



YOUNG, MINNEY & CORR, LLP



California
Charter Schools
Association

California Charter Schools Association Governance Academy Part 1

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THE CHARTER LAW FIRM

YM&C Firm Overview



- Partners have over 100 years of collective experience working with charter schools
- 35 attorneys working with charter schools throughout the state in all areas of charter school law (e.g., employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent most of California charter schools
- Conduct workshops for charter schools in all areas of legal compliance

Overview



- Areas Covered:
 - SB 126
 - Virtual Board Meetings During the Pandemic
 - The Brown Act
 - Conflict of Interest Laws
 - Form 700

Goals for Session



1. This is a primer; non-exhaustive overview.
2. Create issue spotters!
3. Charter petition, bylaws etc. might obligate you to different rules – need to ensure charter, bylaws etc. consistent with these transparency laws.
4. Comprehensive board/staff training recommended for each school.
5. Limit disruptions and liabilities.
 - Disclaimers
 - Real Problems are Fact Specific & Complex
 - Cookie-Cutting can be Dangerous
 - Non-Attorney Advice and the Attorney-Client Privilege
 - Only highlighting major issues due to short time period

SB 126
Education Code
Section 47064.1

SB 126



New Law on Charter School Transparency

- Education Code Section 47604.1 makes express law that charter schools must comply with Public Records Act, Brown Act, Political Reform Act, and Government Code 1090 being applicable to charter schools and entities managing/operating charter schools.

Education Code 47604.1



- **Multiple charter schools in same county:** shall meet within the boundaries of the county in which the charter schools are located.
- **Multiple charter schools not in the same county:** shall meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools reside.
- A two-way teleconference location shall be established at each school site.

Education Code 47604.1



The governing body of the entity **managing the charter schools in multiple counties** shall audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's internet website.

Education Code 47604.1



A Board operating a single charter school: Shall meet within the boundaries of the county in which the charter school is located.

The Board meetings need not be recorded or posted on the school's website.

Education Code 47604.1



- Allows an employee of a charter school to be on the charter school board as long as they *abstain from voting on or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting that member's employment.*
- *Still concerned about having employees on the Board....*

Virtual Board Meetings with Executive Order N-29-20

Waiver of Brown Act Requirements



Teleconference Meetings

Six 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.



Virtual 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.

Governor's Executive Order



A charter school board may hold teleconference meetings without adhering to all of the requirements of the Brown Act. 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.

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.

Understanding the Brown Act

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

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, *and*
- Must not be a standing committee

*Committees created by staff and composed of staff members
are not Board Committees.*

Serial Meetings

directorship, stewardship, her
integrity
noun 1. adherence to principles; source



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

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.

Meetings



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



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
- How to request disability-related accommodation
- Location for inspection of docs distributed to Board

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)

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.

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.

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

Closed Session



Requirements

- Use “Safe Harbor” agenda language (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

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

Understanding Conflict of Interest Laws

Conflicts of Interest



Broad Definition

- A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a 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.

Financial Interests



Common Types of Financial Interests Regulated by Conflict Laws

- Ownership or investment in business entity
- Investment in real property
- Source of income - compensation
- Source of gifts
- Effect on personal finances

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

Government Code Section 1090



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

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!

Political Reform Act

directorship, stewardship, her
integrity
noun 1. adheren
principles; sour



DECISIONS

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.

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

Conflict of Interest Code & Form 700

Conflict of Interest Code



- Under SB 126, Schools must adopt a Conflict of Interest Code
- Code identifies “Designated Employees” – board members and management employees must always be designated.
- School’s Board approves and then approval through the County Clerk or FPPC
- Code lists disclosure categories of economic interests that the designated employees must include in their annual disclosure (Form 700)

Types of Form 700 Filings



Assuming Office: File within 30 days of starting employment or being sworn in; includes information for the past 12 months.

Annual Statement: Normally by April 1st; includes information for the prior calendar year. (If you start employment/assume office between October 1 – December 31, you do not need to fill out an Annual Statement until the following year.)

Leaving Office: File within 30 days of your last day; includes YTD information.

Form 700



Form 700 includes:

- Cover Sheet
- Schedule A-1 (General Investments)
- Schedule A-2 (Interest in Business Entities/Trusts)
- Schedule B (Interest in Real Property)
- Schedule C (Income and Loans)
- Schedule D (Gifts)

SCHEDULE A-1

- “Investments”: financial interest in any business entity that is located in, doing business in, planning to do business in, or that has done business during the previous two years in the Charter School’s jurisdiction.

