

YM&C
YOUNG, MINNEY & CORR, LLP

**El Camino Real Alliance
Comprehensive Governance
Training**

Presented by:
Lisa A. Corr
Young, Minney & Corr, LLP
655 University Ave., Suite 150
Sacramento, CA 95825
(916) 646-1400
lcorr@mycharterlaw.com
www.mycharterlaw.com

THE CHARTER LAW FIRM

1

Agenda

1. Roles and Responsibilities of Charter School Boards
2. The Brown Act
3. Conflicts of Interest Overview
4. The Public Records Act

YM&C
YOUNG, MINNEY & CORR, LLP

2

**Foundations for
Excellence in
Governance**

YM&C
YOUNG, MINNEY & CORR, LLP

3

An Excellent Board...

1. Understands its Roles and Responsibilities
2. Governs Instead of Manages the School
3. Contributes to a Positive School Culture
4. Acts as a Single Unit and Speaks with One Voice
5. Uses Committees Wisely
6. Responds Appropriately to Complaints
7. Regularly Educates Itself
8. Utilizes Time Efficiently
9. Evaluates the Executive Director and Itself
10. Regularly Engages in Strategic Planning

YM&C 4
YOUNG, MINNEY & CORR, LLP

4

Understanding the Brown Act


YM&C 5
YOUNG, MINNEY & CORR, LLP

5

Purpose of The Brown Act

What Is the Purpose of the Brown Act?

- To Foster Broad Public Access



"... The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

YM&C 6
YOUNG, MINNEY & CORR, LLP

6

Roadmap

- Meetings
- Notice & Agendas
- Rights of the Public
- Closed Sessions
- Penalties

YM&C YOUNG, MINNEY & CORR, LLP 7

7

Meetings

Brown Act Applies to **Meetings of the Board**

- Basic Definition
 - When any congregation of a majority of the members of the body meet to hear, discuss, deliberate, or take action on any item of Charter School business
- Meeting Types
 - Regular
 - Special
 - Emergency

YM&C YOUNG, MINNEY & CORR, LLP 8

8

Meetings

Board Committees

Nearly all committees must comply with the Brown Act

Exception:


A Committee that is:

- Advisory (not decision making)
- Composed of only Board members
- Less than a quorum of the Board
- Must not be a standing committee

YM&C YOUNG, MINNEY & CORR, LLP 9

9

Meetings




- A Majority of the Board Can Attend:
 - Other Body's Public Meetings
 - Public Conferences of General Interest
 - Purely Social or Ceremonial Gatherings
- So Long as Charter School Business is Not Discussed


10

YM&C YOUNG, MINNEY & CORR, LLP

10

Meetings





Serial Meetings


- Examples: Hub or Chain
- Technology may result in meetings at times you might not expect
 - E-mails
 - Text messages
 - Social media
 - Website postings
 - Online forums
 - Telephone calls
 - Faxes

11

YM&C YOUNG, MINNEY & CORR, LLP

11

Meetings



Serial Meetings

- Limit on One-Way Communications


While an employee or official may engage in separate conversations or communications with other members of the Board in order to answer questions or provide information regarding a matter of Charter School business, that person may not communicate to members of the Board the comments or position of any other member or members of the Board.

12

YM&C YOUNG, MINNEY & CORR, LLP

12

Meetings



**Education Code Section 47604.1:
Location of Meetings**

The governing body of one charter school shall meet within the physical boundaries of the county in which the charter school is located.

A two-way teleconference location shall be established at each school site.

YM&C 13
YOUNG, MINNEY & CORR, LLP

13

Meetings



Teleconference Meetings

Six Additional Requirements:


1. Agenda must be posted at all teleconference locations.
2. Each teleconference location must be identified in the notice and agenda of the meeting.



YM&C 14
YOUNG, MINNEY & CORR, LLP

14

Meetings



Teleconference Meetings

3. All votes taken must be by roll call.
4. Each teleconference location must be accessible to the public. (ADA-compliance required.)
5. Members of the public must be able to hear and must have the right to address the Board directly from each teleconference location.
6. A quorum of the Board must participate from within the county in which the Charter School is located.

YM&C 15
YOUNG, MINNEY & CORR, LLP

15

Meetings

Governor's Executive Order:
 A charter school board may hold teleconference meetings without adhering to all of the requirements of the Brown Act while public health officials have imposed or recommended social distancing measures. To make it easier for charter schools boards to convene meetings during this challenging time, Executive Order N-29-20 allows the following flexibility in teleconference meetings:

- The agenda does not need to provide notice of each teleconference location nor do agendas need to be posted at each location;
- A quorum of board members need not be located in the Charter School jurisdiction; and
- Governing board members may participate in a teleconference meeting from places that are not publicly accessible.

