



**CHARTER SCHOOL GOVERNANCE TRAINING:
*RALPH M. BROWN ACT
PUBLIC RECORDS ACT
AVOIDING CONFLICTS OF INTEREST
BEST PRACTICES***

PUENTE LEARNING CENTER

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Topics We Will Cover

- Role of the Board of Directors
- Ralph M. Brown Act
- California Public Records Act
- Fiduciary Duties and Avoiding Conflicts of Interest
- Best Practices/ Questions?

Note: PUENTE's charter requires board members receive annual training on responsibilities, including conflicts of interest and Brown Act

Governance Structure and Role of the Charter School Board

Organizational Structure

- Puente Learning Center (PLC) is a California nonprofit public benefit corporation that, among other things, operates a charter school (see Ed. Code, § 47604(a))
- The charter school is governed by the PLC Board of Directors; Board has a legal and fiduciary responsibility for the charter school
- PLC Directors are elected in accordance with the corporation's bylaws *and* Element 4 of the school's charter
 - Authorizer entitled to representative on board (Education Code § 47604(b))

Board of Directors' Role

- Overall role of the Board is to ensure long-term viability of the organization
- Guides mission and vision of school
- Organization-wide strategic planning
- Board monitors school performance and other data to inform its decisions
- Board provides accountability, internal oversight, and leadership
- Board hires, compensates, and evaluates key employee (e.g. Principal and/or CEO)
- Board approves compensation for CFO

Board of Directors' Role

- Board approves major educational and operational policies:
 - Financial policies and procedures including internal controls
 - Student/parent handbook and employee handbook
 - School calendar and regular Board meeting calendar
 - Uniform Complaint Procedures
 - School Safety Plan (see new AB 1747)
 - And many others
 - How do I know what policies my school needs?

Board of Directors' Role

- Board approves major contracts (leases, loans, contracts per financial policies)
- Board approves strategic decisions
- Board approves the annual budget, interims, actuals, any budget revisions, annual audit
- Board approves LCAP (LCP) and Annual Update
- Board regularly reviews and monitors financial policies and procedures, budget, and finances to inform and evaluate resource allocation
- *Note: Board can use committees to help in this work*

Role of Board Compared to the School Leader

- Board provides fiduciary oversight, and hires a leader (e.g., Principal) to execute the day-to-day operations of school
 - The Board should not get involved with day-to-day operations
- The school leader is accountable for implementing all Board policies
- The charter, school leader's contract, and/or policies further delineate roles and responsibilities, including delegated authority
- Board supervises only the top 1 or 2 employee(s)
 - Top employee(s) supervise other employees
 - Top employee(s) regularly reports to the Board, is regularly evaluated by the Board

Senate Bill 126

SB 126

- Went into effect January 1, 2020
- Education Code section 47604.1: charter schools and entities “managing a charter school” must follow transparency laws:
 - Brown Act
 - Public Records Act
 - Political Reform Act
 - Government Code section 1090 and 1099 “incompatible offices doctrine”
- Transparency laws don’t apply to “activities that are unrelated to a charter school.” But must bifurcate meetings and separate charter school-related business from non-charter school-related business.
 - *Tip: back-to-back meetings with separate agendas are ok*

SB 126 continued

- Charter school board must meet in physical boundaries of county in which charter school(s) located
- Two-way teleconference must be established at each site and resource center

Ralph M. Brown Act

Brown Act: Overview

- The Brown Act is California's "open meetings" law for local public agencies
- Generally requires the governing board's actions be taken at an open meeting accessible to the public, duly noticed, where the public can attend and speak on matters on the agenda or within the agency's jurisdiction
- Under Brown Act, where can PUENTE's charter school meetings be?
 - Under SB 126, within the boundaries of LA County
- Does the Brown Act apply during COVID-19?
 - Yes, but the Governor's Executive Orders provide some flexibilities while physical distancing measures remain in effect
 - *During COVID-19, meetings may be all-virtual*

