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PRESENTED BY:

Unparalleled School Legal Services

YOUNG, MINNEY & CORR, LLP

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Firm Overview

Young, Minney & Corr, LLP (YM&C) stands at the forefront of charter school advocacy since the enactment of California's Charter Schools Act of 1992. Our firm offers unparalleled legal proficiency encompassing all aspects of charter school establishment, growth, and operation.

At YM&C, we place great emphasis on a proactive legal approach. We assist our clients in foreseeing potential legal challenges, minimizing exposure to legal liabilities and associated costs, and preempting operational hurdles. In liability instances, YM&C vigorously champions your cause, leveraging an extensive reservoir of experience, expertise, practical insight, and adeptness in advocating steadfastly on your behalf.

With a team of 40+ attorneys situated across various offices in California, YM&C takes pride in being a genuinely cooperative collective marked by diverse backgrounds and personas. We are dedicated to meeting all your charter school requisites.

YM&C offers a full breadth of legal services in every aspect of charter school law:

- Labor & Employment
- Student Rights & Discipline
- Special Education
- Board Governance
- Facilities
- Development & Renewal
- Insurance Defense
- Litigation
- Independent Study
- Corporate Law
- Public Law

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of attorneys and services, please visit www.ymclegal.com or call us at **916-646-1400**.

Jerry W. Simmons

Partner

Sacramento Office

916.646.1400 Ext. 215

jsimmons@ymclegal.com



Jerry Simmons, a seasoned law, politics, and media professional, specializes in resolving educational institutions' high-stakes challenges. His track record showcases the ability to navigate crises involving media attention, law enforcement scrutiny, and politically sensitive situations. Jerry has extensive experience working for public agencies, nonprofits, and public and private schools.

Jerry has advocated for the approval of hundreds of California charter schools because he believes every student deserves a world-class education regardless of their neighborhood. His background includes presenting at California Charter Schools Association and Charter Schools Development Center conferences and providing comprehensive legal advice to charter schools for over twenty years.

As an alumnus of a community college, Jerry values the role of community colleges in providing universal access to higher education. Serving as a Student Trustee of the West Valley-Mission Community College District and later as a publicly elected member and President of the Sierra Community College District Board of Trustees, Jerry has been part of setting policy for all aspects of college operations.

Jerry has also been active in four-year university governance. He served on the San Jose State University Academic Senate, which sets all policies for the university, on auxiliary organization boards, and various committees overseeing campus operations. Subsequently, his legal studies included an internship at the CSU General Counsel's Office, contributing to transactional and litigation matters for the system.

Jerry was a Teaching Assistant at Pepperdine University School of Law and a Teaching Fellow at Harvard University's Graduate School of Education, further highlighting his commitment to education. He played a significant role in alum relations at Harvard and handled student discipline cases at Harvard Business School, uniquely preparing him for challenges in private universities. Jerry Simmons is a multifaceted leader equipped to address educational institutions' most complex challenges.

PRACTICE AREAS

Board Governance

Facilities

Charter Development

Charter Defense

Independent Study

Public Law

EDUCATION

Pepperdine School of Law (J.D.)

Harvard University (M.A.)

San Jose State University (B.A.)

Kaela Haydu

Partner

Walnut Creek Office

916.646.1400 Ext. 258

khaydu@ymclegal.com



Kaela Haydu is a dedicated attorney primarily focused on litigation, board governance, and public law. She brings a wealth of experience and expertise to these areas.

Before joining YM&C, Kaela honed her legal skills as a litigation attorney in Downtown Los Angeles, where she gained valuable insights and practical knowledge in navigating complex legal matters.

Kaela's journey into the legal profession was shaped by her passion for education and a profound belief in its transformative power. Before pursuing a law career, she spent five years as an elementary school teacher in charter and private schools in Northern and Southern California. This experience gave her a unique perspective on the challenges and opportunities within the educational system. Her decision to go to law school stemmed from a deep conviction that an excellent education is crucial in shaping a person's life and that encouraging education reform is a meaningful charge.

Kaela's commitment to making a positive impact extends beyond the courtroom.

In addition to litigating vital matters, Kaela regularly provides legal guidance on board governance and public law to nonprofits and charter school boards, including Brown Act adherence, Conflict of Interest compliance, effective board meetings, and tailored policy creation. Her legal acumen benefits from her holistic approach to problem-solving and ability to navigate the intersection of law and education.

Through her legal pursuits, Kaela continues to exemplify a steadfast commitment to making a meaningful difference in the lives of others, reflecting her belief in the power of TK-14 education and the pursuit of justice.

PRACTICE AREAS

Litigation

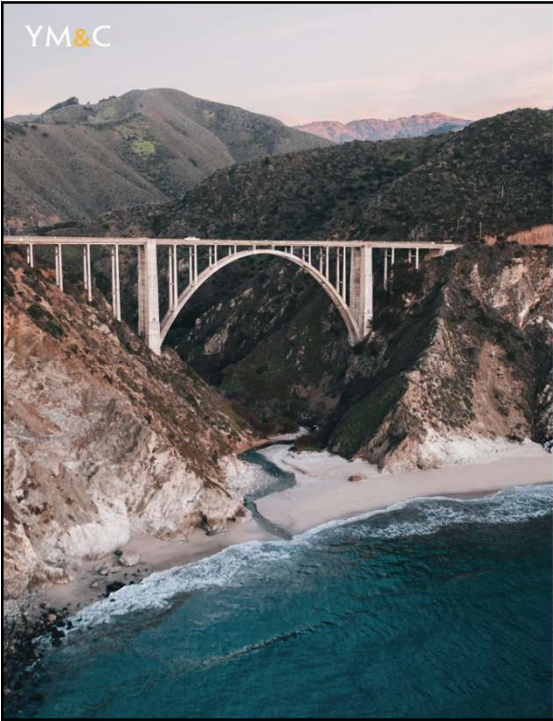
Labor & Employment

Board Governance

EDUCATION

University of California,
Los Angeles School of Law (J.D.)

Cal Poly San Luis Obispo (B.A.)