16

16

Meetings

Governor's Executive Order:
 The charter school board may take advantage of this additional flexibility in teleconference meetings so long as the school complies with the following:

- The public has access via internet and/or telephone to the Board meeting and can provide public comment in some electronic form.
- The charter school uses its sound discretion and makes reasonable efforts to adhere, as closely as possible, to the other provisions of the Brown Act in order to maximize transparency and provide public access.


17

17

Meetings

**Regular Meetings Only:
 Executive Compensation**

- Approval of CEO/Executive Director's compensation must occur at a regular (not special) meeting
- Govt. Code 54953: Prior to final action, Board must orally report a summary of the recommendation for final action, including the salary, salary schedule, and fringe benefits, during the open meeting where final action will be taken.
- Final action in open session



18

18

Notice Requirements

Notice and Agendas

General Rule: The agenda shall be posted properly in advance of a meeting and must include a brief description of items to be transacted or discussed. With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.

Contents

- Brief description = usually not more than 20 words
- "Safe Harbor" language for closed sessions
- How to request disability-related accommodation
- Location for inspection of docs distributed to Board

YM&C 19
YOUNG, MINNEY & CORR, LLP

19

Notice Requirements

Notice and Agendas

When?

- Regular meetings – 72 hours notice
- Special meetings – 24 hours notice
- Emergency meetings – 1 hour notice (rare)

Where to Post?

- Physically at a publicly accessible location within the jurisdiction during the entire posting period
- At all teleconference locations, if any
- On the website – homepage (new law – took effect for meetings on or after Jan. 1, 2019)

YM&C 20
YOUNG, MINNEY & CORR, LLP

20

Notice Requirements


Govt. Code 54954.2(a)(2): "It is in the public interest to ensure that members of the public can easily and quickly find and access meeting agendas of legislative bodies ... on the Internet homepage of those certain local agencies."

- Applies to meetings on or after Jan. 1, 2019
- Prominent, direct link to agenda on homepage
- If agency uses an "integrated agenda management platform," current agenda must be at the top.
- Agenda must be (1) retrievable, downloadable, indexable, and electronically searchable; (2) platform independent and machine readable; and (3) available to the public free of charge.

YM&C 21
YOUNG, MINNEY & CORR, LLP

21


Notice Requirements



Exceptions


1. Upon a determination by a majority vote of the Board that an "emergency situation" exists (54956.5)
2. Upon a determination by a 2/3 vote of the Board or a unanimous vote of those present if less than 2/3 of the members are present that:
 - There is a need to take immediate action; and
 - The need for action came to the attention of the "agency" (i.e. entire Charter School) after the agenda was posted.

22


YOUNG, MINNEY & CORR, LLP

22

Rights of the Public




Rights to enable access and participation

- Give oral testimony at meeting
 - Addressing disruptive speakers
- Audio record and broadcast
- Limitations on conditions of public attendance
- Non-discriminatory facilities (reasonable accommodations under ADA)
- Copies of agendas and other public writings


Govt. Code 54954.3(b)(2); Must provide 2x the time for public testimony to persons utilizing a translator to ensure equal opportunity.

23


YOUNG, MINNEY & CORR, LLP

23


Closed Sessions



What Are the Permissible Closed Sessions?


1. Pending/anticipated litigation (conference with legal counsel)
2. Pupil discipline (Education Code)
3. Personnel (appointment, employment, evaluation, discipline, dismissal)
 - Caveat: 24-hour written notice to employee is required if Board will hear complaints and/or charges
4. Real estate negotiations
5. Labor negotiations
6. Public security

24


YOUNG, MINNEY & CORR, LLP

24


Closed Session



Requirements

- Use "Safe Harbor" agenda language (GC 54954.5)
- Prior to Closed Session:
 - Board Must Make a Public Announcement of Reasons for Closed Session Prior to Closed Session
 - Public Must Have an Opportunity to Comment
- After Closed Session:
 - Board Must Make a Public Report of Action Taken in Closed Session and Vote or Abstention of Every Board Member
- Semi-closed meetings are prohibited
- Confidentiality is required


