



YOUNG, MINNEY & CORR, LLP



California  
Charter Schools  
Association

## California Charter Schools Association Governance Academy Part 2

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THE CHARTER LAW FIRM

# Overview



- Areas Covered:
  - Public Records Act
  - Financial Oversight of Public Funds
  - Good Governance for Boards and Administrators

# Public Records Act

# Purpose of the Public Records Act



## PURPOSE

*“In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” (Govt. Code § 6250)*

# Public Records Defined



## Public Records

“Includes any writing containing information relating to the conduct of the public's business **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics.” (Govt. Code § 6252)

# Public Records Defined



## Writing

“Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” (Govt. Code § 6252)

# Exceptions to Disclosure



## Pending Litigation

(Gov. Code Section 6254(b)):

- Only During Ongoing Litigation
- More than Just Privileged Information/ Documents

# Exceptions to Disclosure



## Personnel, Medical, or Similar Files (Gov. Code Section 6254 (c)):

- Weighing test: The Public Interest of Disclosure vs. Unwarranted Invasion of Privacy



# Exceptions to Disclosure



## Records Exempted by Federal or State Law

(Gov. Code Section 6254(K)):

- HIPAA
- Privileged
- FERPA

# Exceptions to Disclosure



## Catchall Exception

(Gov. Code Section 6255(a)):

- Weighing test: The Public Interest of Disclosure vs. the Importance of Confidentiality

# Records Not Exempt



- Public Employment Contracts
- Public Employee's Name and Salary
- Most Email Communication

# 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)

# Response to Public Records Act Request



## TIMELINE:

- Response Within 10 Days from Receipt of the Request
- 10-Day Deadline Can Be Extended Up to 14 Additional Days in “Unusual Circumstances
- Must Make Reasonable Effort to Elicit Additional Clarifying Information to Identify Records

# 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?

# Response to Public Records Act Request



Can you ask requester to pay for the school's time and out-of-pocket expenses relating to producing the records?

*NLG v. City of Hayward, 2020*

# *City of San Jose V. Superior Court (Smith)*



## LANDMARK CALIFORNIA SUPREME COURT OPINION IN MARCH 2017:

“Employees’ communications about official agency business may be subject to the CPRA regardless of the type of account used in their preparation or transmission.”



# Relating to the Conduct of Public's Business



Must relate in some substantive way to the conduct of the public's business. It often depends on the context. The court gave us factors to consider . . . .

# Best Policy



- Require Employees 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.

# 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)

# 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)

# Financial Oversight of Public Funds

# Overview



Recent court cases and audits have identified a number of concerns regarding how charter school funds are spent.

## Goals

1. Update you on emerging legal issues
2. Provide you best practices going forward

# Big Picture



- Charter school funds are considered public funds by most agencies
- When public (or private) funds are spent improperly, potential criminal liability can result
- LCFF supplemental and concentration grant funds must be spent in accordance with each school's LCAP plan

# Money Matters



- Funds received by your charter school, whether from the State of California or other sources, are generally considered “public funds”
  - Article XVI, Section 6 of the California constitution
- All public funds must be utilized to support a “public purpose”
  - Reasonably determined and must be of a benefit to your students
- Charter schools (and their staff and Board members) are held accountable for the use of funds, and misuse can result in serious criminal charges.
- Watch out for private inurement
- Public officials held to higher standard than private individuals/companies because public funds are at stake



# Potential Criminal Liability



- Watch out for potential criminal liability or media/authorizer criticism arising from expenditures of public funds for these types of activities:
  - First or Business Class Travel
  - Wine, Beer or Alcohol
  - Expensive Meals, Hotels, entertainment
  - Expenditures Not Directly Related to School Purposes
  - Travel for Staff or Board Members Not Directly Related To School Purposes
  - Gifts
  - Purchasing Personal Items (Clothes, guns and ammo, jewelry)
  - Car leases
  - Renting an apartment/condo
  - Large employee expense accounts
  - Golf club memberships
  - Bonuses paid to employees in the form of gift cards
  - Payment of debts of other people/organizations
  - Payments to vendors with familial ties to charter school employees
- What about Director's & Officers Liability Insurance?