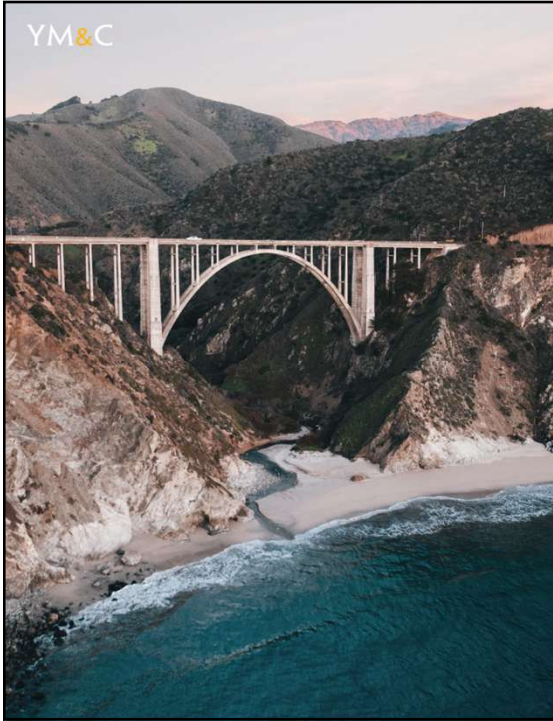


DISCLAIMER

This training cannot substitute for personalized legal advice.

Our advice is based upon the latest available guidance, which is subject to change in this ever-evolving landscape.





YM&C FIRM MISSION

We champion outstanding choices in education for all students.

We believe a quality public education is a civil right.

We work and fight alongside you to ensure student needs are always put first.



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PRESENTERS:

JERRY SIMMONS, ESQ.
Partner

KAELA HAYDU, ESQ.
Partner



WHAT IS ETHICS?

Personal financial gain

Bribery and gifts

Use of Public Funds

Fair Processes

Transparency

Core Relevant AB 2158 Topics

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ETHICAL LAPSES MAY LEAD TO DENIAL OF A CHARTER RENEWAL PETITION

Chartering authority may deny high-, middle-, or low-performing, upon a finding that:

- Charter school is demonstrably unlikely to successfully implement the program set forth in the petition due to **substantial fiscal or governance factors**.

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ETHICAL LAPSES MAY LEAD TO CHARTER REVOCATION

Chartering authority may revoke a charter where it has:

- Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
- Failed to meet generally accepted accounting principles or engaged in fiscal mismanagement.
- Violated any law.

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ETHICAL LAPSES MAY LEAD TO SERIOUS CONSEQUENCES

- Removal as a board member
- Loss of employment
- Criminal investigations, prosecution, jail time, financial penalties
- Administrative investigations and financial penalties
- Civil litigation
- Reputational harm

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ETHICS TRAINING

Requirement	This Course
Two hours of course content	YES
Coverage of general ethics principles and ethics laws	YES
Content is relevant to the official's public service (here, charter school board membership)	YES
Course covers core content outlined in Government Code section 53234(d) (ethics laws) and California Code of Regulations title 2, section 18371 (ethics training)	YES
Course is developed in consultation with guidance issued by the Fair Political Practices Commission and the Attorney General	YES
Attorney General: "For in-person training, the ethics law portion of any course should be delivered by an attorney licensed to practice law in California and knowledgeable about California's ethics laws."	YES
Participant is provided proof of participation upon completion (school must retain compliance records)	YES

WARNING: Other courses, webinars, and presentations covering similar topics do not count toward AB 2158 compliance requirements unless part of an AB 2158-designated course.

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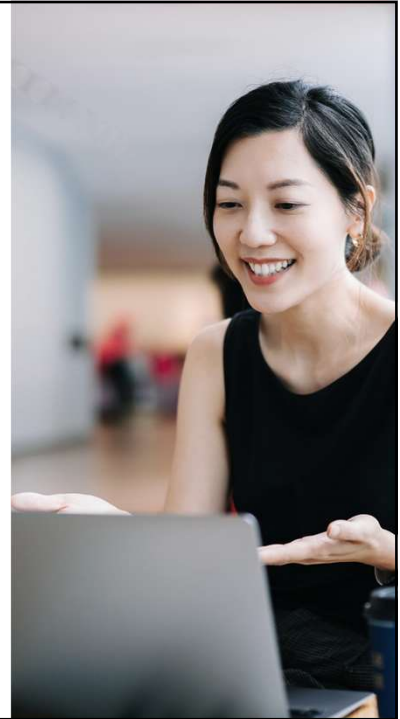
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TRAINING

SB 827 - Ethics Training for Administrators

- In 2022, AB 2158 extended to charter school board members the longstanding requirement applicable to local government officials that they receive two hours of specified ethics training every two years.
 - ✓ Board members are required to receive training on designated general ethics topics, Brown Act, Public Records Act, conflict of interest laws, gifts, bribery, fair processes, and other related topics and laws by January 1, 2026 and at least once every two years thereafter.
- As of January 1, 2026, the same training requirements apply to “the chief administrator of a charter school,” i.e., CEO, ED, Superintendent.

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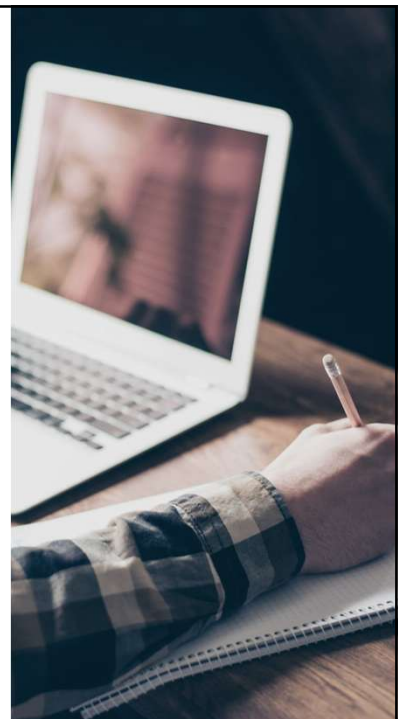


TRAINING

Ethics Training, Documentation and Website Posting

- Current requirement: maintain records for five years documenting compliance, including the date that the training was completed and the entity that provided the training.
- **Additional new requirement:** By July 1, 2026, charter schools with websites must “post ... instructions and contact information for the purpose of requesting records” regarding compliance.