SCHEDULE A-1 Investments Stocks, Bonds, and Other Interests (Ownership Interest is Less Than 10%)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION
Name _____

Investments must be itemized.
Do not attach brokerage or financial statements.

<p>▶ NAME OF BUSINESS ENTITY _____</p> <p>GENERAL DESCRIPTION OF THIS BUSINESS _____</p> <p>FAIR MARKET VALUE <input type="checkbox"/> \$2,000 - \$10,000 <input type="checkbox"/> \$10,001 - \$100,000 <input type="checkbox"/> \$100,001 - \$1,000,000 <input type="checkbox"/> Over \$1,000,000</p> <p>NATURE OF INVESTMENT _____ <input type="checkbox"/> Stock <input type="checkbox"/> Other _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Income Received of \$0 - \$499 (Describe) <input type="checkbox"/> Income Received of \$500 or More (Report on Schedule C)</p> <p>IF APPLICABLE, LIST DATE: _____/_____/19 _____/_____/19 ACQUIRED DISPOSED</p>	<p>▶ NAME OF BUSINESS ENTITY _____</p> <p>GENERAL DESCRIPTION OF THIS BUSINESS _____</p> <p>FAIR MARKET VALUE <input type="checkbox"/> \$2,000 - \$10,000 <input type="checkbox"/> \$10,001 - \$100,000 <input type="checkbox"/> \$100,001 - \$1,000,000 <input type="checkbox"/> Over \$1,000,000</p> <p>NATURE OF INVESTMENT _____ <input type="checkbox"/> Stock <input type="checkbox"/> Other _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Income Received of \$0 - \$499 (Describe) <input type="checkbox"/> Income Received of \$500 or More (Report on Schedule C)</p> <p>IF APPLICABLE, LIST DATE: _____/_____/19 _____/_____/19 ACQUIRED DISPOSED</p>
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Comments: _____



SCHEDULE A-1

- You, spouse or registered domestic partner, or dependent children have an interest of \$2,000 or more, but less than 10% ownership, at any time during reporting period.
- Typically stocks and bonds (including those held in margin or brokerage accounts or managed funds).
- Not Included: Government or municipal bonds, bank accounts (savings/checking), certificates of deposit, insurance policies, annuities, CalPERS or CalSTRS pension plans, and undirected mutual funds.

▶ **NAME OF BUSINESS ENTITY**

GENERAL DESCRIPTION OF THIS BUSINESS

FAIR MARKET VALUE

\$2,000 - \$10,000 \$10,001 - \$100,000
 \$100,001 - \$1,000,000 Over \$1,000,000

NATURE OF INVESTMENT

Stock Other _____
(Describe)

Partnership Income Received of \$0 - \$499
 Income Received of \$500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

_____ / _____ / **19** _____ / _____ / **19**
 ACQUIRED DISPOSED

SCHEDULE A-2

- Ownership Interest:
Report investments in a business entity or trust in which you/spouse/registered domestic partner/independent children, together or separately, had a 10% or greater interest worth \$2,000 or more.

▶ 1. BUSINESS ENTITY OR TRUST

Name _____

Address (Business Address Acceptable) _____

Check one
 Trust, go to 2 Business Entity, complete the box, then go to 2

GENERAL DESCRIPTION OF THIS BUSINESS

FAIR MARKET VALUE

\$0 - \$1,999

\$2,000 - \$10,000

\$10,001 - \$100,000

\$100,001 - \$1,000,000

Over \$1,000,000

IF APPLICABLE, LIST DATE:

_____/_____/19 ____/____/19
ACQUIRED DISPOSED

NATURE OF INVESTMENT

Partnership Sole Proprietorship _____
Other

YOUR BUSINESS POSITION _____

▶ 2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)

- \$0 - \$499 \$10,001 - \$100,000
- \$500 - \$1,000 OVER \$100,000
- \$1,001 - \$10,000

SCHEDULE A-2

- Only business entities that are located in, doing business in, planning to do business in, or that has done business during the previous two years in the Charter School's jurisdiction.
- Must list single source of income of over \$10,000.

▶ 3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF \$10,000 OR MORE (Attach a separate sheet if necessary.)

