

California Charter Schools Association  
**KNOWLEDGE BRIEF**

CALIFORNIA  
CHARTER  
SCHOOLS  
ASSOCIATION

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ISSUE: Governance and Fiscal Accountability Guidance

**RESPONSIBILITY GOVERNANCE AND FISCAL  
ACCOUNTABILITY GUIDANCE AND BEST PRACTICES**

**Introduction**

California's charter schools are at a critical crossroads. In 2004-2005, California's 500+ charter schools are serving more than 180,000 students. In 2005-2006, it is anticipated that more than 80 additional charter schools will be added to this total. The rapid growth of the charter school movement coupled with the raging "quality debate" about the performance of charter schools in the media recently has left many – both critics and friends – questioning whether charter schools have lived up to the promise of "flexibility for accountability."

The stakes over whether charter schools are performing or not performing compared to their traditional counterparts could not be higher. Many defenders of the "old guard" in education are seeking to aggressively re-regulate charter schools, cut funding or worse.

Most of the proposed re-regulation are in the areas of school governance and fiscal operations, where the laws governing charter schools may be vague and are subject to debate. To mitigate re-regulation and *pro-actively* define and advance quality in ways that work for California's diverse charter school models, the California Charter Schools Association established the *Quality Statements for Charter School Operations* in five areas:

1. Student Achievement
2. Ethical Leadership
3. Continuous Focus on Increasing Quality
4. Responsible Governance
5. Fiscal Accountability

This knowledge brief specifically provides guidance and best practices on navigating the *governance* and *fiscal operations* of charter schools – two critical areas in which charter schools must demonstrate accountability and transparency to authorizers, legislators and the public at large. Our hope is that this Knowledge Brief will help provide useful information and guidance to charter schools and demonstrate our movement's unwavering commitment to quality school operations.

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## Summary of California Conflict of Interest Laws<sup>1</sup>

The following is a brief summary of conflict of interest laws in California that may be applicable to charter schools. The applicability of conflict of interest laws to a charter school may vary depending upon the organization of the charter school. It is recommended that you consult with legal counsel to determine which of these laws may be applicable to your charter school.

### *Intent of Conflict of Interest Laws*

The stated purpose of the conflict of interest laws is to ensure that “public officials ... perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them”<sup>2</sup> and to make certain that “...every public officer [is] guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity.”

### *California's Conflict of Interest Laws*

California's conflict of interest laws of concern for charter schools consist primarily of seven components. The following briefly describes the requirements of each component<sup>3</sup>:

#### 1. **Government Code 1090:**

Government Code Section 1090 et seq. prohibits a public official from participating in any decision concerning a public contract in which he or she has a private financial interest. Any participation by an officer or an employee in the process by which such a contract is developed, negotiated, and executed is a violation of section 1090.<sup>4</sup> Generally, a governing board is prohibited from voting on any contract in which a member has a financial interest. California courts have consistently held that a public official cannot escape liability for a contract that violates Government Code § 1090 by abstention or disqualification (a board member cannot save a contract through refusal because disclosure and abstention does not guarantee the absence of influence). A contract prohibited by Section 1090 is void at its inception. There are enumerated remote interests in which the member can disclose and abstain and certain “non-interests” that once disclosed do not prevent participation of the member.

#### 2. **The Political Reform Act (Government Code Section 81700 et seq.) (“PRA”):**

The PRA prohibits public officials and employees from making, participating in making, or otherwise using his or her official position to influence a governmental decision<sup>5</sup> in which he or she has a financial interest. In addition, public officials and designated employees of public agencies must disclose any economic interest that may be foreseeably and materially benefited by the public official's decisions. The PRA requires adoption of a conflict of interest code. Unlike Government Code Section 1090, which prohibits a board from considering a contract in which one of its board members is financially interested, the PRA requires only that an interested employee disclose and be disqualified from making a government decision.

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<sup>1</sup> This section of the Knowledge Brief has been prepared by Paul C. Minney, Esq. of the Law Offices of Spector, Middleton, Young & Minney, LLP (SMYM) (a law firm specializing in the representation of charter schools). Information about SMYM may be found at [www.smy charterlaw.com](http://www.smy charterlaw.com).

<sup>2</sup> Government Code Section 81001.

<sup>3</sup> Additional information regarding these conflict of interest laws can be found on the California Attorney General's web site under “publications” – Conflicts of Interest. See <http://caag.state.ca.us>.