Brown Act: Holding Meetings

- Boards take action, discuss school business, only at “meetings”
- What is a meeting?
 - “Any congregation of a majority of the members of a legislative body ... to hear, discuss, or deliberate, or take action on any item”
 - You may not, “outside a meeting ... use a series of communications ... directly or through intermediaries, to discuss, deliberate, or take action”
 - Limited exceptions
 - So...avoid inadvertent serial meetings, e.g. by email
 - *Tip: information-only updates are ok, but no reply-all*

Brown Act: Holding Meetings

- New law on social media: AB 992
 - clarifies that a public official may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction.
 - BUT cannot use any social media platform to “discuss among themselves” (among majority of legislative body) official business. According to AB 992, “discuss among themselves” includes making posts, commenting and even using digital icons that express reactions to communications (i.e., emojis) made by other members of the legislative body.

Brown Act: Committees

- Brown Act applies to all standing committees created by the Board for business of the charter school, even if just advisory (e.g. academic committee)
 - “Ad hoc” committees exempt, but only if composed of Board members only, less than a quorum, limited existence
- Brown Act does not apply to working groups set up by the CEO/ED
 - Much more flexible mechanism
- Brown Act does not apply to Parent Council or School Site Council (composed of Principal, teachers, staff, parents) to offer information, support, resources to the Board

Brown Act: Holding Meetings

- Types of Meetings
 - “Regular” meetings require 72 hours posting notice
 - “Special” meetings require 24 hours posting notice
 - “Emergency” – very rarely used
- Who can call a meeting?
- What about annual board retreat, strategic planning sessions, board study sessions?
 - Remember, a meeting is any congregation of a majority of members to discuss *any item of school business*

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Brown Act: Holding Meetings

- Teleconferencing (normal times)
 - Agenda must identify teleconference locations
 - Agenda must be posted at teleconference locations
 - Teleconference locations must be accessible to the public
 - Roll call vote
 - Quorum must be within the jurisdiction

Brown Act: Holding Meetings

- Teleconferencing during COVID-19
 - All Board members may currently attend regular, special, or emergency meetings by telephone (or video conference)
 - Must still provide opportunity for public participation
 - Must still post agendas on website in appropriate timeframes
 - Most of the Brown Act teleconference requirements are suspended:
 - No need to identify physical locations of each teleconferencing location in agenda
 - No need to post agendas at each teleconferencing location
 - No need to provide public access at each teleconferencing location
 - No need to have a quorum of Board members dialing in from within the County

Brown Act: Holding Meetings

- What can the Board consider at a meeting? The Brown Act limits a meeting to what is on the posted agenda:
 - Brief description of business to be transacted (20 words or less)
 - Consent agenda ok for routine items
 - Don't create "information only" vs. "action" items if you want flexibility
- Post in publicly accessible place at/near location, and on the website
 - *One-click rule: agenda must be posted on website in a format that is accessible in one-click, searchable, downloadable, and on main page*

Brown Act: Holding Meetings

- Adding items to the agenda—*very limited*. Only allowed if:
 - (A) majority vote that there is an emergency (defined narrowly);
or
 - (B) 2/3 vote of board members present, or unanimous vote if less than 2/3 of full board is present, that *there is need to take immediate action and need arose subsequent to agenda being posted*

Brown Act: Holding Meetings

Tip: If you miss the 72-hour posting deadline to include an item on a regular agenda, you can still post a special meeting agenda with 24 hours notice for same time and place

- Agenda packet is a public record when distributed to majority of Board members.
 - Be careful about closed session or other privileged materials
 - No requirement to post online, but consider how your agenda materials are made available to the public at the meeting during COVID-19

Brown Act: Closed Sessions

- Brown Act limits closed sessions (also called executive sessions) to only certain topics:
 - Statutory basis must be identified correctly on agenda
 - Use the safe harbor descriptions in Gov. Code 54954.5 on your agendas!
 - Not for budget discussions, general planning
 - Only essential persons may be present in closed session
 - What happens in closed session, stays in closed session; no disclosure (e.g. parent rep on Board cannot carry closed session information to other parents)
 - Reporting out
 - Special closed session rules for executive compensation, personnel matters
 - *Be careful here!*