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DEADLINES

Timing

- New service on/after 1/1/2026 → training due within 6 months
- Repeat every 2 years thereafter

Records

- Keep training records 5+ years
- Records are public (CPRA)
- Website instructions for requesting records required starting 7/1/2026

TRAINING

Fiscal Training (AB 640)

- Charter school board members in service as of April 1, 2027, except for officials whose term of office ends before April 1, 2028, must receive designated fiscal training before April 1, 2028.
- Officials who commence initial service, or who commence a subsequent nonconsecutive term, on or after April 1, 2027, are required to receive the training no later than one year from the first day of their initial service, or of their subsequent nonconsecutive term. The law encourages training to begin before the first meeting of the board occurs after the member joins.

TRAINING

Fiscal Training (AB 640) – Training Topics

Training topics: K–12 public education school finance laws, specified as

- (1) Laws related to the creation and approval of a local educational agency budget to support student learning and achievement (citing to Education Code provisions)
 - (2) Laws related to fiscal penalties for noncompliance. (citing to Education Code provisions)
- Directs the Fiscal Crisis & Management Assistance Team (FCMAT) to develop a curriculum in consultation with the CDE by October 1, 2026. Requires FCMAT and CDE to post on their website.

TRAINING

Fiscal Training (AB 640)

- Providers shall provide proof of participation
- Charter schools must provide board members information, annually, on training available to meet the requirement
- Charter schools must maintain compliance records for at least five years, including the dates of compliance and entity providing the training



TRAINING ROADMAP

Training Area	Content
Transparency	<ul style="list-style-type: none">o Ralph M. Brown Acto California Public Records Act
Personal Financial Gain	<ul style="list-style-type: none">o Conflict of Interest Laws<ul style="list-style-type: none">✓ Government Code Section 1090✓ Political Reform Acto Reporting Obligations - Form 700
Bribery and Gifts	<ul style="list-style-type: none">o Definition of briberyo Prohibition and limits on gifts
Use of Public Funds	<ul style="list-style-type: none">o Principles governing use of public fundso Prohibition on gifts of public funds
Fair Process	<ul style="list-style-type: none">o Eliminating Biaso Prohibition on incompatible officeso Anti-nepotism



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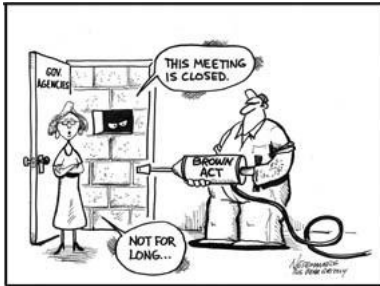


ROADMAP: 6 QUESTIONS

1. What is the purpose of the Brown Act?
2. What is a meeting?
3. What are the notice and agenda requirements?
4. What are the public's rights?
5. What are the permissible closed session topics?
6. What are the penalties and remedies for violating the Act?

1. WHAT IS THE PURPOSE OF THE ACT?

A. 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.”

1. WHAT IS THE PURPOSE OF THE ACT?

How Does the Brown Act Accomplish Its Purpose?

- Public is given notice of meetings
- Meetings must be open to the public
- Transparency does not mean chaos
- Charter School can set more stringent requirements that foster greater access and participation (e.g., longer posting periods).

2. WHAT IS A MEETING?

A. Basic Definition:

When any congregation of a majority of the members of the Board meet to hear, discuss, deliberate, or take action on any item of Charter School business.



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2. WHAT IS A MEETING?

B. Exceptions to definition of meeting:

- Attendance of majority at **public conferences** of general interest
- Attendance of majority at **another body's public meeting**
- Attendance of majority at purely **social or ceremonial gatherings....**

**SO LONG AS SCHOOL BUSINESS
IS NOT DISCUSSED!**

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2. WHAT IS A MEETING?

C. Brown Act Committees

As a general rule, all committees must follow the Brown Act.

Non- Brown Act Committees

There is one exception for certain advisory committees that are not subject to the Brown Act. The advisory committee must be composed solely of the members of the Board that are less than a quorum and must not be a standing committee.

Certain Advisory Committees

- Must be advisory, not decision-making
- Must be composed solely of the members of the Board
- Must be less than a quorum of the Board
- Must not be a standing committee

2. WHAT IS A MEETING?

D. Serial Meetings Are Prohibited

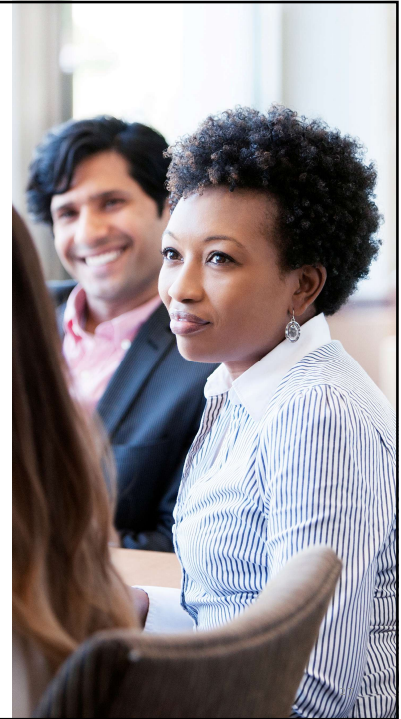
- A majority of the members;
- Outside a noticed meeting;
- Use a series of communications of any kind, directly or through intermediaries;
- To discuss, deliberate, or take action on;
- Any item of Charter School business that is within the subject matter jurisdiction of the Board.



2. WHAT IS A MEETING?

E. Limit On Unilateral Communications

While an employee or official may engage in separate conversations or communications outside of a meeting 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.



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2. WHAT IS A MEETING?