<sup>4</sup> If the governmental discussion in question does not involve a contract, or if a contract in which an officer or employee has a financial interest is not ultimately executed, no violation exists.

<sup>5</sup> A public official has decision making authority if he or she may: (1) vote on a matter; (2) appoint a person to a position; (3) obligate his or her agency to a course of action; or (4) enter into a contract for the agency. In addition, electing not to act is considered a government decision.

3. **Government Code 1126 (“incompatible offices”):** Government Code Section 1126 prohibits employees of a local agency from engaging in employment or any other activity for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her official duties. Government Code Section 1126 does not specify what types of paid activities are incompatible with an employee’s office. Instead, Government Code Section 1126 (b) merely authorizes local agencies to promulgate policies and rules defining which activities are inconsistent with an employee’s duties.
4. **Penal Code 70:** Penal Code Section 70 is one of California’s oldest prohibitions on official misconduct. Enacted in 1870, Penal Code Section 70 prohibits public officials from knowingly requesting or receiving gratuities or rewards in exchange for performing an official act. In brief, Penal Code Section prohibits public officials from requesting or receiving bribes.
5. **Education Code Section 35107/Government Code Section 53227:** Education Code Section 35107 (b)(1) prohibits a school district employee from serving as a member of his or her school district governing board. In addition, Government Code Section 53227 applies the same prohibition to all employees of local agencies.
6. **Corporations Code Provisions (and corporate bylaws):** The Corporations Code (and typically corporate bylaws) includes a number of provisions intended to prevent conflicts of interest. For example, the Corporations Code provides that a nonprofit corporation may not have more than 49 percent of its board of directors composed of interested persons. Generally, an “interested person” is one who receives compensation from the corporation or any family member of any such person. In addition, the Corporations Code prohibits self dealing transactions unless certain protocols are followed. A “self dealing transaction” is any transaction to which a corporation is a party and in which one or more of its directors has a material financial interest. Lastly, board members have certain fiduciary responsibilities to act in good faith and in the best interest of the corporation.
7. **Common Law:** As distinguished from statutory law, common law comprises the body of those principles and rules derived from judicial decisions. The application of these decisions creates the conflict of interest “common law” doctrine. The common law conflict of interest doctrines generally require public officials to avoid placing themselves in a position in which personal interests may clash with their duties to their offices. As one California court stated: “a public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.”

## Best Practices to Sticky Situations

There's a lot of gray area in charter law when it comes to what the law actually says and what laws and regulations apply to charter schools, which can sometimes be a liability. As we repeatedly see in the charter movement, it only takes one charter school abusing the system to trigger the criticism and re-regulation of the entire movement – and perception is typically much more powerful and dangerous than the reality.

Some of the toughest situations that charters face are related to issues of governance and fiscal policies. The following best practices are designed as guidelines to help charter operators appropriately deal with these situations and protect the integrity of their school and our movement:

### 1. **Employees on the board, or board members on the staff:**

One of the greatest opportunities presented by charter schools is the opportunity for local stakeholder governance. Giving stakeholders a real voice in the governance and mission of the school creates an ownership and empowerment that drive our schools' greatness. However, there are also some real and perceived risks that accompany this opportunity. The following best practices should be considered when making decisions about employees serving on the board:

- Many schools simply choose to avoid any perception of conflict at all by choosing to not have employees serve as board members. As an alternative, charter schools can form committees and councils made up of employees that advise the governing board.
- Schools that do appoint employees (e.g., the Executive Director) to the board often have this employee act as a non-voting member of the board.
- Another best practice is for board member employees to recuse themselves from decisions involving their compensation, performance evaluation or promotion decisions. (In some cases, employee board members vote on policy and strategic issues but recuse themselves from all decisions involving budget.)
- Employees should not make up a majority of the board. (It is important that charter boards be large enough to include a cross section of opinions and diversity of thought, and that the boards not be dominated by any one stakeholder group.) (Non-profit public benefit corporations are required to maintain less than 49percent "interested" directors).