Brown Act: Rights of the Public

- Speak *before* action taken on any item (including closed session)
- Attend meeting without having to “sign in”
- Publicly accessible location (with disabled access)
- May criticize the school, employees, and Board
- Public comment can (and should) be time-limited
- Public comment is not a conversation
- At regular meeting, public comment may address Board on something *not* on agenda
 - No non-agenda comment required at special meetings, but can allow

Brown Act: Board Meeting Minutes

- Minutes generally approved by Board at subsequent meeting
- How much detail in minutes? There is no hard-and-fast rule
 - Open session items: usually in a narrative format, track your agenda, briefly describe discussion, who made the motion and second, and how each Board member voted
 - Closed session items: only the description found on the agenda and anything reported out

Tips: What Makes a Great Board Meeting?

- Board Chair and school leader should work together to plan board meetings and agendas
 - Be clear about what needs to go to the Board, and what doesn't
- Background material provided to Board with enough time to review and digest
 - How much material? Enough for Board to be well-informed
- Foster a culture of inquiry, cooperation and transparency
- Stay organized and efficient
- Be strategic in delegating tasks to committees, if used

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Public Records Act

The California Public Records Act: Overview

- What is the California Public Records Act (CPRA)?
- What are public records?

A public record 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”

A “writing” includes notes, handwriting, copies, faxes, voicemails, videos, pictures, **emails, texts** (more on these later)... regardless of the manner in which they’re stored

Are PUENTE's Records Open to the Public?

- Yes and no.
- What types of records are exempt from disclosure?
 - PUENTE records not related to the charter school
 - Identifiable student records (FERPA)
 - Personnel and medical records
 - Pending litigation
 - Preliminary drafts
 - Attorney-client communications and attorney work product
 - Others, too

The California Public Records Act: Email and Texts

- What about emails?
 - Email that is kept (know your policy on this) in ordinary course of business may be public.
 - This is one of the most common request areas, and can be extremely onerous to comply because of volume of emails
- What about text messages?
 - Text messages, and other electronic communications (and other records), that are kept in the ordinary course of business are likely public, *even if on personal phone/email*

The California Public Records Act: Responding to Requests

- Who can make a CPRA request?
- How are CPRA requests made?
- Can you charge fees for responding to a CPRA request?
 - Can charge for copies
 - Cannot charge for staff time
- Duty to respond within ten days from receipt of the request (with exceptions), but reasonable time to produce records

Fiduciary Duties

Fiduciary Duties of Directors

- A fiduciary relationship is any relationship between parties in which one of the parties has a duty to act “with the utmost good faith for the benefit of the other party”
- Directors owe fiduciary duties to the corporation:
 - Duty of care
 - Duty to provide financial oversight
 - Duty of loyalty (no conflicts of interest)

Board Member Exposure to Personal Liability?

- Broad nonprofit law immunity for volunteer Board members
- D&O insurance to defend claims against Board members acting within scope of duties
- However, Board members can be personally liable when:
 - Acting outside the course and scope of duties (such as managing rank-and-file employees, rather than policy-making)
 - Breaching fiduciary duties
 - Conflicts of interest create personal benefit
 - Intentional or willful misconduct

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Duty of Care

- Act with care, skill, prudence, and diligence,
- Under the circumstances,
- Of a prudent person acting in a like capacity,
- With familiarity with those matters, and
- Considering the background and experience of the director.
 - Note – Directors may rely on information, opinions, reports, or statements by officers of corporation whom director believes to be reliable and competent, counsel, committee, independent accountants, or other persons

Duty of Care

- Be informed, stay informed, and be proactive in your role
- Ask questions to seek clarity before voting
- Listen to all perspectives and test your understanding of information and implications
- Ok to rely on your resources, but ask probing questions necessary to own your decision