None or Names listed below

▶ 4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD OR LEASED BY THE BUSINESS ENTITY OR TRUST

Check one box:

INVESTMENT REAL PROPERTY

Name of Business Entity, if Investment, or Assessor's Parcel Number or Street Address of Real Property

Description of Business Activity or City or Other Precise Location of Real Property

FAIR MARKET VALUE

\$2,000 - \$10,000

\$10,001 - \$100,000

\$100,001 - \$1,000,000

Over \$1,000,000

IF APPLICABLE, LIST DATE:

/ / **19** / / **19**

ACQUIRED DISPOSED

NATURE OF INTEREST

Property Ownership/Deed of Trust Stock Partnership

Leasehold Other

Yrs. remaining

Check box if additional schedules reporting investments or real property are attached



Form 700



Trusts Are in A-2

Investments and interest in real property held and income received by a trust in which you have a 10% or greater interest are reported in A-2.

Must report if you are a trustor and:

- Can revoke/terminate trust
- Retained/reserved any rights to income/interest
- Retained power of appointment of trustees or beneficiaries

Must report if you are a beneficiary and:

- Presently receive income; or
- Have an irrevocable future right to receive income or principal.

Do not report a trust that only contains non-reportable interest.

Form 700



Examples of Trusts

1. Board member set up a living trust that holds large amounts of stock in PG&E and Apple Computers, a rental home in the same county as the charter school, and her principal residence. She is the trustor and can terminate/revoke at anytime.

Must report stock and rental home as part of trust in A-2.

2. Executive Director is a beneficiary of his parents' trust but does not currently receive income and it is revocable.

No need to report the trust.

SCHEDULE B

Interest in Real Property:

- Ownership
- Held by a business entity or trust either by you, your spouse/registered domestic partner/dependent children (report in A-2)
- Report tenants that paid \$10,000 or more in rent

This is for realty that provides income. You are not required to report your residence or vacation home if it is exclusive used as a personal residence



▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

CITY

FAIR MARKET VALUE

- \$2,000 - \$10,000
- \$10,001 - \$100,000
- \$100,001 - \$1,000,000
- Over \$1,000,000

IF APPLICABLE, LIST DATE:

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
			19		19
		ACQUIRED		DISPOSED	

NATURE OF INTEREST

- Ownership/Deed of Trust
- Easement
- Leasehold Yrs. remaining
- Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

- \$0 - \$499
- \$500 - \$1,000
- \$1,001 - \$10,000
- \$10,001 - \$100,000
- OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

- None

SCHEDULE C

- Incomes and Loans of \$500 (gross income) or more received during reporting period.
- Income must be reported only if the source is located in, doing business in, planning to do business in, or has done business during the previous two years in the school's jurisdiction.
- Reportable: Salary/wages of you and (50% of) your spouse, commission, gross income of car or house, prizes not reported as gifts money received from a loan given.
- Not Reportable: Salary from government agency, Income from CalPERS or CalSTRS retirement account.

▶ 1. INCOME RECEIVED

NAME OF SOURCE OF INCOME

ADDRESS *(Business Address Acceptable)*

BUSINESS ACTIVITY, IF ANY, OF SOURCE

YOUR BUSINESS POSITION

GROSS INCOME RECEIVED No Income - Business Position Only

\$500 - \$1,000 \$1,001 - \$10,000

\$10,001 - \$100,000 OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED

Salary Spouse's or registered domestic partner's income
(For self-employed use Schedule A-2.)

Partnership *(Less than 10% ownership. For 10% or greater use Schedule A-2.)*

Sale of
(Real property, car, boat, etc.)

Loan repayment

Commission or Rental Income, *list each source of \$10,000 or more*

(Describe)

Other
(Describe)



SCHEDULE D

- 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).

▶ NAME OF SOURCE *(Not an Acronym)*

ADDRESS *(Business Address Acceptable)*

BUSINESS ACTIVITY, IF ANY, OF SOURCE

DATE (mm/dd/yy)

VALUE

DESCRIPTION OF GIFT(S)

____/____/____

\$ _____

____/____/____

\$ _____

____/____/____

\$ _____

Form 700: Gifts



- Many exceptions to both general rules, the most common being:
 1. Special Occasions: Birthdays, Holidays:
 - Can be gifts from anyone (other than lobbyists) so long as the gift giving and taking is proportional.
 2. Inheritance
 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

Form 700 Penalties



Late filers: \$10 a day up to \$100

- Filing Officer collects fine and deposits in charter school general fund
- If FPPC brings action, fine goes to the State
- Filing Officer and FPPC can waive fine if
 - Late filing was not willful, and
 - Fine would not further purpose of PRA

Form 700 Penalties



Non-filing or violating the conflicts of interest rules in the PRA:

- Administrative: up to \$5,000 fine for each violation
- Criminal: Misdemeanor: up to 6 months in jail + up to \$1,000 fine



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 YGNACIO VALLEY ROAD
SUITE 190
WALNUT CREEK, CA 94596