating to themselves or other employee(s).
- f. Setting the deductible and contribution rates of employees regarding health/dental/vision benefits.
- g. Settlement agreements relating to legal claims of the employee or other employees.
- h. The budget of the Charter School, where the budget includes allocations toward salaries, benefit costs and retiree health care costs of all employees. Additionally, if the vote on the budget was only to approve non-compensation items, would this yield a different result?
- i. Allocations of funds to reimburse employees for expenses that they incur.
- j. The negotiation or approval of collective bargaining agreements or proposals made by the Charter School at the collective bargaining table. Would the answer to this question change if the employee was also a member of the union's negotiating team or serves as an officer or Board member of the union responsible for negotiating the contract with the Charter School?
- k. An E-learning policy that provides for distance learning for students and impacts an employee's work environment and need to commute to work but does not impact salaries or benefits paid to employees.
- l. A loan, including a federal PPP loan, which may be forgiven and become a grant to the school. In order to be forgiven, a significant percentage of these funds would need to be allocated toward the retention of employees, including salaries, of the school.
- m. The contract of the Executive Director/Principal or other supervisor of the employee.

6) May a teacher serve on the Budget and Finance Committee of the Charter School Board that makes recommendations to the Charter School Board on budget and finances of the Charter School as long as they do not influence, attempt to influence or vote on any financial decision that does not impact them

financially? For example, could they lawfully participate in discussions and vote to give scholarships to students for busing costs, purchase technology for students, or allocate funds to facilities improvements? Given that the decision to allocate funds or not allocate funds toward these types of non-compensation



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items will impact the amount remaining available to allocate to compensation items, are votes on these types of allocations permissible by employee members of a Charter School Budget and Finance Committee?

## **Who Has Responsibility for Ensuring Compliance?**

7) When a debate arises on the Charter School Board about whether an item is a conflict of interest for one or more members to vote on, who makes the decision about whether the member participates in the discussion and vote? For example, frequently there are situations where a Board member believes that it is not a conflict of interest for them to participate in a discussion and vote on an item, but some other members of the Board or staff disagree. In such a case, does the individual member make the decision about whether to participate and accept the risk of penalties, or can the Charter School Board compel a member to not participate in the discussion and vote on a particular item where they believe that the member has a conflict of interest?

Our sincere attempts to comply with the laws surrounding these topics in a charter school setting has proven to be quite difficult because there is so much uncertainty about how conflict of interest laws apply to different stakeholder groups at the Charter School. Your assistance in answering these questions will not just be of benefit to our school, but also to more than 1,000 other charter schools operating statewide that want to comply with the provisions of SB126 and Education Code Section 47604.1, but are unsure how to do so. Your opinion will provide some certainty to ensure that employees and other stakeholders serving on charter school boards understand clearly when they are putting themselves at risk by participating in a discussion or vote.

If you should have any questions, please do not hesitate to call me.

Sincerely,

Pam Magee  
Executive Director