F. Meeting Locations and Two-Way Teleconference Locations

Type of Governing Body	Meeting Location
Governs one charter school	Meet within the physical boundaries of the county in which the charter school is located; two-way teleconference location at each schoolsite
Governs one NCB that does not have a facility or operates one or more resource centers	Meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside; two-way teleconference location at each resource center
Governs an entity managing one or more charter schools located within the same county	Meet within the physical boundaries of the county in which the charter schools are located; two-way teleconference location at each schoolsite/resource center
Governs an entity that manages two or more charter schools that are not located in the same county	Meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools managed by that entity reside; two-way teleconference location at each schoolsite/resource center; audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's internet website.

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2. WHAT IS A MEETING?

G. Remote Participation in Meetings by Board Members



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2. BROWN ACT MEETING; TELEPHONY OPTION

H. Basic Requirements if Any Board Member Participates by Telephone

1. All votes taken shall be by roll call;
2. Agenda must be posted at all teleconference locations;
3. Each teleconference location shall be identified in the notice and agenda of the meeting;
4. Each teleconference location shall be accessible to the public;
5. Members of the public shall have the right to address the board directly at each teleconference location; and
6. A quorum of the Board must participate from within the School's "jurisdiction."

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2. BROWN ACT MEETING; REMOTE PARTICIPATION

SB 707 Amendments – Effective January 1, 2026 through January 1, 2030

- Allows relaxed videoconferencing requirements for members for “**just cause**”
- Allows videoconferencing without any obligation to:
 - ✓ Identify the teleconferencing location on the agenda; or
 - ✓ Allow public access to the teleconferencing location.
- Member must participate through both audio and visual technology
- **Only allowable if a quorum of members participate in person from a singular physical location** clearly identified on the agenda and which is open to the public and situated within the agency’s jurisdiction.

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2. BROWN ACT MEETING; REMOTE PARTICIPATION

“**Just cause**” means any of the following:

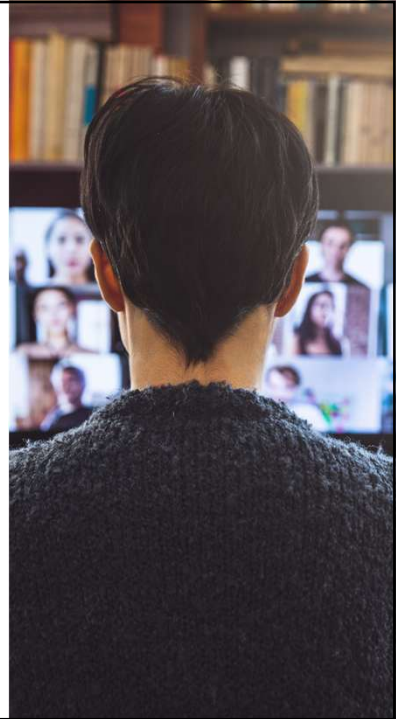
- A childcare or **caregiving need** of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
- A **contagious illness** that prevents a member from attending in person.
- A need related to a **physical or mental disability** as defined in law and not otherwise accommodated.
- **Travel while on official business** of the governing board or another state or local agency.
- An immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner of the member that requires the member to participate remotely.
- A **physical or family medical emergency** that prevents a member from attending in person.
- **Military service obligations** that result in a member being unable to attend in person.

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2. REMOTE PARTICIPATION CONT.

- Under no circumstances can a member participate in meetings solely by videoconference from a remote location for a period of more than:
 - ✓ 2 meetings per year if the body meets once per month or less
 - ✓ 5 meetings per year if the body meets twice per month
 - ✓ 7 meetings per year if the body meets three or more times per month

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2. BROWN ACT MEETING; REMOTE PARTICIPATION

Other requirements:

- Board member must **notify the Board at the earliest possible opportunity**, including at the start of a regular meeting, of their need to participate remotely for just cause, including a **general description of the circumstances** relating to their need to appear remotely at the given meeting.
- Meeting **minutes must identify** the **member(s)** who participated in the meeting remotely, the **legal provision** under which they are participating remotely (e.g., GC Section 54953.8.3) and the **“just cause”** reason for their participation (e.g., childcare need)

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2. BROWN ACT MEETING; REMOTE PARTICIPATION

Other requirements:

- Members of the public must be provided a means to “**remotely hear and visually observe the meeting, and remotely address**” the governing board, i.e., a **two-way audiovisual platform or a two-way telephonic service** and a live webcasting of the meeting.
- **Meet virtual meeting requirements: agenda** provides notice for how the public can participate; comments cannot be required in advance; technical disruption must be fixed before Board can take action.
- The **member shall publicly disclose** before any action is taken, if any individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member’s relationship with any such individuals.

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2. MEETING; DISABILITY ACCOMMODATION

SB 707: Special Rules for Accommodating Board Members with Disabilities

- A board member with a disability that precludes their attendance in person may be accommodated by allowing them to participate in the meeting remotely.
- Disability-related remote participation counts towards physical quorum as though the accommodated member were participating in-person at the physical meeting location.
- Disability-related remote participation must be via audio and visual technology unless a physical condition necessitates off-camera participation.

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2. MEETING; DISABILITY ACCOMMODATION

SB 707: Special Rules for Accommodating Board Members with Disabilities

- Board member participating remotely as a disability accommodation **must disclose at the meeting**, before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member’s relationship with any of those individuals.

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BROWN ACT STATE OF EMERGENCY

Virtual Meetings During a State of Emergency

- AB 557 and SB 707 extended the authorization to hold **virtual meetings** during any proclaimed state of emergency or local emergency, indefinitely, where the governing body either (1) meets for the purpose of determining whether meeting in person would present imminent health risks or (2) has previously made that determination.
- Board must **approve the following findings** no more than 45 days after teleconferencing for the first time due to the emergency, and every 45 days thereafter:
 - (1) The Board has reconsidered the circumstances of the state of emergency or local emergency; and
 - (2) The state of emergency or local emergency continues to directly impact the ability of the members to meet safely in person.
- Local emergency means “a condition of extreme peril to persons or property proclaimed by the governing body of the local agency affected, in accordance with ... the California Emergency Services Act” or “a local health emergency declared pursuant to [provisions of the Health and Safety Code].”

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3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

A. 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.**

Agenda:

1.
2.
3.
4.
5.
6.



