

STUDENT SUCCESS PROGRAMS

DBA – AUDEO CHARTER SCHOOL · THE CHARTER SCHOOL OF SAN DIEGO

(A California Non-Profit Public Benefit Corporation)

Len Hering RADM, USN (ret) – Chairman,

Scott Barton – Member, David Crean – Member, Tim Morton– Member, Eric Schweinfurter - Member

SPECIAL BOARD WORKSHOP/TRAINING

Thursday, November 18, 2021, 3:00 PM

Via Video Conference

Access to the live video conference will be accessible prior to the start of the meeting at

CSSD: <https://charterschool-sandiego.net/board-governance/>

Audeo: <https://www.audeocharterschool.net/board-of-directors/>

This agenda contains a brief, general description of each item to be considered.

Except as otherwise provided by law, no action shall be taken on any item not appearing in the following agenda.

1.0 OPEN SESSION

- 1.1 Call to Order
- 1.2 Roll Call
- 1.3 Establishment of Quorum
- 1.4 Pledge of Allegiance
- 1.5 Approval of Agenda

2.0 PUBLIC COMMENT

If you would like to participate in public comment, please complete a speaker card and submit it to Staff. Public comment for items of interest to the public and within the scope of Student Success Programs Board (non-agenda) shall be no longer than two (2) minutes. Public comment for agenda items shall be no longer than three (3) minutes. Speakers may not yield their time. In accordance with the Brown Act, no discussion or action may occur at this time but it is the Board's prerogative to respond or give direction to staff. All public comment will be heard at this point in the agenda as ordered below. Each agenda item being commented on will have a maximum of 20 minutes allotted and each non-agenda item will have a maximum of 10 minutes allotted. If necessary, the Board Chair may equivalently decrease the time for each speaker in order to stay within the allotted maximum.

2.1 Non-Agenda Public Comment

2.2 Agenda Public Comment

3.0 BOARD WORKSHOP/TRAINING

- 3.1 Young, Minney & Corr Law Firm will provide training to the Board regarding the Brown Act, Conflict of Interest Law, Public Records Act, Government Code Section 1090, Compliance with SB126 and the Governor's Executive Order N-29-20/N-15-21

4.0 ADJOURNMENT

Next Regular Board Meeting: February 16, 2022

Meeting Agenda available at:

www.charterschool-sandiego.net, www.audeocharterschool.net

Accommodation -- Student Success Programs, Inc. (School's), does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. Angela Neri, has been designated to receive requests for disability-related modifications or accommodations in order to enable individuals with disabilities to participate in School's open and public meetings. Please notify Angela Neri at (858) 678-2020 twenty-four (24) hours or more prior to disability accommodations being needed in order to participate in the meeting. Translation services are available by notifying Angela Neri at (858) 678-2045 twenty-four (24) hours or more prior to the board meeting. In compliance with Government Code Section 54957.5, non-exempt writings that are distributed to a majority or all of the board in advance of a meeting may be viewed at 10170 Huennekens Street, San Diego, CA 92121; or at the scheduled meeting. In addition, if you would like a copy of any record related to an item on the agenda, please contact Angela Neri (858) 678 -2020.

Certification of Posting

I, Angela Neri, hereby certify that I posted this agenda on the Audeo and CSSD webpage on November 17, 2021.



YOUNG, MINNEY & CORR, LLP



**STUDENT SUCCESS PROGRAMS;
AUDEO CHARTER SCHOOL; AND
MIRUS EDUCATION'S
BROWN ACT AND CONFLICT OF
INTEREST LAW TRAINING**

Presented by:
Paul Minney (pminney@mycharterlaw.com)
Jerry Simmons (jsimmons@mycharterlaw.com)
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THE CHARTER LAW FIRM

Understanding the Brown Act

Education Code 47604.1



Charter School Transparency Law Effective January 1, 2020

- ▶ Makes express that charter schools must comply with Public Records Act, Brown Act, Political Reform Act, and Government Code 1090, as they are applicable to charter schools and entities managing/operating charter schools.

Education Code 47604.1



New Location Requirements:

The governing body of *one nonclassroom-based charter school that does not have a facility or operates one or more resource centers* shall meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that charter school reside; and

A two-way teleconference location shall be established at each resource center.

Education Code 47604.1



New Location Requirements:

For a governing body of an entity managing *one or more charter schools located within the same county*, the governing body of the entity managing a charter school shall meet within the physical boundaries of the county in which that charter school or schools are located; and

A two-way teleconference location shall be established at each schoolsite and each resource center.