25



YOUNG, MINNEY & CORR, LLP

25


Enforcement



Complaints and Challenges

- Notice of Concern
 - Often brought by Charter Authorizer
 - Short turnaround to respond
 - Seek advice from legal counsel on response
- Notice and Demand for Cure or Cease and Desist
 - Can be brought by DA or member of the public
 - Board must cure/respond within 30 days
 - Seek advice from legal counsel on response

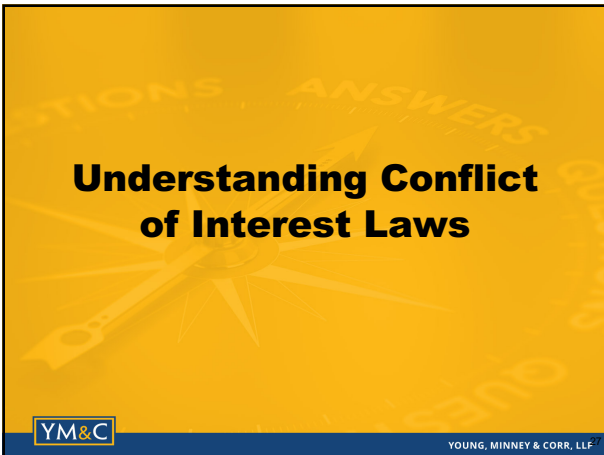
26




YOUNG, MINNEY & CORR, LLP

26

Understanding Conflict of Interest Laws




27



YOUNG, MINNEY & CORR, LLP

27

Conflicts of Interest



Broad Definition


- A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a corporate contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- In short, a conflict of interest is a clash between an individual's duty to his or her office and his or her personal interests.

28

YOUNG, MINNEY & CORR, LLP

28

Financial Interests



Common Types of Financial Interests Regulated by Conflict Laws

- Ownership or investment in business entity
- Investment in real property
- Source of income
- Position in business entity (e.g., director, officer, partner, trustee, employee, management)
- Source of gifts
- Effect on personal finances


*Financial interests of immediate family members of Board members and employees typically are covered.

29

YOUNG, MINNEY & CORR, LLP

29

Hoops to Jump Through



What happens if a Board member or employee has a conflict of interest in a decision (such as a proposed transaction or contract)?


1. Disclose the interest.
 - Employees disclose in writing to supervisor
 - CEO and Board members disclose to Board and ensure it is noted in the minutes
2. Abstain from any vote or discussion before or during the meeting and do not participate in the matter (leave the room).
3. Determine whether the remaining members of the Charter School Board can enter into the transaction or contract under Government Code section 1090. Consult with attorneys because minor facts of each case can change legal advice.

30

YOUNG, MINNEY & CORR, LLP

30

Government Code Section 1090



31

YOUNG, MINNEY & CORR, LLP

31

Government Code Section 1090

Elements

1. Public official (officer, board member, or employee)
2. Making a public contract (for sale or purchase)
3. Public official has a financial interest in the contract

32

YOUNG, MINNEY & CORR, LLP

32

Government Code Section 1090

What you need to know about Section 1090

- If board member has financial interest, the entire board is prohibited from entering into the contract; *even if it is with the best vendor at the best price and the interested board member abstains.* (Unless an exception applies.)
- Making a public contract is defined very broadly! Applies to earliest discussions, planning, solicitation for bids, etc., not just vote.
- Thus, this statute is, in most respects, the toughest standard to meet.
- Violation of GC 1090 is a felony and the contract void!

33

YOUNG, MINNEY & CORR, LLP

33

Political Reform Act

DECISIONS

YM&C

34

YOUNG, MINNEY & CORR, LLP

34

Political Reform Act

Big Picture

1. Public official
2. Participating in or attempting to influence a governmental decision
3. Public official has qualifying financial interest
(Includes spouse and children)
4. Financial interest is material

The Official Must Recuse Him or Herself from All Parts of the Decision-Making Process.

* Lots of very detailed regulations have also been adopted by FPPC.