3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

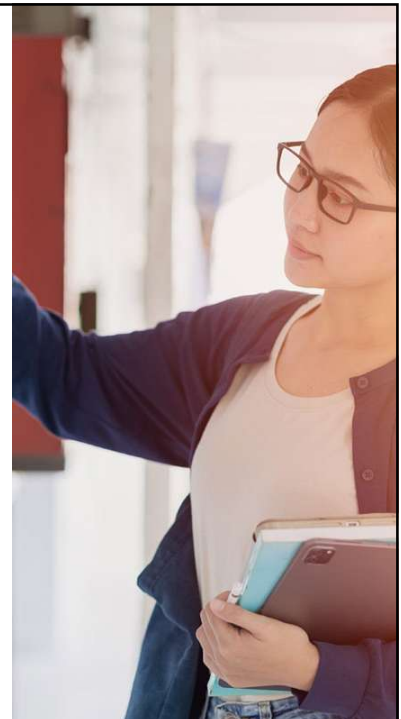
B. Exceptions to the Agenda Rule:

1. Upon a determination by a majority vote of the Board that an “emergency” or “dire emergency” exists (54956.5) – EXTREMELY RARE
2. Upon a determination by a 2/3 vote of the members of the Board or unanimous vote of those present if less than 2/3 of the members are present that:
 - a. That there is a need to take immediate action; and
 - b. The need for action came to the attention of the Board after the agenda was posted.

3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

3. The agenda item was posted for a prior meeting of the Board that:
 - a. Occurred not more than 5 calendar days prior to the date action was taken on the item; and
 - b. At the prior meeting the item was continued to the meeting at which action is taken.
4. Direction to staff.
5. Brief responses, clarifying questions and announcements.
6. Identification of future agenda items.

3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?



3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

Location of Posting

1. Posted in publicly accessible location for entire posting period within jurisdiction.
2. If Charter School maintains a website, agenda must be posted on website.
3. On website through “prominent, direct link” on front page; current agenda appears at top; agenda must be downloadable and searchable; free access.

Content of Agendas – Brief description of 20 words or less and public testimony time.

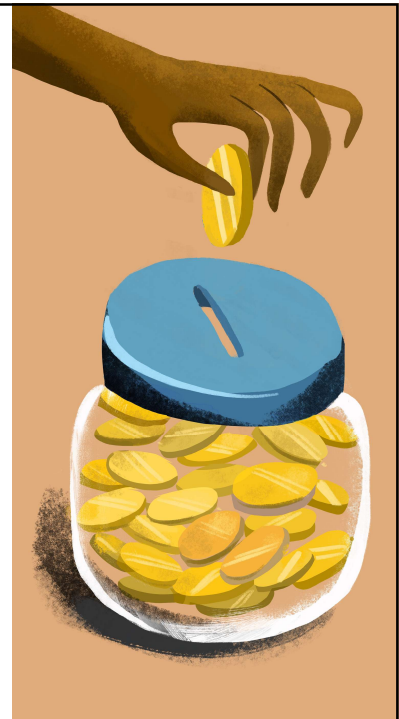
Closed Session Agendas

1. Use safe harbor language.
2. Provide verbal notice in advance of closed session.
3. Make public report of action taken in closed session and roll call vote or abstention of every member, if any.

3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

Executive Compensation:

- The Charter School must approve executive contract (ED, CEO, Superintendent, Dept Head) at regular (not special) meeting.
- Must report salary, salary schedule, and benefits orally in open session.
- Prior to any Board action to approve any decisions regarding executive compensation, the Board must first exercise due diligence (review of comparable compensation practices) to ensure compliance with IRS restrictions on excess compensation for nonprofit executives, including a charter school CEO, CFO, and other positions with “substantial influence” over the affairs of the organization.



3. WHAT ARE THE NOTICE & AGENDA REQUIREMENTS?

Votes are Public: The votes of individual board members must be publicly reported during the meeting and in minutes.

Board Minutes: Include all material motions and votes, including motions that fail.

4. WHAT ARE THE PUBLIC'S RIGHTS?

- A. Public testimony
- B. Taping or broadcasting
- C. No conditions of attendance
- D. Non-discriminatory facilities
- E. Copies of agendas and other public writings
- F. Must provide double the time for public testimony to persons utilizing an interpreter to ensure equal opportunity



4. WHAT ARE THE PUBLIC'S RIGHTS?

SB 1100

- Authorizes Board Chair or designee to **remove, or cause the removal of, an individual for disrupting the meeting.**
- “Disrupting” means engaging in behavior during a Board meeting that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and **includes, but is not limited to**, one of the following:
 - ✓ A failure to comply with reasonable and lawful regulations or policies adopted by the Board related to public comment, or any other law.
 - ✓ Engaging in behavior that constitutes use of force or a true threat of force.

4. WHAT ARE THE PUBLIC'S RIGHTS?

- Before removing an individual, the presiding member or designee **must warn the individual** that their behavior is
 1. Disrupting the meeting; and
 2. That their failure to cease their behavior may result in their removal.
- The presiding member or designee may then remove the individual if they do not promptly cease their disruptive behavior.
- The warning requirement does not apply to behavior constituting a **“true threat of force”**.
- A **“true threat of force”** means “a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat”

4. WHAT ARE THE PUBLIC'S RIGHTS?

SB 707

The presiding member of the Board conducting a meeting, or their designee, may remove, or cause the removal of, an individual for disrupting any teleconferenced meeting.

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5. WHAT ARE THE PERMISSIBLE CLOSED SESSION TOPICS?

A. Confidentiality requirement

- No Board member, staff member or invitee may disclose information from closed session without the authorization of the Board.