Education Code 47604.1



New Location Requirements:

For a governing body of an entity that manages *two or more charter schools that are not located in the same county*, the governing body of the entity managing the charter schools shall 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; and

A two-way teleconference location shall be established at each schoolsite and each resource center; and

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

Purpose of The Brown Act



What Is the Purpose of the Brown Act?

- ▶ 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.”

Meetings



Brown Act Applies to Meetings of the Board

- ▶ Basic Definition



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

Meetings



Board Committees: Nearly all Committees Must Comply with the Brown Act

Exceptions:

- ▶ Advisory Committee (not decision making)
- ▶ Composed of only Board members
- ▶ Less than a quorum of the Board
- ▶ Must not be a standing committee

Meetings



Serial Meetings

Serial Meetings Are Prohibited

- ▶ Majority of Board members
- ▶ Engaging in a series of communications
- ▶ Outside Board meeting
- ▶ Through direct communications or intermediaries or technology
- ▶ To discuss, deliberate, or take action on any item of business (including relaying comments or position of other Board members)

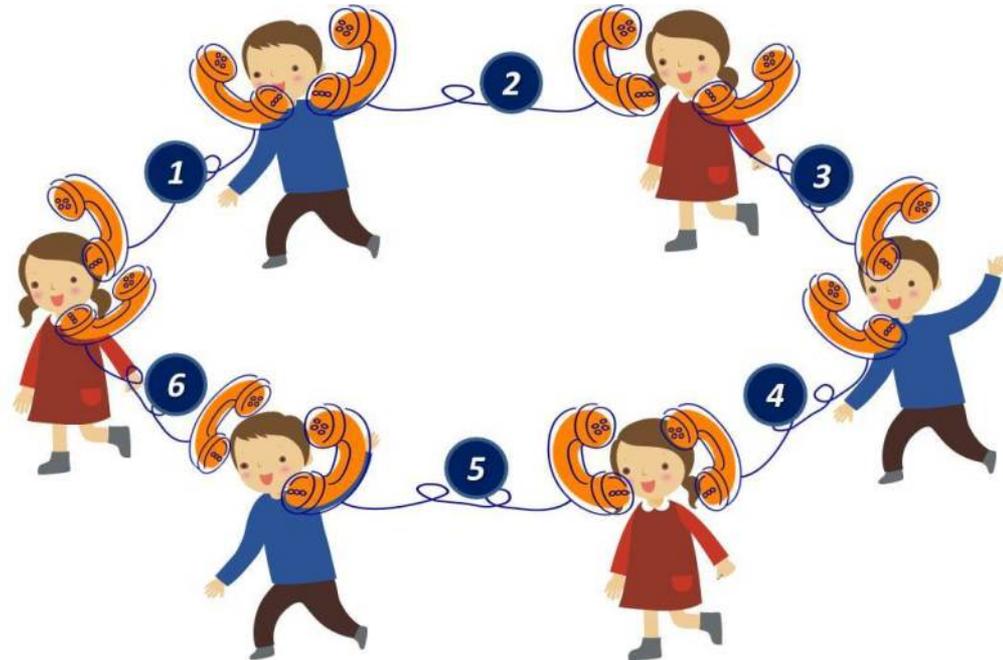


Meetings



Serial Meetings

- ▶ Hub or Chain prohibited
- ▶ Technology may result in meetings at times you might not expect
 - ☞ E-mails
 - ☞ Text messages
 - ☞ Social media
 - ☞ Website postings
 - ☞ Online forums
 - ☞ Telephone calls
 - ☞ Faxes



Meetings



Serial Meeting & Limit on One-Way Communications

- While an employee or official may engage in separate conversations or communications with other members of the Board in order to answer questions or provide information regarding a matter of Charter School business, that person may not communicate to members of the Board the comments or position of any other member or members of the Board.

Meetings



Teleconference Meetings (Normal rules)

Six Additional Requirements:

1. Agenda must be posted at all teleconference locations.
2. Each teleconference location must be identified in the notice and agenda of the meeting.



Meetings



Teleconference Meetings *(cont'd)*

3. All votes taken must be by roll call.
4. Each teleconference location must be accessible to the public. (ADA-compliance required.)
5. Members of the public must be able to hear and must have the right to address the Board directly from each teleconference location.
6. A quorum of the Board must participate from within the Charter School's "jurisdiction."