Duty of Financial Oversight

- Board approves annual budget (and LCAP), which is the school's (and Board's) blueprint for the year, setting spending priorities and goals
 - Through the year, Board monitors budget and finances
 - Financial reports are presented to the Board, such as balance sheet, income statement, cash flow
 - Ask questions!
- School financial policies and procedures

Charter School Finances – Audits

- Required annually by law
- It validates the school's reported finances
- Audits are also used to validate the charter school's internal controls
- Audit submitted to oversight agencies

Duty of Loyalty

- Must act in good faith and in the best interests of the corporation
 - Board members must place the interests of school as a whole before their own interests (or for parent board members, above those of their own student!)
- Individuals in a position of public trust must avoid *conflicts of interest* that prevent them from fulfilling their duties in an impartial manner

Avoiding Conflicts of Interest

- Know the landscape
 - Trend toward more scrutiny and regulation of conflicts of interest and the appearance of impropriety, serious consequences for charter schools
 - School policies, charter, bylaws
 - Corporations Code
 - Political Reform Act
 - Government Code section 1090
 - Other sources?

Corporations Code

- Applies to boards of all nonprofit public benefit corporations
- Directors must avoid “self-dealing” transactions, *i.e.* no material financial interest in transaction
- For *most* charitable nonprofits, the corporation can still enter into the transaction if:
 - transaction is beneficial and fair to the Corporation;
 - majority of Board affirms “fairness” of the transaction; and
 - financially interested board member may be required to disclose and disqualify.

...but wait, there's more!

Political Reform Act

- Fair Political Practices Commission (FPPC) says charter schools must follow the Political Reform Act
- Political Reform Act requires disclosure of personal financial interests by decisionmakers
 - Board members and other designated officials must disclose financial interests on Form 700 annually and within 30 days of assuming or leaving office
 - Conflict of interest code lays out who discloses (decisionmakers) and what is disclosed on Form 700

Political Reform Act

- Political Reform Act also requires disclosure and disqualification from any decision that may materially affect personal financial interests
 - Must recuse from all parts of the decisionmaking process
 - What is considered a “financial interest” is clearly defined by law
 - Financial interests of spouse and sometimes dependents count

Political Reform Act

- Applies to board members and other decisionmakers
- Special rules for gifts
- Civil and criminal penalties for violations
- No defense or indemnity by school or insurers
- Under Political Reform Act, the agency can still enter into such a contract as long as the official meets the disclosure and disqualification rules

...but wait, there's more!

Conflicts of Interest – Government Code section 1090

- What is Government Code section 1090?
 - Section 1090 deals specifically with conflicts of interest in the *contract-making process*. It does not supplant the Political Reform Act, but acts in tandem
 - More strict, but limited to *contracts*
 - Section 1090 provides that a public agency officer or employee may not make, participate in making, or attempt to influence a contract in which he or she is financially interested

Conflicts of Interest – Government Code section 1090

- When Section 1090 applies, then:
 - A public official who has a financial interest in a contract cannot be involved with the contract process at all
 - Financial interest is broadly defined
 - 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, so timing is crucial
 - Also, unless an exception applies (there are a few), a Board member's interest imputes to the rest of the Board, even where the Board member does not actually participate; recusal is not enough
 - Harsh penalties and remedies

Other Conflict of Interest Considerations?

- Appearance of impropriety
- Nepotism
- Common law
- IRS rules for executive compensation, no “interested persons”
- Special rules tied to funding, e.g. federal rules or California regulations for schools that accept lease reimbursement funds

Best Practices

Best Practices

- Board (and committees as needed) meet regularly
- Board receives governance training
- Board knows how to identify a potential conflict of interest
- Board members review documents, ask questions, stay informed, but understand their role is “big-picture”
- Board approves annual budget and gets regular updates
- Board stays informed on condition of school

Best Practices

- Board helps recruit diversity of expertise and experience on Board (education, politics, finance, business management, community outreach)
- School has system of evaluation for administrators/ teachers/ staff, and key vendors
- Administrators/ teachers/ staff receive professional development
- School has robust stakeholder communication system (e.g., key items available on website, active parent council)

Questions (now or later)?



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