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5. WHAT ARE THE PERMISSIBLE CLOSED SESSION TOPICS

B. Authorized Closed Sessions

1. Personnel
 - ✓ Caveat - 24 hour written notice to employee if complaints and/or charges will be heard
2. Real estate negotiations
3. Labor negotiations
4. Public security exception
5. Conference with legal counsel
6. Pupil discipline

6. WHAT ARE THE PENALTIES & REMEDIES FOR VIOLATING THE ACT?

- Civil remedies
 - ✓ Board action may be declared null and void
 - ✓ Injunctive relief may be obtained
 - ✓ Prevailing plaintiff awarded attorneys' fees
- Criminal penalties apply if one or more Board members intend to deprive the public of information to which the member knows or has reason to know the public is entitled.
- Potential charter revocation

6. WHAT ARE THE PENALTIES & REMEDIES FOR VIOLATING THE ACT?

Complaints and Challenges

- Notice and Demand for Cure or Cease and Desist
 - ✓ Can be brought by District Attorney or member of the public
 - ✓ Board must cure/respond within 30 days
 - ✓ Seek advice from legal counsel on response

TRAINING ROADMAP

Training Area	Content
Transparency	<ul style="list-style-type: none">○ Ralph M. Brown Act○ California Public Records Act
Personal Financial Gain	<ul style="list-style-type: none">○ Conflict of Interest Laws<ul style="list-style-type: none">✓ Government Code Section 1090✓ Political Reform Act○ Reporting Obligations - Form 700
Bribery and Gifts	<ul style="list-style-type: none">○ Definition of bribery○ Prohibition and limits on gifts
Use of Public Funds	<ul style="list-style-type: none">○ Principles governing use of public funds○ Prohibition on gifts of public funds
Fair Process	<ul style="list-style-type: none">○ Eliminating Bias○ Prohibition on incompatible offices○ Anti-nepotism

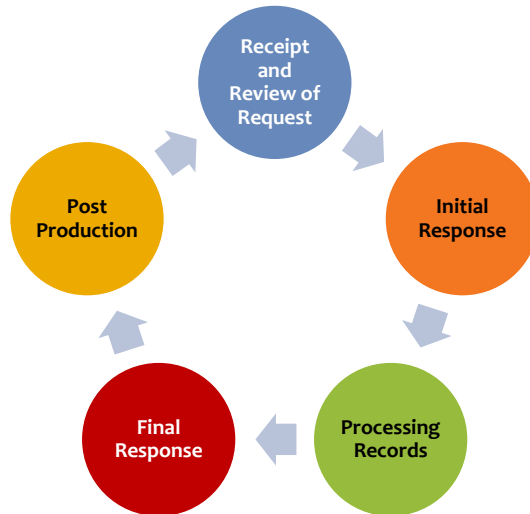




PURPOSE OF THE PUBLIC RECORDS ACT

“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 § 7921.000)

LIFE CYCLE OF A PUBLIC RECORDS ACT REQUEST



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RECEIPT AND REVIEW OF REQUEST

A request may be in any form and does not need to reference the PRA.

Practice Pointers:

- Treat any request for records or information as a PRA request.
- Reduce verbal requests to writing and provide a copy to requester.

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PROCESSING RECORDS

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 § 7920.530)



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PROCESSING RECORDS

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 § 7920.545)

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PROCESSING RECORDS

City of San Jose v. Superior Court (2017)

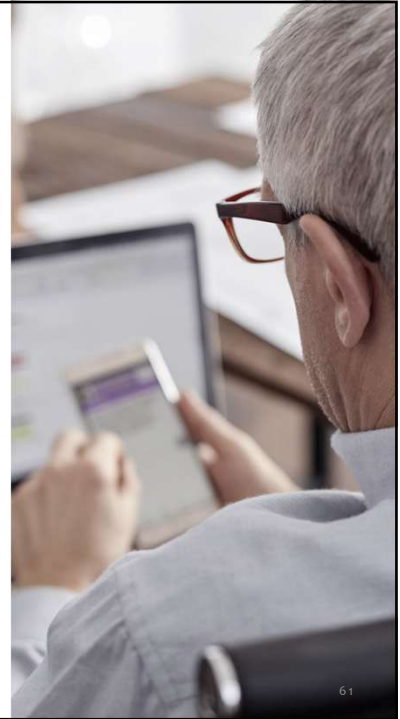
“A city employee’s writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.”

Must relate in some substantive way to the conduct of the public’s business.

Factors:

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

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POST PRODUCTION

- To enforce rights under the Public Records Act a requester must institute proceedings for injunctive/declaratory relief or seek a writ of mandate. (Govt. Code § 7923.000.)
- The court shall award court costs and reasonable attorneys’ fees to the plaintiff should the plaintiff prevail in litigation. (Govt. Code § 7923.115.)
 - ✓ Plaintiff prevails if suit motivates disclosure.

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ELECTRONIC COMMUNICATION BEST PRACTICES

- Employees and board members should use school-issued email accounts for all communications touching on public business.
- Keep school-related email communication professional.
- Strongly discourage discussing public business on Facebook, Twitter, or other social medium.
- Discourage employees and board members from using text messages to communicate about public business.
- Adopt records retention policy that addresses all records including email retention.

TRAINING ROADMAP

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CONFLICTS OF INTEREST

Broad Definition

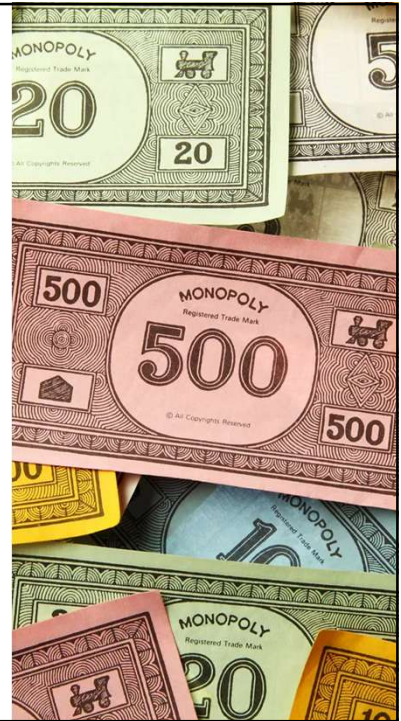
- A *conflict of interest* arises when an individual who has a private financial interest in the outcome of a corporate contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- In short, a conflict of interest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

FINANCIAL INTERESTS

Common Types of Financial Interests Regulated by Conflict Laws

- Ownership or investment in business entity
 - Investment in real property
 - Source of income
 - Source of gifts
 - Effect on personal finances
- Financial interests of immediate family members of Board Members and employees typically are covered.