Assembly Bill 361



Pursuant to AB 361 (October 1, 2021), a charter school board may continue to hold teleconference meetings without adhering to some of the traditional requirements of the Brown Act. If certain conditions are met, a charter school board may continue to meet virtually with the following flexibilities:

- The agenda does not need to provide notice of each teleconference location nor do agendas need to be posted at each location;
- A quorum of board members do not need to be located within the Charter School's jurisdiction; and
- Governing board members may participate in a teleconference meeting from places that are not publicly accessible.



Assembly Bill 361



A charter school board may continue to hold teleconference meetings without adhering to all of the traditional teleconference requirements of the Brown Act under the following circumstances:

- During a proclaimed state of emergency; and

- State or local officials have imposed or recommended measures to promote social distancing; or

- The charter school board determines that meeting in person would present imminent risks to the health or safety of attendees.



Assembly Bill 361



If meeting pursuant to AB 361, the board must:

- Protect the statutory and constitutional rights of the parties and public appearing before the board.
- Give notice and post agendas as otherwise required under the Brown Act.
- Allow members of the public to access the meeting (e.g., Zoom) and describe the manner in which the public can offer public comment.
- Not require members of the public to submit comments in advance of the meeting. The public must be able to participate in real time.
- Provide a timed or a reasonable period for public comment.
- If there is a technical disruption in the meeting broadcast, take no further action on items in the agenda until public access is restored.



Assembly Bill 361



In order to continue holding meetings pursuant to AB 361, the board must make the following findings by majority vote every 30 days:

- The charter school board has reconsidered the circumstances of the state of emergency.
- Any of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.



Notice Requirements

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

Notice and Agendas

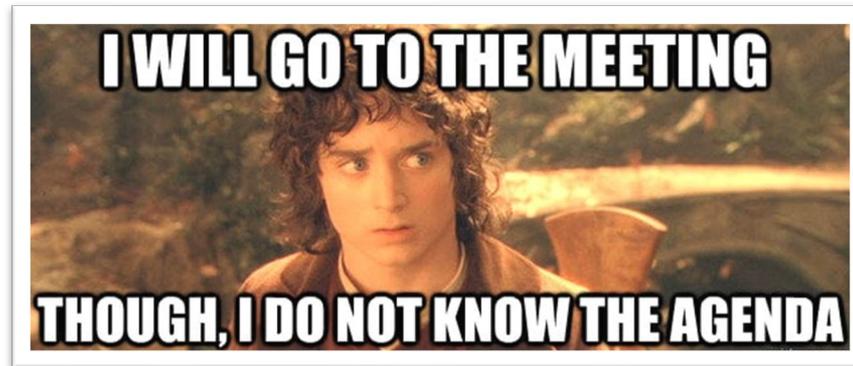
General Rule: The agenda shall be posted properly in advance of a meeting and must include a brief description of items to be transacted or discussed.

With a few exceptions, if an item is not on the agenda, the Board cannot discuss it.



Notice Requirements

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



Contents

- ▶ Brief description = usually not more than 20 words
- ▶ How to request disability-related accommodation
- ▶ Location for inspection of docs distributed to Board

Notice Requirements



When?

- ▶ Regular meetings – 72 hours notice
- ▶ Special meetings – 24 hours notice
- ▶ Emergency meetings – 1 hour notice (rare)

Where to Post?

- ▶ Physically at a publicly accessible location within the jurisdiction during the entire posting period
- ▶ On the website – homepage with a prominent, direct link

Rights of the Public



Rights to Enable Access and Participation

- ▶ Give oral testimony at meeting
 - ☞ Time limits
 - ☞ Addressing disruptive speakers
- ▶ Virtual meetings and best practices (stay in control of your meeting!)
- ▶ Audio record and broadcast



Rights of the Public



Rights to Enable Access and Participation *(cont.)*

- ▶ Limitations on conditions of public attendance
- ▶ Non-discriminatory facilities (reasonable accommodations under ADA)
- ▶ Copies of agendas and other public writings

Closed Sessions



What Are the Permissible Closed Sessions?

- ▶ Pending/Anticipated Litigation (conference with legal counsel)
 - ▶ Personnel (appointment, employment, evaluation, discipline, dismissal)
 - ☞ Caveat: 24-hour written notice to employee is required if Board will hear complaints and/or charges



Closed Sessions



What Are the Permissible Closed Sessions?

(cont.)