YM&C

35

YOUNG, MINNEY & CORR, LLP

35

COI Code & Form 700

Conflict of Interest Code

- States who must file the Form 700
- Assigns disclosure categories

Form 700

- Statement of Economic Interests

- When it must be filed:
 - Assuming or reappointment to office or position (within 30 days)
 - Once annually (by April 1st)
 - Leaving office or position (within 30 days)
- Penalties for failure to file:
 - Criminal charges by Atty General or District Atty for deliberate failure to file
 - Civil or administrative action by FPPC or private citizen

YM&C

36

YOUNG, MINNEY & CORR, LLP

36

Political Reform Act

“Financial Interest”

- Investment in business entity of \$2,000 or more
- Real property investment of \$2,000 or more
- Income of \$500 or more
- Business position in entity
- Gift of \$50 or more

YM&C 37
YOUNG, MINNEY & CORR, LLP

37

Form 700

- Check the Conflict of Interest Code to Determine What You Must Report (Board members: broad disclosure).
- Typically All Financial Interests
 - Not Your Residence
 - Not Income from a Public Agency
 - Half of Your Spouse’s Income
 - Financial Interest within Your Jurisdiction
 - Property – within 2 miles of jurisdiction
 - Investments/Business in jurisdiction
 - Gifts – all gifts inside or outside of jurisdiction

YM&C 38
YOUNG, MINNEY & CORR, LLP

38

Form 700


GIFTS

- General rule is that you cannot accept more than \$500 from one source in a calendar year.
- General rule is that gifts worth more than \$50 must be reported (one gift or aggregate gifts from same source in a calendar year).
- Many exceptions to both general rules, the most common being:
 1. Special Occasions – Birthdays, Holidays:
 - Can be gifts from anyone (other than lobbyists) as long as the gift giving and taking is proportional.
 2. Inheritance

YM&C 39
YOUNG, MINNEY & CORR, LLP

39

Form 700



GIFTS cont.

3. Family Members:
 - Spouse (or former spouse), child, parent, grandparent, great grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, great aunt, uncle, great uncle, niece, great niece, nephew, great nephew, first cousin, or first cousin once removed, or the spouse of any such person. (other than a lobbyist)
4. "BFF's"- Long-term friendships:
 - Friends for a "period of time" and gift giving and taking must be proportional. (other than a lobbyist)
5. Dating – "bona fide" relationship (other than a lobbyist)
 - Returning or Donating Gifts vs. Reporting

YM&C 40
YOUNG, MINNEY & CORR, LLP

40

Common Law on Conflicts of Interest



Prohibition Against Conflicts of Interest

- Public official engaging in transaction or influencing decision.
- Creating an appearance of impropriety (financial interest not necessarily required)

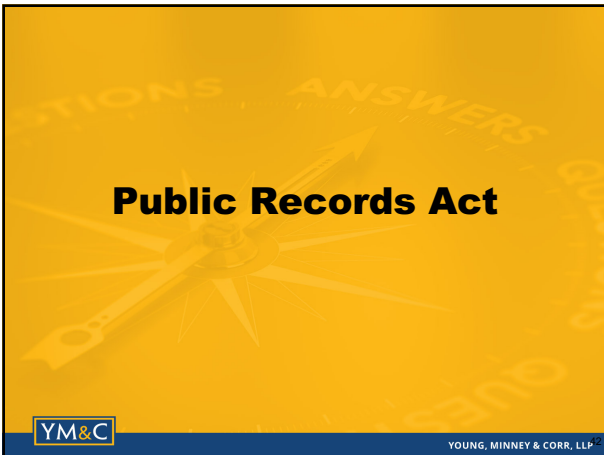
Doctrine of Incompatible Offices

- Public official holding two public offices simultaneously
- Offices are incompatible with each other (creating divided loyalties); overlapping jurisdictions

YM&C 41
YOUNG, MINNEY & CORR, LLP

41


Public Records Act




YM&C 42
YOUNG, MINNEY & CORR, LLP

42

Essential Elements of The Public Records Act




- Form of Request: Writing, Oral, In-Person, Over the Phone.
- Purpose of Request is Not Relevant.
- Public Records **prepared, owned, used, or retained** by any state or local agency.
- No duty to create a record.
- “Writing” is almost anything!


43


YOUNG, MINNEY & CORR, LLP

43

The Request




- Request must be specific and focused.
- If request is broad and “burdensome,” Charter School must assist requester to narrow.
- Charter School must make “reasonable efforts” to locate records.


44

YOUNG, MINNEY & CORR, LLP


44

Exceptions to Disclosure



Pending Litigation
(Gov. Code Section 6254(b)):

- Only during ongoing litigation
- More than just privileged information/documents


45

YOUNG, MINNEY & CORR, LLP

45

Exceptions to Disclosure

- Personnel, Medical, or Similar Files (Gov. Code Section 6254 (c))
- Records Exempted by Federal or State Law (Gov. Code Section 6254(K)):
 - HIPAA
 - Privileged
 - FERPA – identification of student can occur in many ways.