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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

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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

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

- Cannot make, participate in, or use an official position to influence, any decision directly relating to any person with whom the official is negotiating, or has any arrangement concerning, prospective employment
- Lots of very detailed regulations have also been adopted by FPPC.

COI CODE

Conflict of Interest Code

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



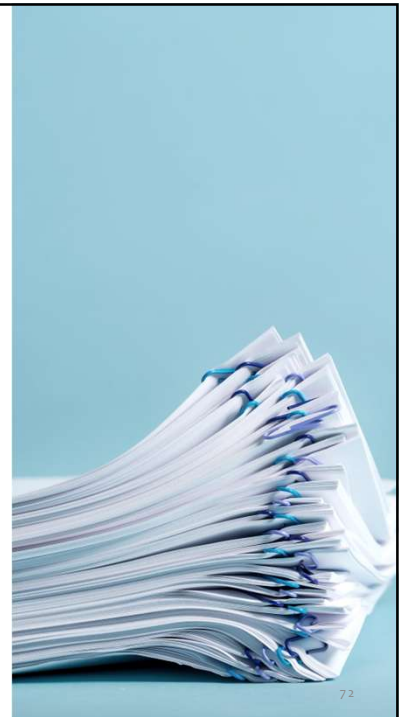
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CONFLICT OF INTEREST RULES

AB 1286

- Under existing law, the Political Reform Act (PRA) requires board members and designated officials to file Form 700 and make various disclosures of financial interests.
- AB 1286 now requires disclosures of “arrangements for prospective employment” defined as “an agreement pursuant to which a prospective employer’s offer of employment has been accepted by the prospective employee, including through verbal or written acceptance”
- When an arrangement for prospective employment is required to be reported, the statement shall contain the date that the filer accepted the prospective employer’s offer of employment, the business position, a general description of the business activity of the prospective employer, and the name and street address of the prospective employer.



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FORM 700

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

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)

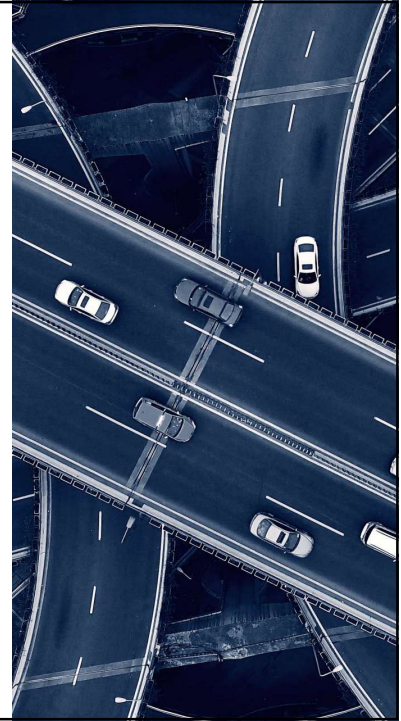


Does it meet the
smell test?

TRAINING ROADMAP

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GIFTING AND BRIBERY

Definition of Bribe: to persuade (someone) to act in one's favor, typically illegally or dishonestly, by a gift of money or other inducement.

1. Does a gift = bribe?
 - What is the intent of the giver and the receiver?
 - Does the giver have business before the Board? (e.g., proposed vendor, counterparty to a contract)
 - Is the giver attempting to influence a decision?
 - Is the receiver participating in a quid pro quo?
 - Could a gift have the appearance of a bribe?
2. Is a gift/bribe a financial interest under Section 1090 and the Political Reform Act?

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BRIBERY

Penal Code Section 68: “Every executive or ministerial officer, employee, or appointee of the State of California, a county or city therein, or a political subdivision thereof, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or action upon any matter then pending, or that may be brought before him or her in his or her official capacity, shall be influenced thereby, is punishable by imprisonment [of up to four years]... and, in addition thereto, forfeits his or her office, employment, or appointment, and is forever disqualified from holding any office, employment, or appointment, in this state.”

We don't want to test whether this statute applies to charter school officials!

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BRIBERY

Don't bribe other public officials!

Penal Code Section 85: “Every person who gives or offers to give a bribe to any Member of the Legislature, any member of the legislative body of a city, county, city and county, school district, or other special district, or to another person for the member, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his or her vote, or in not attending the house or any committee of which he or she is a member, is punishable by imprisonment in the state prison for two, three or four years.”

GIFTS

- General rule is that you cannot accept more than \$630 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).
 1. Many exceptions to both general rules, the most common being:
 - ☞ Special Occasions – Birthdays, Holidays:
 - ✓ Can be gifts from anyone (other than lobbyists) if the gift giving and taking is proportional.
 2. Inheritance

GIFTS

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. “BFFs”- Long-term friendships:

- ☞ Friends for a “period of time” and gift giving and taking must be proportional. (other than a lobbyist)

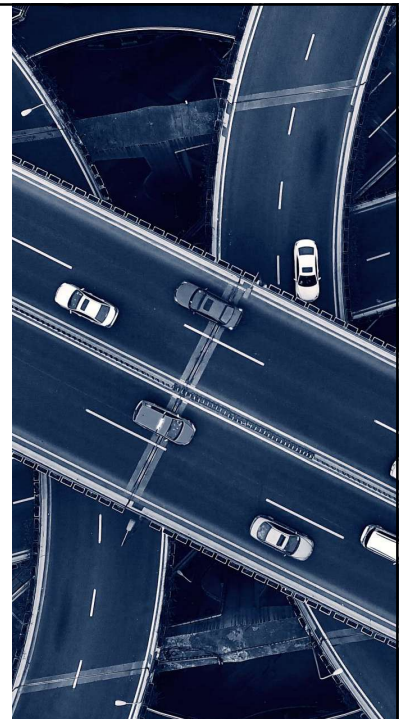
5. Dating – “bona fide” relationship (other than a lobbyist)

- ☞ Returning or Donating Gifts vs. Reporting

Other laws regulate gifting from lobbyists (e.g., Gov. Code, §§ 86203, 89503) and third-party-paid travel (Gov. Code § 89506)

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PUBLIC SCRUTINY TEST

All state, federal, and local funds received by charter schools:

- Are considered public funds
- Must be used to support the educational mission

Donated funds might be considered public funds upon donation – check with counsel.