- ▶ Conference with Real Estate Negotiator
- ▶ Conference with Labor Negotiator
- ▶ Public Security
- ▶ Pupil Discipline (Education Code)

Closed Session



Requirements

- ▶ Use “Safe Harbor” agenda language (GC 54954.5)
- ▶ Prior to Closed Session:
 - ✎ Board Must Make a Public Announcement of Reasons for Closed Session Prior to Closed Session
- ▶ Public Must Have an Opportunity to Comment
- ▶ After Closed Session:
 - ✎ Board Must Make a Public Report of Action Taken in Closed Session and Vote or Abstention of Every Board Member
- ▶ Only necessary personnel may attend
- ▶ Confidentiality is required

Executive Compensation

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

Executive Compensation

- ▶ Approval of CEO/Executive Director's compensation must occur at a regular (not special) meeting
 - ▶ Govt. Code 54953: Prior to final action, Board must orally report a summary of the recommendation for final action, including the salary, salary schedule, and fringe benefits, during the open meeting where final action will be taken.
 - ▶ Final action in open session



Enforcement



Complaints and Challenges

Notice of Concern

- ▶ Often brought by Charter Authorizer
- ▶ Short turnaround to respond
- ▶ Seek advice from legal counsel on response

Notice and Demand for Cure or Cease and Desist

- ▶ Can be brought by DA or member of the public
- ▶ Board must cure/respond within 30 days
- ▶ Seek advice from legal counsel on response

Understanding Conflict of Interest Laws

Conflicts of Interest



Broad Definition

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



Government Code Section 1090



Elements

1. Public official (officer, board member, or employee)
2. Making a public contract (for sale or purchase)
3. Public official has a financial interest in the contract

Government Code Section 1090



What you need to know about Section 1090

- ▶ If board member has financial interest, the entire board is prohibited from entering into the contract; *even if it is with the best vendor at the best price and the interested board member abstains.* (Unless an exception applies.)
- ▶ Making a public contract is defined very broadly! Applies to earliest discussions, planning, solicitation for bids, etc., not just vote.
- ▶ Thus, this statute is, in most respects, the toughest standard to meet.
- ▶ Violation of GC 1090 is a felony and the contract void!

Political Reform Act

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

D E C I S I O N S



Political Reform Act



Big Picture

1. Public official
2. Participating in or attempting to influence a governmental decision
3. Public official has qualifying financial interest
(Includes spouse and children)
4. Financial interest is material

The Official Must Recuse Him or Herself from All Parts of the Decision-Making Process

☞ Lots of very detailed regulations have also been adopted by FPPC.

COI Code



Conflict of Interest Code

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



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

Political Reform Act



“Financial Interest” for Form 700

- ▶ Investment in business entity of \$2,000 or more
- ▶ Real property investment of \$2,000 or more
- ▶ Income of \$500 or more
- ▶ Business position in entity
- ▶ Gift of \$50 or more



Form 700



Check the Conflict-of-Interest Code to Determine What You Must Report (Board members: broad disclosure).

- ▶ Typically, All Financial Interests
 - 👉 Not Your Residence
 - 👉 Not Income from a Public Agency
 - 👉 Half of Your Spouse's Income
 - 👉 Financial Interest within Your Jurisdiction
 - ▲ Property – within 2 miles of jurisdiction
 - ▲ Investments/Business in jurisdiction
 - ▲ Gifts – all gifts inside or outside of jurisdiction

Form 700



Gifts

- ▶ General rule is that you cannot accept more than \$500 from one source in a calendar year.
- ▶ General rule is that gifts worth more than \$50 must be reported (one gift or aggregate gifts from same source in a calendar year).
- 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

Form 700



Gift (cont.)

3. Family Members:

- ☞ Spouse (or former spouse), child, parent, grandparent, great grandparent, grandchild, brother, sister, current or former parent-in-law, brother-in-law, sister-in-law, aunt, great aunt, uncle, great uncle, niece, great niece, nephew, great nephew, first cousin, or first cousin once removed, or the spouse of any such person. (other than a lobbyist)

4. “BFF’s”- Long-term friendships:

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

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

- ☞ Returning or Donating Gifts vs. Reporting

Common Law on Conflicts-of-Interest



Prohibition Against Conflicts of Interest

- ▶ Public official engaging in transaction or influencing decision.
- ▶ Creating an appearance of impropriety (financial interest not necessarily required)

Doctrine of Incompatible Offices

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



Public Records Act

Public Records Act



- School/agency records are generally disclosable.
- Public records are broadly defined, though there are some exceptions.
- Emails and text messages likely are disclosable if they relate to school/agency business.
- Electronic and paper records are covered.
- Required to respond within ten (10) days.
- YMC regularly assists with PRA requests.

Public Records



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

- But note that personnel files and student records are generally exempt from disclosure.

Public 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 § 6252)



THE CHARTER LAW FIRM

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QUESTIONS AND RESPONSES

THANKS FOR ATTENDING TODAY!

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