YM&C 46
YOUNG, MINNEY & CORR, LLP

46

Exceptions to Disclosure

Preliminary Drafts
(Gov. Code Section 6254(a)):

Preliminary drafts, notes, or memos that are not retained in ordinary course of business are not disclosable if public interest in withholding outweighs public interest in disclosure.

YM&C 47
YOUNG, MINNEY & CORR, LLP

47

Exceptions to Disclosure


Catchall Exception
(Gov. Code Section 6255(a)):

- Weighing test: the public interest of disclosure vs. the importance of confidentiality


YM&C 48
YOUNG, MINNEY & CORR, LLP

48

Records Not Exempt




- Most public contracting documents (“trade secret” exemption)
- Public employment contracts
- Public employee’s name and salary
- Most email communication


49


YOUNG, MINNEY & CORR, LLP

49

Waiver of Exemptions




Whenever a local agency discloses a public record which is otherwise exempt from disclosure, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. (Govt. Code § 6254.5)


50

YOUNG, MINNEY & CORR, LLP

50

Ten-Day Letter




Must Include:

- Whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the school
- The date when the records will be made available (reasonable time).

Determining Time Frame:

- Do you need to search for and collect records?
- Is there a large volume of records being requested?
- Do you need to consult with attorneys?
- Do you need time to compile data?


51

YOUNG, MINNEY & CORR, LLP

51

Response to Public Records Act Request

- Responses: disclose, refer to website, withhold, redact.
- If withholding or redacting, response must be in writing and must cite legal authority and identify by name and title the person responsible for the decision.
- Redacting v. Withholding: Is private information "reasonably segregable?"
- ALWAYS KEEP A COPY OF WHAT IS PROVIDED TO REQUESTER!

YM&C 52
YOUNG, MINNEY & CORR, LLP

52

Charging Fees (Be Careful!)

- Charter School may only charge a fee for the direct cost of duplicating a record when requester is seeking copies.
 - Pro rata cost of running copy machine
 - Questionable: Pro rata cost of person operating copy machine
- DOJ charges \$.10 a page.
- If records provided electronically, the thumb drive can be a charged expense.
- Cannot charge for tasks associated with retrieval, inspection, and handling the file.

YM&C 53
YOUNG, MINNEY & CORR, LLP

53

City of San Jose v. Superior Court (Smith)

Employees' communications about school business may be subject to the CPRA even if it was made on a private account or personal device. Factors are:

- 1) Content
- 2) Context and purpose
- 3) Audience to whom it was directed
- 4) Was it prepared by an employee acting or purporting to act within the scope of his or her employment?

YM&C 54
YOUNG, MINNEY & CORR, LLP

54

Best Policy


integrity
noun 1. adherence to principles; soundness

- Require employees and board members to use or copy their government accounts for all communications touching on public business.
- Strongly discourage discussing public business on Facebook, Twitter, or other social medium.
- Strongly discourage teachers and administrators from using text messages to communicate with students or parents.

YM&C 55
YOUNG, MINNEY & CORR, LLP

55

Enforcement of Rights




- To enforce rights under the Public Records Act a requestor must institute proceedings for injunctive/declaratory relief or seek a writ of mandate. (Govt. Code § 6258)
- The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation. (Govt. Code § 6259)

YM&C
YOUNG, MINNEY & CORR, LLP

56

Enforcement of Rights



- The costs and fees shall be paid by the public agency and shall not become a personal liability of the public official. (Govt. Code § 6259)
- If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency. (Govt. Code § 6259)

YM&C
YOUNG, MINNEY & CORR, LLP

57

YM&C
THE CHARTER LAW FIRM

YOUNG, MINNEY & CORR, LLP
916.646.1400 • INFO@MYCHARTERLAW.COM • WWW.MYCHARTERLAW.COM



QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY!

SACRAMENTO OFFICE:
655 UNIVERSITY AVENUE
SUITE 150
SACRAMENTO, CA 95825

LOS ANGELES OFFICE:
5200 LANKERSHIM BLVD.
SUITE 370
NORTH HOLLYWOOD, CA 91601

SAN DIEGO OFFICE:
591 CAMINO DE LA REINA
SUITE 910
SAN DIEGO, CA 92108

WALNUT CREEK OFFICE:
500 YONACIO VALLEY ROAD
SUITE 190
WALNUT CREEK, CA 94596

58