The “public scrutiny test”:

- For each transaction, ask, would the tax-paying public would view the expenditure as necessary to support public education?
- If you are questioning whether the expenditure is appropriate, it may not be!

Do public contracting and bidding laws apply to charter school expenditures?

MISUSE OF PUBLIC FUNDS

Government Code Section 8314

Bars use of public resources/funds for campaign activities and personal purposes.

Penal Code Section 424

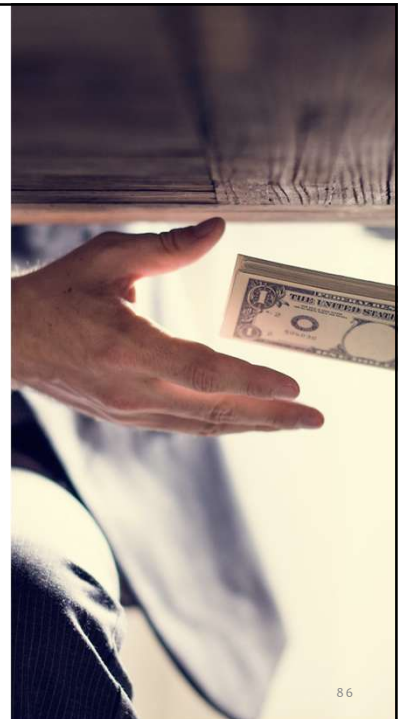
Persons responsible for "receipt, safekeeping, transfer or disbursement of public money" are prohibited from:

- Appropriating for personal use
- Keeping false or falsifying accounts
- Willfully obstructing lawful payments

EMBEZZLEMENT

Penal Code Section 503

“Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.”



GIFT OF PUBLIC FUNDS?

- General prohibition against lending or gifting public money (California Constitution, art. XVI, § 6)
- For charter schools, there must be a nexus between the expenditure and the mission of the public school
 - Expenditures should be budgeted for by Board
 - ✓ Must further the Charter School's public purpose
 - ✓ Evaluate on case-by-case basis
 - Purely personal items or money benefiting an individual without any consideration are not OK
 - ✓ E.g., paying for board member's vacation in the Bahamas or CEO's gym membership

GIFT OF PUBLIC FUNDS?

FCMAT's Sample List of Unallowable Expenditures

- A social gathering where a meal is provided for employee recognition such as for teacher appreciation, secretary day, etc.
- Contributions or donations to religious, community, charity, or other non-profit groups
- Purchase of flowers for personal gift
- Giving of flowers or items to convey compassion, sympathy or meet a perceived moral obligation
- Presents or gifts to anyone including employees, volunteers, or students
- Alcohol
- Holiday or other staff parties or picnics
- Employee reimbursement for mileage from their residence to their place of work

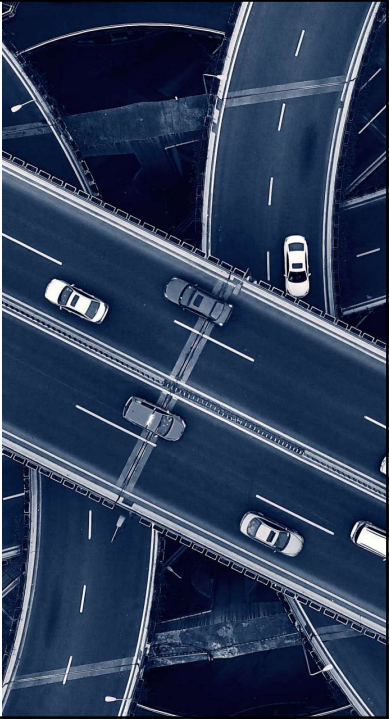
GIFT OF PUBLIC FUNDS?

FCMAT's Sample List of Allowable Expenses

- School furniture, supplies and equipment
- Teacher and faculty salaries
- Uniforms and regalia for school bands, choirs or athletic teams
- Caps and gowns for graduation ceremonies
- Instructional materials and textbooks
- Maintenance of buildings and facilities
- Research and promotional activities to advance public education
- Awards to students for excellence or to employees for exceptional contributions (if in board policy)
- Flowers or decorations for a school awards ceremony or commemorative event
- Transportation for students
- Refreshments/meals for meetings for the purpose of conducting school business (e.g., curriculum meeting during lunch)
- Snacks, refreshments and food for students in the course of the school day that are deemed to contribute to the educational process (e.g., during testing)

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ELIMINATING BIAS

In every action, decision, and policy, the Board and each Board member must uphold the anti-discrimination laws required of the Charter School:

No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid.

ELIMINATING BIAS

In circumstances where a board member acts as a factfinder (e.g., expulsion) Courts have recognized that “an individual has the right to a tribunal ‘which meets . . . standards of impartiality.’ . . . Biased decision makers are . . . impermissible and even the probability of unfairness is to be avoided. . . . The factor most often considered destructive of administrative board impartiality is bias arising from pecuniary interests of board members. . . . **Personal embroilment in the dispute will also void the administrative decision . . . , although neither prior knowledge of the factual background which bears on a decision nor pre-hearing expressions of opinions on the result disqualifies an administrative body from acting on a matter before it. . . .**”

[Clark v. City of Hermosa Beach](#), 48 Cal. App. 4th 1152 (1996)

INCOMPATIBLE OFFICES

Doctrine of Incompatible Offices

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



NEPOTISM

Fun fact: The word **nepotism** comes from the Italian word for nephew, and the practice can be traced back to Pope Sixtus IV in the late 15th century.

Defined: The appearance of, or actual, favoritism in employment (e.g., hiring, compensation, supervision, discipline), appointments, contracting, or decision-making based on family or personal relationships.

Best Practice: Implement and enforce anti-nepotism policy that defines scope of nepotism and procedures to avoid nepotism.

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