### 2. **Employing family members:**

Some of the most successful charter schools in our movement are led by wife/husband teams. Many other great schools employ two or more members of the same family. The best practices below are designed to help support these teams while avoiding potential perceptions of conflict:

- Family members should not be included in the hiring decisions of other family members. Even when the family member is not directly involved in the process, it is important to have a clear and transparent hiring process. Schools should create position descriptions for open positions, post or widely circulate the descriptions, interview multiple candidates and keep documentation of why the person was hired. (The Association's free online job board is a great way to help ensure broad outreach and transparency in the hiring process.)
- Family members should not be involved in compensation decisions, direct supervision or performance evaluation of other family members.
- Family members should avoid direct involvement regarding expense approval for other family members. If one family member is the business manager who typically approves all expense reports, designate the executive director or a member of the board to approve any expenses and sign checks for the business manager's family member.
- Where a family member is in a position to review purchases or reimbursement for another other family members, there should be sufficient checks and balances in place to ensure third party review.

### 3. **Contracting with or borrowing money from board members or management employees:**

Many charter school board members and management employees play a critical role in providing services to the school (e.g., legal support, real estate, etc.) and providing financial support. The following best practices are designed to protect the charter school and the board members/management employees:

- Use a very transparent process, the results and process are made publicly available, and the financial interests of the board member/management employee should be disclosed on the record.
- There should be an independent review of the decision process and value of the services when a board member is involved. Obviously, the board member being contracted with to provide the service or loan, should not be involved in making the decision to contract with themselves.

- Check to make sure you are aware of any bid limit requirements with public monies. Call the Association's help desk to ask about this or to be referred to one of our preferred service provider attorneys.
- In case of board member loans to the school, make sure there is clear documentation of the terms of the loan (e.g., what is the rate, what is the term, are there any penalties or security), that the loan terms are fair and reasonable.

4. ***Reimbursement to founders for expenses:***

Founders can incur a lot of out-of-pocket expenses even before the school is up and running. We have all heard stories of founders quitting their job, selling their car and mortgaging their home in order to pursue their passion of starting a charter school. No one wants the founder's integrity to be at issue when it comes to reimbursing them for legitimate expenses they incurred to launch the school. The following best practices will help protect the founder and the school:

- Keep all receipts and an accurate log of transactions, amounts and purpose of expenditures.
- Ensure fair market value for any goods and services purchased.
- Allow the board to make decision about reimbursements (founders should recuse themselves from these decisions).

Additional assistance in these areas beyond this Knowledge Brief can be accessed by call the Association's Help Desk at (866) 415-2272 or by e-mail at [helpdesk@charterassociation.org](mailto:helpdesk@charterassociation.org).

## High-Quality Indicators

The *High-Quality* Indicators are intended to assist charter schools in aligning themselves with the Association's Quality Statements for Charter School Operations. They are also intended to assist schools in the development of a "balanced scorecard" of measures that address other important dimensions of student and school performance in addition to standardized tests and thereby counter-balance the single-minded focus on Academic Performance Index (API) and Annual Yearly Progress (AYP). The Association believes that the indicators and standards we have identified will guide our ability as individuals and as a movement to live up to the "Accountability for Flexibility" pact we have made with the public and ensure the strength and sustainability of the charter school movement.

### Quality Statements: California Charter Schools Association's High-Quality Indicators

#### **Quality Statement 4: Responsible Governance**

Charter school boards and administrators establish and implement policies that are transparent and focused on student achievement. Charter school boards and administrators have a cogent understanding of and comply with the laws that govern charter schools.

- 4.1 Ensure that policies are implemented in a fair and consistent manner.
  - 4.1A The charter school governance follows a fully adopted set of bylaws which include policies that address conflicts of interest, meeting protocols and procedures, and the scope and delineations of powers and authority within the charter school.
  - 4.1B Conflicts of interest policies are comprehensive and address the disqualification of a board member or employees to act upon matters which may materially affect his/her assets and income.
  - 4.1C The school's governance policies are organized and made easily accessible to the public and/or may be made readily available to the public.
  - 4.1D The charter school has clearly defined complaint and conflict resolution procedures which are communicated to the stakeholders (i.e., granting agency, school, faculty, staff, parents, students).
- 4.2 Monitor the trends, issues, and potential changes in the environment in which charter schools operate.
  - 4.2A The school administration and governing board consists of individuals who are experienced in managing organizations and well-versed in charter law.
  - 4.2B New board members are given a formal orientation on the purpose and educational vision of the school and on their roles and legal responsibilities as a board member.
  - 4.2C School administrators and/or board members actively seek information professional development related to charter operations and laws.
  - 4.2D Schools with multiple sites have comprehensive monitoring systems established for ensuring that those sites the school's meet the charter's mission and goals.
- 4.3 Seeks input from impacted stakeholders.
  - 4.3A The school establishes regular opportunities for stakeholders to address the administration and board (i.e. parent meetings, surveys, staff meetings, student forums, etc.).
  - 4.3B The board conducts its meetings regularly (at least quarterly) and in an organized and effective manner, so to encourage public comment and participation.
  - 4.3C Meeting agendas and meeting minutes are posted in a timely manner for broad public review.
- 4.4 Enacts policies that respect diversity and implements practices that are inclusive of all types of learners, consistent with the school's charter.
  - 4.4A The schools' recruitment strategies focus on the targeted population stated in its charter and are inclusive of a diversity and range of learners, including those with identified special needs.
  - 4.4B The school has clear open enrollment procedures and an adopted lottery policy for enrollment.
  - 4.4C The school has a comprehensive student discipline policy (including due process procedures for suspension and expulsion) that is distributed to parents and students annually.
- 4.5 Actively engage the school's authorizer in monitoring the school's educational program and its fiscal status
  - 4.5A The school provides regular reports of student performance, academic progress and the school's fiscal