# “Minor” Issues – Big Problems



- If financial misconduct is found, even relatively minor instances will be used against your school.
  - Angry community members at Board meetings or authorizer meetings.
  - Parents and foundations may decide not to donate to school
  - Parents may remove their students causing enrollment drop
- May result in audits by the Fiscal Crisis and Management Assistance Team (FCMAT), who, when they complete the audit, make it a public document
  - FCMAT Audits are time-consuming, onerous, and create a stigma around your school (regardless of whether any allegations are substantiated.)
  - FCMAT audits are very expensive to rebut!
- If you are in LAUSD, allegations may result in OIG audit/review
- Ignorance is not a defense!

# FCMAT Findings



## Extraordinary Audit of a Charter School (cont.)

- “The charter school’s governing board does not comply with its own financial reporting policy.”
- “The governing board should ensure that all commercial warrants are reviewed during each board meeting and that bank accounts can be opened or closed only by board authorization.”
- “More than one third of the (credit card) purchases lacked supporting documentation, log sheets, or approval from site administrators.”

# CSA Findings



## CA State Auditor Report on a Charter School

- School “could not provide monthly financial reports...such as year-to-date cashflow...”
- “Nearly a quarter of the 225 expenditures we reviewed lacked both proper authorization and sufficient support.”
- “The Foundation could not demonstrate that it preauthorized 19 of the 20 debit card transactions we reviewed.”



# Good Governance

# Why is Governance Important in Charter Schools?



- Charter Schools are overseen by Authorizing School Districts and must be renewed to continue to operate and can be closed down if not operated correctly.
- AB 1505 explicitly calls out substantial “governance factors” as a grounds for denial of renewal.
- Charter Schools must operate at a certain level to be renewed
- Charter Schools use public funds to educate students.
- Despite successes, Charter Schools still receive extreme scrutiny and unfounded criticisms.

# Board Duties v. Executive Director Duties



The Board of Directors GOVERNS while the Executive Director MANAGES.

The purpose of governance is oversight of the Executive Director.

The purpose of managing is to make the school perform, on a day-to-day basis, at the highest possible level.

How WELL is the school performing? v. How WILL decisions get made?

# CASE STUDY



**BOARD MEMBER WHO IS AN HR EXPERT VISITS THE SCHOOL SITE AND PROVIDES POINTERS TO TEACHER DURING CLASSROOM VISIT.**



# An Effective Board



- The Board uses a single point of delegation and accountability for operations (Executive Director).
- Board members are independent of the Executive Director and are responsible for oversight.
- Board members are aware of and adhere to board policies, the bylaws, and the charter.

# CASE STUDY



## **PARENT SUBMITS COMPLAINT ABOUT TEACHER TO INDIVIDUAL BOARD MEMBER.**

# An Effective Board



- Recognizes that every Board member is one vote and no decision is made individually.
- No Board members' vote is worth more than another's.
- Chairperson has procedural authority.
- Every Board member owes a duty of loyalty to the corporation – which means the vote of the majority of the Board.

# CASE STUDY



**BOARD MEMBER WHO WAS  
OUT-VOTED ON STUDENT  
UNIFORM POLICY SETS UP ANTI-  
UNIFORM PETITION DRIVE IN  
FRONT OF LOCAL MARKET.**

# The Board as a Team



- ❑ When is it appropriate for a single Board member to act on behalf of the Board?
- ❑ What do individual Board members say when questioned about the Board's actions?

# Utilize Time Effectively and Efficiently



- How do agendas get prepared?
- How does the public participate in your meetings?
- What do you spend most of your time doing at your meetings?
- How do you prepare for meetings?
- How do you know if you are a healthy board?



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# QUESTIONS AND RESPONSES

# THANKS FOR ATTENDING TODAY!

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