- health to the authorizer.
- 4.5B The school’s legal and financial structures are clearly delineated with the authorizing agency and the school timely files all corporate reports (e.g., Annual 990).
- 5.5C Operational agreements, contracts and/or MOU’s have been established with the authorizing agency in key areas such as liability, special education, and facilities.
- 4.5D The charter authorizing agency regularly review the adopted budget and interim reports.

**Quality Statement 5: Fiscal Accountability**

A charter school fulfills its fiduciary responsibility for public funds and maintains publicly accessible fiscal records. The school engages in an annual financial audit, which is made public.

- 5.1 Creates and monitors immediate and long-range financial plans to effectively implement the school’s educational program and ensure financial stability.
- 5.1A Comprehensive budget assumptions are prepared during the budget process. These are sufficiently detailed to provide meaningful comparison with actual transactions.
- 5.1B The working budget is monitored against actuals at least monthly, including ADA assumptions, and adjusted accordingly.
- 5.1C Accounts payable obligations are up-to-date, appropriately described, and disclosed in financial statements.
- 5.1D The budget considers any long-term debt schedules, multi-year contracts, and capitol projects are tracked and monitored on a regular basis.
- 5.1E There is an annual review on the status of employee salary and benefit discussions/negotiations, any changed in health benefit costs, and any other significant costs.
- 5.2 Engages in an annual financial audit, which is made public.
- 5.2A The charter school is audited by a certified public accountant (CPA) or public accountant (PA) licensed by the California State Board of Accountancy (and not declared ineligible to conduct audits by the State Controller’s Office).
- 5.2B The charter school’s audit is performed in accordance with generally accepted auditing standards to ensure that the school’s finances are being managed in accordance generally accepted accounting principles and practices.
- 5.2C The audit tests the validity of the charter school’s ADA and reports these findings in the audit report.
- 5.2D The charter school receives a school-specific audit report that includes financial statements and audit findings/conclusions specific to the charter school (unless completely dependent on the district).
- 5.2E Audit report includes a management letter commenting on areas of possible improvements (if any) in structures, procedures, and management practices of the school, as well as any factors that would prevent them from issuing an unqualified opinion on the financial statements.
- 5.2F The charter school board reviews the audit report and responds to any audit findings and designs a corrective action plan to address these findings.
- 5.2G A copy of the audit is sent by the charter school to the authorizing agency, State Controller, county superintendent, and CDE by legally mandated deadlines and the authorizing agency reviews the charter school’s corrective action in response to any audit exceptions.
- 5.2H If the charter school meets the requirements for an audit under the federal Single Audit Act, the charter school’s audit is performed in adherence with those federal requirements.
- 5.3 Establishes clear fiscal policies to ensure that public funds are used appropriately and wisely.
- 5.3A The school adheres to an adopted fiscal policy and procedures manual.
- 5.3B Fiscal policies include procedures for the authorization of purchases and release of funds, including signatories for checks or purchase orders over a specified threshold, and procedures related to credit cards and revolving cash funds.
- 5.3C Bank reconciliations for all school-affiliated bank accounts are completed and reviewed on a monthly basis (person empowered to signs the check is not the same person who reconciles the account).
- 5.3D The charter governing board adopts a budget at least 30 days prior to the new fiscal year.
- 5.4 Ensures financial resources are directly related to the school’s purpose: student attainment of learning goals.
- 5.4A The school’s physical space, materials and supplies are conducive to accomplishing the charter’s school wide learning goals.